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**SECOND SUBSTITUTE SENATE BILL 5368**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2021 Regular Session

**State of Washington                      67th Legislature                      2021 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Short, Fortunato, and Wilson, L.)

READ FIRST TIME 02/22/21.

1            AN ACT Relating to encouraging rural economic development;  
2 amending RCW 36.70A.330 and 43.155.070; adding a new section to  
3 chapter 35A.14 RCW; adding a new section to chapter 36.70A RCW;  
4 adding a new section to chapter 43.160 RCW; adding a new section to  
5 chapter 80.36 RCW; and adding a new section to chapter 43.330 RCW.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7            NEW SECTION.    **Sec. 1.**    A new section is added to chapter 35A.14  
8 RCW to read as follows:

9            (1) A code city as provided in RCW 35A.14.296(2) may collaborate  
10 with the county or counties where the code city is located to form an  
11 interlocal agreement regarding annexation of unincorporated territory  
12 within the urban growth area boundary. The interlocal agreement  
13 formation process must include procedures for public participation.  
14 The procedures must provide for broad dissemination of proposals and  
15 alternatives, opportunity for written comments, public meetings after  
16 effective notice, and consideration of and response to public  
17 comments. The interlocal agreement may only be executed after notice  
18 of availability of the agreement is posted on the website of each  
19 legislative body for four weeks and a public hearing by each  
20 legislative body, separately or jointly. This method of annexation

1 shall be an alternative method and is additional to all other methods  
2 provided for in this chapter.

3 (2) An interlocal agreement under this section may include use of  
4 a sales tax credit for annexed areas should such a credit be  
5 reinstated by the legislature.

6 (3) The agreement or plan under this section must address the  
7 following:

8 (a) A balancing of annexations of commercial, industrial, and  
9 residential properties so that any potential loss or gain is  
10 considered and distributed fairly as determined by tax revenue;

11 (b) Development, ownership, and maintenance of infrastructure;

12 (c) The potential for revenue-sharing agreements.

13 (4) In addressing the items in subsection (3)(a) through (c) of  
14 this section, the parties must also address the balancing of factors  
15 and objectives for annexation review in RCW 36.93.170 and 36.93.180.

16 (5) By December 1, 2021, the association of Washington cities and  
17 the Washington state association of counties shall report to the  
18 legislature, in compliance with RCW 43.01.036, on how a sales tax  
19 credit may be utilized to encourage appropriate annexations and what  
20 limits should be associated with such a credit if reinstated.

21 **Sec. 2.** RCW 36.70A.330 and 1997 c 429 s 21 are each amended to  
22 read as follows:

23 (1) After the time set for complying with the requirements of  
24 this chapter under RCW 36.70A.300(3)(b) has expired, or at an earlier  
25 time upon the motion of a county or city subject to a determination  
26 of invalidity under RCW 36.70A.300, the board shall set a hearing for  
27 the purpose of determining whether the state agency, county, or city  
28 is in compliance with the requirements of this chapter.

29 (2) The board shall conduct a hearing and issue a finding of  
30 compliance or noncompliance with the requirements of this chapter and  
31 with any compliance schedule established by the board in its final  
32 order. A person with standing to challenge the legislation enacted in  
33 response to the board's final order may participate in the hearing  
34 along with the petitioner and the state agency, county, or city. A  
35 hearing under this subsection shall be given the highest priority of  
36 business to be conducted by the board, and a finding shall be issued  
37 within forty-five days of the filing of the motion under subsection  
38 (1) of this section with the board. The board shall issue any order

1 necessary to make adjustments to the compliance schedule and set  
2 additional hearings as provided in subsection (5) of this section.

3 (3) If the board after a compliance hearing finds that the state  
4 agency, county, or city is not in compliance, the board shall  
5 transmit its finding to the governor. ((The))

6 (a) The board may refer a finding of noncompliance to the  
7 department. The purpose of the referral is for the department to  
8 provide technical assistance to facilitate speedy resolution of the  
9 finding of noncompliance and to provide training pursuant to section  
10 3 of this act as necessary.

11 (b) Alternatively, the board may recommend to the governor that  
12 the sanctions authorized by this chapter be imposed. The board shall  
13 take into consideration the county's or city's efforts to meet its  
14 compliance schedule in making the decision to recommend sanctions to  
15 the governor.

