



City of Longview

1525 Broadway
Longview, WA 98632
www.ci.longview.wa.us

Agenda

Planning Commission

Wednesday, April 5, 2023

7:00 PM

City Hall

The City Hall is accessible for persons with disabilities. Special equipment to assist the hearing impaired is also available. Please contact the City Executive Offices at 360.442.5004 48 hours in advance if you require special accommodations to attend the meeting.

1. ROLL CALL

2. APPROVAL OF MINUTES

23-000998 Minutes of February 1, 2023

3. AUDIENCE PARTICIPATION OF CORRESPONDENCE

4. DECLARATION OF EX-PARTE COMMUNICATIONS AND APPEARANCE OF FAIRNESS

5. PUBLIC HEARINGS

6. NON-PUBLIC HEARING ITEMS

23-000999 PC 2023-2 Driveway pavement requirements

23-0001007 PC 2023-3 Cryptocurrency Mining & Data Centers

7. OTHER BUSINESS

8. PLANNER'S REPORT

23-0001013 *Article: WA Looks to address housing shortage with density, zoning changes (Joseph O'Sullivan, Crosscut)*

23-0001008 HB 1245- 2023-24 Increasing Housing Options through Lot Splitting

23-0001009 HB 1110- 2023-24 Increasing middle housing in areas traditionally dedicated to single-family detached housing.

23-0001010 HB 1293-2023-24 Streamlining development regulations

23-0001011 SB 5235-2023-24 Concerning accessory dwelling units (ADUs)

23- SB 5466-2023-24 Promoting transit-oriented development
0001012

9. ADJOURNMENT



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1. **ROLL CALL**

Chairman Collins called the meeting to order at 7:00 p.m.

Present: Member Craig Collins, Member Trey Davis, Member Jeff Rauth, Member Ramona Leber, Member Joanna Lee, Member Kalei LaFave,

Absent: Member Stacy Dalgarno

Staff Present: Christopher Eastwood, Assistant City Attorney; Mac Kosar, Planner; Lisa Vertrees, Administrative Assistant

2. **APPROVAL OF MINUTES**

23-000810 PC Minutes of December 7, 2022

A motion was made by Member Ramona Leber, seconded by Member Jeff Rauth to approve the regular meeting minutes of December 7, 2022. The motion passed unanimously.

3. **AUDIENCE PARTICIPATION OF CORRESPONDENCE**

A citizen expressed some concern of the planned storage units on 33rd Avenue.

4. **DECLARATION OF EX-PARTE COMMUNICATIONS AND APPEARANCE OF FAIRNESS**

The Declaration was read into the record.

5. **PUBLIC HEARINGS**

23-000841 PC 2022-3 Draft amendments to LMC Chapter 16.24 Electrical Code

Mr. Kosar reviewed the staff report.

Member Ramona Leber asked a few questions to clarify aesthetic, types of permits required, etc.

Chairman Collins opened the public hearing.

Casey Brown with Ameroc, provided information on the security system.

Hearing no further speakers, Chairman Collins closed the public hearing.

A motion was made by Member Ramona Leber, seconded by Member Joanna Lee, to adopt the draft electrical code amendments, with the exception of residential area zoning, and forward the draft to Council.

The motion passed unanimously.

23-000842 PC 2022-5 Driveway pavement requirements, Mylar, Mini-storage code

Mr. Kosar provided a topic refresher.

Chairman Collins opened the public hearing.

Hearing no speakers, Chairman Collins closed the public hearing.

A motion was made by Member Joanna Lee, seconded by Member Jeff Rauth to approve and forward the code updates to the City Council for approval. The motion passed unanimously.

6. NON-PUBLIC HEARING ITEMS

None at this time.

7. OTHER BUSINESS

None at this time.

8. PLANNER'S REPORT

** The Longview School District is planning several projects, including Memorial Stadium improvements.*

** Sunrise Village update*

** Demo of Fisher's Lane water treatment plant*

** Sam's Mini Golf*

** Annexation - a parcel on Ocean Beach Hwy. The use does fall within the comprehensive plan*

Member Ramona Leber requested a report on things before the Legislature that could impact the Planning Commission's work.

