

CERTIFICATION OF ENROLLMENT

SECOND SUBSTITUTE SENATE BILL 5412

Chapter 368, Laws of 2023

68th Legislature
2023 Regular Session

STATE ENVIRONMENTAL POLICY ACT—LOCAL LAND USE—CATEGORICAL EXEMPTIONS
—HOUSING

EFFECTIVE DATE: July 23, 2023

Passed by the Senate April 22, 2023
Yeas 41 Nays 8

DENNY HECK

President of the Senate

Passed by the House April 17, 2023
Yeas 95 Nays 2

Laurie Jinkins

**Speaker of the House of
Representatives**

Approved May 9, 2023 11:10 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE SENATE BILL 5412** as passed by the Senate and the House of Representatives on the dates hereon set forth.

SARAH BANNISTER

Secretary

FILED

May 10, 2023

**Secretary of State
State of Washington**

SECOND SUBSTITUTE SENATE BILL 5412

AS AMENDED BY THE HOUSE

Passed Legislature - 2023 Regular Session

State of Washington 68th Legislature 2023 Regular Session

By Senate Transportation (originally sponsored by Senators Salomon, Liiias, Kuderer, Lovelett, Mullet, and Pedersen)

READ FIRST TIME 02/24/23.

1 AN ACT Relating to reducing local governments' land use
2 permitting workloads, by ensuring objective and timely design review
3 for housing and other land use proposals within cities and counties
4 and allowing proposed housing within urban growth boundaries to rely
5 on environmental reviews completed at the comprehensive planning
6 level; and amending RCW 43.21C.229.

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

8 **Sec. 1.** RCW 43.21C.229 and 2020 c 87 s 1 are each amended to
9 read as follows:

10 (1) (~~In order~~) The purpose of this section is to accommodate
11 infill and housing development and thereby realize the goals and
12 policies of comprehensive plans adopted according to chapter 36.70A
13 RCW(~~r~~-a).

14 (2) A city or county planning under RCW 36.70A.040 is authorized
15 by this section to establish categorical exemptions from the
16 requirements of this chapter. (~~An exemption adopted under this~~
17 ~~section applies even if it differs from the categorical exemptions~~
18 ~~adopted by rule of the department under RCW 43.21C.110(1)(a).~~) An
19 exemption may be adopted by a city or county under this subsection if
20 it meets the following criteria:

1 (a) It categorically exempts government action related to
2 development proposed to fill in an urban growth area, designated
3 according to RCW 36.70A.110, where current density and intensity of
4 use in the area is roughly equal to or lower than called for in the
5 goals and policies of the applicable comprehensive plan and the
6 development is either:

7 (i) Residential development;

8 (ii) Mixed-use development; or

9 (iii) Commercial development up to (~~sixty-five thousand~~) 65,000
10 square feet, excluding retail development;

11 (b) It does not exempt government action related to development
12 that is inconsistent with the applicable comprehensive plan or would
13 clearly exceed the density or intensity of use called for in the
14 goals and policies of the applicable comprehensive plan;

15 (c) The local government considers the specific probable adverse
16 environmental impacts of the proposed action and determines that
17 these specific impacts are adequately addressed by the development
18 regulations or other applicable requirements of the comprehensive
19 plan, subarea plan element of the comprehensive plan, planned action
20 ordinance, or other local, state, or federal rules or laws; and

21 (d) (i) The city or county's applicable comprehensive plan was
22 previously subjected to environmental analysis through an
23 environmental impact statement under the requirements of this chapter
24 prior to adoption; or

25 (ii) The city or county has prepared an environmental impact
26 statement that considers the proposed use or density and intensity of
27 use in the area proposed for an exemption under this section.

28 (~~(2) Any~~) (3) All project actions that propose to develop one
29 or more residential housing units within the incorporated areas in an
30 urban growth area designated pursuant to RCW 36.70A.110 or middle
31 housing within the unincorporated areas in an urban growth area
32 designated pursuant to RCW 36.70A.110, and that meet the criteria
33 identified in (a) and (b) of this subsection, are categorically
34 exempt from the requirements of this chapter. For purposes of this
35 section, "middle housing" has the same meaning as in RCW 36.70A.030
36 as amended by chapter . . . (Engrossed Second Substitute House Bill
37 No. 1110), Laws of 2023. Jurisdictions shall satisfy the following
38 criteria prior to the adoption of the categorical exemption under
39 this subsection (3):

1 (a) The city or county shall find that the proposed development
2 is consistent with all development regulations implementing an
3 applicable comprehensive plan adopted according to chapter 36.70A RCW
4 by the jurisdiction in which the development is proposed, with the
5 exception of any development regulation that is inconsistent with
6 applicable provisions of chapter 36.70A RCW; and

7 (b) The city or county has prepared environmental analysis that
8 considers the proposed use or density and intensity of use in the
9 area proposed for an exemption under this section and analyzes
10 multimodal transportation impacts, including impacts to neighboring
11 jurisdictions, transit facilities, and the state transportation
12 system.

13 (i) Such environmental analysis shall include documentation that
14 the requirements for environmental analysis, protection, and
15 mitigation for impacts to elements of the environment have been
16 adequately addressed for the development exempted. The requirements
17 may be addressed in locally adopted comprehensive plans, subarea
18 plans, adopted development regulations, other applicable local
19 ordinances and regulations, or applicable state and federal
20 regulations. The city or county must document its consultation with
21 the department of transportation on impacts to state-owned
22 transportation facilities including consideration of whether
23 mitigation is necessary for impacts to transportation facilities.

24 (ii) Before finalizing the environmental analysis pursuant to
25 (b)(i) of this subsection (3), the city or county shall provide a
26 minimum of 60 days' notice to affected tribes, relevant state
27 agencies, other jurisdictions that may be impacted, and the public.
28 If a city or county identifies that mitigation measures are necessary
29 to address specific probable adverse impacts, the city or county must
30 address those impacts by requiring mitigation identified in the
31 environmental analysis pursuant to this subsection (3)(b) through
32 locally adopted comprehensive plans, subarea plans, development
33 regulations, or other applicable local ordinances and regulations.
34 Mitigation measures shall be detailed in an associated environmental
35 determination.

36 (iii) The categorical exemption is effective 30 days following
37 action by a city or county pursuant to (b)(ii) of this subsection
38 (3).

39 (4) Until September 30, 2025, all project actions that propose to
40 develop one or more residential housing or middle housing units

1 within a city west of the crest of the Cascade mountains with a
2 population of 700,000 or more are categorically exempt from the
3 requirements of this chapter. After September 30, 2025, project
4 actions that propose to develop one or more residential housing or
5 middle housing units within the city may utilize the categorical
6 exemption in subsection (3) of this section.

7 (5) Any categorical exemption adopted by a city or county under
8 this section applies even if it differs from the categorical
9 exemptions adopted by rule of the department under RCW
10 43.21C.110(1)(a). Nothing in this section shall invalidate
11 categorical exemptions or environmental review procedures adopted by
12 a city or county under a planned action pursuant to RCW 43.21C.440.
13 However, any categorical exemption adopted by a city or county under
14 this section shall be subject to the rules of the department adopted
15 according to RCW 43.21C.110(1)(a) that provide exceptions to the use
16 of categorical exemptions adopted by the department.

Passed by the Senate April 22, 2023.

Passed by the House April 17, 2023.

Approved by the Governor May 9, 2023.

Filed in Office of Secretary of State May 10, 2023.

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