16 (4) In a compliance hearing upon petition of a party, the board  
17 shall also reconsider its final order and decide, if no determination  
18 of invalidity has been made, whether one now should be made under RCW  
19 36.70A.302.

20 (5) The board shall schedule additional hearings as appropriate  
21 pursuant to subsections (1) and (2) of this section.

22 NEW SECTION. Sec. 3. A new section is added to chapter 36.70A  
23 RCW to read as follows:

24 (1) The department shall offer training to assist local  
25 governments in understanding findings of noncompliance from the  
26 growth management hearings board pursuant to RCW 36.70A.300 and  
27 36.70A.330 and applying prior decisions of the board to ongoing  
28 planning efforts to avoid findings of noncompliance.

29 (2) The department may award grants to a public agency with  
30 appropriate expertise and funded by local governments to provide the  
31 training required in subsection (1) of this section.

32 (3) The training provided in subsection (1) of this section is  
33 limited to counties that are largely rural.

34 **Sec. 4.** RCW 43.155.070 and 2017 3rd sp.s. c 10 s 9 are each  
35 amended to read as follows:

36 (1) To qualify for financial assistance under this chapter the  
37 board must determine that a local government meets all of the  
38 following conditions:

1 (a) The city or county must be imposing a tax under chapter 82.46  
2 RCW at a rate of at least one-quarter of one percent;

3 (b) The local government must have developed a capital facility  
4 plan; and

5 (c) The local government must be using all local revenue sources  
6 which are reasonably available for funding public works, taking into  
7 consideration local employment and economic factors.

8 (2) Except where necessary to address a public health need or  
9 substantial environmental degradation, and except as provided in  
10 subsection (12) of this section, a county, city, or town planning  
11 under RCW 36.70A.040 may not receive financial assistance under this  
12 chapter unless it has adopted a comprehensive plan, including a  
13 capital facilities plan element, and development regulations as  
14 required by RCW 36.70A.040. This subsection does not require any  
15 county, city, or town planning under RCW 36.70A.040 to adopt a  
16 comprehensive plan or development regulations before requesting or  
17 receiving financial assistance under this chapter if such request is  
18 made before the expiration of the time periods specified in RCW  
19 36.70A.040. A county, city, or town planning under RCW 36.70A.040  
20 that has not adopted a comprehensive plan and development regulations  
21 within the time periods specified in RCW 36.70A.040 may apply for and  
22 receive financial assistance under this chapter if the comprehensive  
23 plan and development regulations are adopted as required by RCW  
24 36.70A.040 before executing a contractual agreement for financial  
25 assistance with the board.

26 (3) In considering awarding financial assistance for public  
27 facilities to special districts requesting funding for a proposed  
28 facility located in a county, city, or town planning under RCW  
29 36.70A.040, the board must consider whether the county, city, or town  
30 planning under RCW 36.70A.040 in whose planning jurisdiction the  
31 proposed facility is located has adopted a comprehensive plan and  
32 development regulations as required by RCW 36.70A.040.

33 (4) (a) The board must develop a process to prioritize  
34 applications and funding of loans and grants for public works  
35 projects submitted by local governments. The board must consider, at  
36 a minimum and in any order, the following factors in prioritizing  
37 projects:

38 (i) Whether the project is critical in nature and would affect  
39 the health and safety of many people;

40 (ii) The extent to which the project leverages other funds;

1 (iii) The extent to which the project is ready to proceed to  
2 construction;

3 (iv) Whether the project is located in an area of high  
4 unemployment, compared to the average state unemployment;

5 (v) Whether the project promotes the sustainable use of resources  
6 and environmental quality, as applicable;

7 (vi) Whether the project consolidates or regionalizes systems;

8 (vii) Whether the project encourages economic development through  
9 mixed-use and mixed income development consistent with chapter 36.70A  
10 RCW;

11 (viii) Whether the system is being well-managed in the present  
12 and for long-term sustainability;

13 (ix) Achieving equitable distribution of funds by geography and  
14 population;

15 (x) The extent to which the project meets the following state  
16 policy objectives:

17 (A) Efficient use of state resources;

18 (B) Preservation and enhancement of health and safety;

19 (C) Abatement of pollution and protection of the environment;

20 (D) Creation of new, family-wage jobs, and avoidance of shifting  
21 existing jobs from one Washington state community to another;

22 (E) Fostering economic development consistent with chapter 36.70A  
23 RCW;

24 (F) Efficiency in delivery of goods and services and  
25 transportation; and

26 (G) Reduction of the overall cost of public infrastructure;

27 (xi) Whether the applicant sought or is seeking funding for the  
28 project from other sources; and

29 (xii) Other criteria that the board considers necessary to  
30 achieve the purposes of this chapter.