9. ADJOURNMENT

The next regular Planning Commission meeting is scheduled for March 1, 2023, 7 p.m.

With no further business to discuss, Chairman Collins adjourned the meeting at 7:35 p.m.

Lisa Vertrees, Recorder



P.O. Box 128
Longview, WA 98632-7080
www.mylongview.com

Proposed Amendment to Zoning Code Surface Requirements 19.78.060

Below is the revised writing of the 19.78.060 "Surface Requirements" Zoning code based on interdepartmental feedback. Upon question from City Council staff felt the item needed to further outline excluding commercial and industrial zones.

19.78.060 Surface requirements. Every off-street automobile parking and truck loading and unloading space and necessary means of access to such space, such as driveways, shall be made permanently available for such purpose and shall be improved with asphaltic or Portland cement concrete or other approved alternatives including permeable pavements and pavers, and be well maintained.

For single family residences (SFR) in (R-1, R-2, R-3, R-4) or (TNR), there may be a reduction in the hard surface requirement, reducing the driveway paving requirement to the first 50 feet of distance, starting where the driveway connects to a public road. Driveways extending more than 50 feet from the public road are required to meet City standard. Any alternate design must be approved by the Building Official.



3/28/2023

P.O. Box 128
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www.mylongview.com

Staff Research and Analysis: Cryptocurrency Mining & Data Centers

PC 2023-3 Cryptocurrency/Data Centers

Introduction: City of Longview Staff have received interest from developers in the industries of Cryptocurrency Mining & Data Centers in the past, and renewed interest has been targeting valuable Industrial properties but offering few if any jobs & no tax benefit to the City. City Staff would like to share recent data, information, and stories from other communities to guide the Planning Commission and Public on understanding how Cryptocurrency Mining and Data Centers can impact Longview and its valuable Industrial land, resources, and neighborhoods. Staff is recommending Planning Commission consider limiting, banning, or removing permissions for Cryptocurrency/Data Centers in City Limits after consideration of the following.

Current Permissions: Currently the City of Longview's Industrial Zoning Districts Use table (19.58.020-1) allows for Data Centers in all Industrial Zoning Districts (LI-A & B, HI, C/I). Cryptocurrency Mining often falls under the title or use of Data Centers, and thus could possibly be allowed to operate in any of the City's Industrial Zoning Districts.

Jeffrey Thomson begins his paper '*Tragedy of the Energy Commons: How Government Regulation Can Help Mitigate the Environmental and Public Health Consequences of Cryptocurrency Mining*' by rehashing the familiar story of '*The Tragedy of the Commons*' by William Foster Lloyd. '*The Tragedy of the Commons*' describes the problem of cattle herders in England sharing a common parcel of land which they each entitled to let their cows graze. According to Lloyd's theory, each herder could receive an added benefit by letting additional cattle graze on the common pasture while the whole group of herders shared in the resulting damage to the pasture. Lloyd states "if he puts more cattle on a common, the food which they consume forms a deduction which is shared between all the cattle, as well that of others as his own, in proportion to their number, and only a small part of it is taken from his own cattle (Lloyd on checks to Population, 1832).

Expanding on Lloyd's theory, Garrett Hardin stated "The rational herdsman concludes that the only sensible course for him to pursue is to add another animal to his herd. And another; and another... But this is the conclusion reached by each and every rational herdsman sharing the commons. Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit- in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all" (Hardin, *The Tragedy of the Commons*, 1968).

Thomson concludes from '*The Tragedy of the Commons*' that "a common resource available and accessible to all leads people to pursue their own self-interest without regard for the damage and costs imposed on the greater community" (Thomson, *Tragedy of the Energy Commons*, page 78). Thomson

continues “Much like herdsman in England, a similar issue is emerging in local communities throughout the world when cryptocurrency miners use cheap energy and public utility infrastructure to pursue economic self-interest at the expense of the local communities in which they operate. If cryptocurrency miners have no incentive to invest in the energy resources they utilize and can simply move from one cheap energy source to another, then the economic, environmental, and public health deterioration in the local communities that provide this cheap power will continue. To solve this problem, federal and state legislators must work together to create a systemic and uniform regulatory scheme to control the enormous energy use by cryptocurrency miners” (Thomson, *Tragedy of the Energy Commons*, page 78).