31 (b) Before September 1, 2018, and each year thereafter, the board  
32 must develop and submit a report regarding the construction loans and  
33 grants to the office of financial management and appropriate fiscal  
34 committees of the senate and house of representatives. The report  
35 must include:

36 (i) The total number of applications and amount of funding  
37 requested for public works projects;

38 (ii) A list and description of projects approved in the preceding  
39 fiscal year with project scores against the board's prioritization  
40 criteria;

1 (iii) The total amount of loan and grants disbursements made from  
2 the public works assistance account in the preceding fiscal year;

3 (iv) The total amount of loan repayments in the preceding fiscal  
4 year for outstanding loans from the public works assistance account;

5 (v) The total amount of loan repayments due for outstanding loans  
6 for each fiscal year over the following ten-year period; and

7 (vi) The total amount of funds obligated and timing of when the  
8 funds were obligated in the preceding fiscal year.

9 (c) The maximum amount of funding that the board may provide for  
10 any jurisdiction is ten million dollars per biennium.

11 (5) Existing debt or financial obligations of local governments  
12 may not be refinanced under this chapter. Each local government  
13 applicant must provide documentation of attempts to secure additional  
14 local or other sources of funding for each public works project for  
15 which financial assistance is sought under this chapter.

16 (6) Before September 1st of each year, the board must develop and  
17 submit to the appropriate fiscal committees of the senate and house  
18 of representatives a description of the loans and grants made under  
19 RCW 43.155.065 and 43.155.068.

20 (7) The board may not sign contracts or otherwise financially  
21 obligate funds from the public works assistance account before the  
22 legislature has appropriated funds to the board for the purpose of  
23 funding public works projects under this chapter.

24 (8) To qualify for loans, grants, or pledges for solid waste or  
25 recycling facilities under this chapter, a city or county must  
26 demonstrate that the solid waste or recycling facility is consistent  
27 with and necessary to implement the comprehensive solid waste  
28 management plan adopted by the city or county under chapter 70.95  
29 RCW.

30 (9) After January 1, 2010, any project designed to address the  
31 effects of stormwater or wastewater on Puget Sound may be funded  
32 under this section only if the project is not in conflict with the  
33 action agenda developed by the Puget Sound partnership under RCW  
34 90.71.310.

35 (10) For projects involving repair, replacement, or improvement  
36 of a wastewater treatment plant or other public works facility for  
37 which an investment grade efficiency audit is reasonably obtainable,  
38 the public works board must require as a contract condition that the  
39 project sponsor undertake an investment grade efficiency audit. The

1 project sponsor may finance the costs of the audit as part of its  
2 public works assistance account program loan or grant.

3 (11) The board must implement policies and procedures designed to  
4 maximize local government consideration of other funds to finance  
5 local infrastructure.

6 (12) The provisions in subsection (2) of this section do not  
7 apply to a county, city, or town applying for grants and loans under  
8 this chapter for projects that support broadband services where such  
9 grants and loans will assist the county, city, or town with economic  
10 development, disaster resiliency and response, adaptation to public  
11 health emergencies such as pandemics, and emergency management.

12 NEW SECTION. Sec. 5. A new section is added to chapter 43.160  
13 RCW to read as follows:

14 The board is prohibited from considering whether a county, city,  
15 or town is compliant with chapter 36.70A RCW when considering  
16 applications for broadband funding.

17 NEW SECTION. Sec. 6. A new section is added to chapter 80.36  
18 RCW to read as follows:

19 The commission is prohibited from considering whether a county,  
20 city, or town is compliant with chapter 36.70A RCW when considering  
21 applications for broadband funding.

22 NEW SECTION. Sec. 7. A new section is added to chapter 43.330  
23 RCW to read as follows:

24 The department is prohibited from considering whether a county,  
25 city, or town is compliant with chapter 36.70A RCW when considering  
26 applications for broadband funding.

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