Case Study: Thomson includes a Case Study from Washington State “A recent example from the Mid-Columbia River Basin in Eastern Washington provides a poignant case on the effects of cryptocurrency mining on local communities, public utility infrastructure, and the environment. This case study is important because it highlights the tangible effects of a process that is often seen as existing only in cyber-space. This region of the country is particularly attractive to cryptocurrency miners because the Columbia River provides a nearly limitless energy source. For example, the city of East Wenatchee, Washington, sits along five hydro-electric dams that straddle the Columbia River (Roberts 2018). These dams provide an enormous amount of energy for the city and region (Northwest Power & Conservation Council). As a result, energy from these dams is readily available, cheap, and easy to abuse by cryptocurrency miners (Thomson Page 78, 79).

Thomson continues, “Initially, mining for cryptocurrencies did not require as much power as it does now. Mining one Bitcoin required roughly 1200 watts of electricity, which is the equivalent of the amount of energy required to power a hairdryer or microwave (Roberts 2018). At this rate, miners could spend roughly two dollars to mine one bitcoin worth twelve dollars (Roberts 2018). This extremely profitable return on investment, combined with Bitcoin’s skyrocketing price, incentivized miners to find cheaper and cheaper power sources to run their mines (Roberts 2018). Thus, miners began to turn their attention to the Mid-Columbia River Basin, where electricity was available for about two-and-a-half cents per kilowatt (Roberts 2018). Comparatively, this price is about a quarter of the price of electricity in Seattle, which is the closest urban center (Roberts 2018). The five hydro-electric dams generate nearly six times the amount of energy used by the region’s residents (Roberts 2018). Before the mining craze took off in the early part of 2017, local public utility companies exported surplus energy to urban regions like Seattle and Los Angeles, allowing utility companies to sell power locally at well below its cost of production (Roberts 2018).

Given this incredibly cheap and plentiful source of power, miners began to flock to the region at a quicker pace, renting out old warehouses and abandoned business in order to set up shop (Roberts 2018). By 2014, the energy use in East Wenatchee was skyrocketing- the regional public utility companies received requests from current potential miners for a total of 220 megawatts of power (Roberts 2018). This request was larger than the amount of energy used by the region’s 70,000 residents (Roberts 2018). Furthermore, by the end of 2017, when the price of bitcoin hit all-time highs, the miners coming into the region were no longer interested in building five-megawatt mines; instead, they were building fifty-megawatt mines (Roberts 2018). This development represented enough power for about 22,000 homes, which is more energy than an Amazon Web Services’ data center uses (Roberts 2018).

The combination of cheap power, cheap space, and rising prices of Bitcoin led to the creation of a mining Mecca that was drawing more and more people to the Mid-Columbia River Basin to exploit its resources for explosive economic gain (Thomson page 80). The dams in the region currently yield about 3,000 megawatts, which is enough electricity to power Los Angeles; however, cryptocurrency mines now use roughly 70% of that output (Roberts 2018). Considering that the region used to sell 80% of its output to other areas of the country, these mining operations have severely limited the

energy that the region can sell to other municipalities to help offset the cost of energy for its residents (Roberts 2018). Accordingly, in order to subsidize the growth in mining operations, the public utility companies will have to raise rates, build new infrastructure, and buy power from outside sources, all at the expense of local taxpayers (Thomson 2020).

The case study from the Columbia River Basin demonstrates that cryptocurrency miners, inadvertently or not, will exploit towns with access to cheap power for their own economic gain without imparting an equivalent benefit on the communities they exploit (Thomson 2020).

Cryptocurrency mining often uses enough energy to power entire countries (G.F., *Why Bitcoin uses so much energy*, 2018). Miners often target smaller and more rural towns, such as East Wenatchee, in the Mid-Columbia River Basin, to set up shop because those towns often offer cheap rent and cheap energy (Roberts 2018). This combination leads to an influx of miners on small towns who use a disproportionate amount of the locality's energy supply (Roberts 2018).

Conclusion: Although staff have not seen an influx of Cryptocurrency Mining and Data Center applications, the applications and interest we have seen in Longview have proven to be of no benefit to the community, creating no jobs and generating little or no tax revenue – which Industrial operations are typically major contributors to. The goal of Industrial areas like the Mint Farm is to produce jobs and Economic Development. Although the City of Longview currently has no Data Centers or Cryptocurrency Mining operations, there has been a Bitcoin Miner in the City before. Mining Skies used the Fishers Lane Water Treatment Plant for their operation, and the workers stripped the facility and left in the middle of the night. There is significant concern from members of the Mint Farm Property Owners Association about the lack of investment these operations would be making into their property and surrounding infrastructure, as well as the drain it would create on the resources which they share. Citizens would also show concern over the noise produced by these uses as the 'NoiseBarrierWalls' corporation (a cryptocurrency mining noise reduction solution company) cites "A single bitcoin mining rig can produce 70 to 90 decibels of sound". 70 decibels is reported to sound similar to a washing machine, and 90 that of a leaf blower. Compared to 80 decibels, 90 decibels is 10 times more intense and twice as loud.

The exploitation of our valuable industrial land for our "cheap power" in exchange for no job creation, investment, or tax revenue certainly warrants further discussion and consideration of restricting or banning these operations in the City of Longview.

I would be happy to facilitate direction, discussion or questions in regard to this item how the Planning Commission sees fit.

Thank you,



McAllister Kosar, Planner

Sources:

Thomson, Jeff (2020) "Tragedy of the Energy Commons: How Government Regulation Can Help Mitigate the Environmental and Public Health Consequences of Cryptocurrency Mining," Seattle Journal of Technology, Environmental & Innovation Law: Vol. 11: Iss. 1, Article 4.

Paul Roberts, This Is What Happens When Bitcoin Miners Take Over Your Town, POLITICO MAG.(Mar./Apr. 2018), <https://www.politico.com/magazine/story/2018/03/09/bitcoin-mining-energyprices-smalltown-feature-217230> [<https://perma.cc/SSN9-QREV>].

Garret Hardin, *The Tragedy of the Commons*, SCI. MAG., Dec. 13, 1968, at 1244, <https://science.sciencemag.org/content/sci/162/3859/1243.full.pdf> [<https://perma.cc/34LY-ZA4N>].

<https://noisebarrierwalls.com/applications/crypto-and-bitcoin-mining-noise-reduction/#:~:text=A%20single%20bitcoin%20mining%20rig,requires%20a%20more%20robust%20solution.>

See Dams: history and purpose, NORTHWEST POWER & CONSERVATION COUNCIL, <https://www.nwcouncil.org/reports/columbia-river-history/damshistory> [<https://perma.cc/5YUWF65C>]

William Foster Lloyd, *W.F. Lloyd on the Checks to Population*, 6 POPULATION AND DEV. REV. 473 (1980); W.F. LLOYD, TWO LECTURES ON THE CHECKS TO POPULATION (The University of Oxford 1832), https://philosophy.lander.edu/intro/articles/lloyd_commons.pdf [<https://perma.cc/E797-ADEH>].

12-31-2020

Tragedy of the Energy Commons: How Government Regulation Can Help Mitigate the Environmental and Public Health Consequences of Cryptocurrency Mining

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Tragedy of the Energy Commons: How Government Regulation Can Help Mitigate the Environmental and Public Health Consequences of Cryptocurrency Mining

Jeffrey C. Thomson *

I. INTRODUCTION

A. *The Tragedy of the Commons*

Economic theory has long recognized the problems that arise when individuals in a society have free and unlimited access to a common resource. In 1832, William Foster Lloyd first identified and explained what would later be termed the “tragedy of the commons”¹ in his “Two Lectures on the Checks to Population,” in which he described the problem of cattle herders in England sharing a common parcel of land on which they were each entitled to let their cows graze.² According to Lloyd’s theory, each herder could receive an added benefit by letting additional cattle graze on the common pasture while the whole group of herders shared in the resulting damage to the pasture.³ Lloyd states, “if he puts more cattle on a common, the food which they consume forms a deduction which is shared between all the cattle, as well that of others as his own, in proportion to their number, and only a small part of it is taken from his own cattle.”⁴ Elaborating upon Lloyd’s theory, Garrett Hardin declared,

* Jeffrey Thomson is a student at Seattle University School of Law and graduates with his Juris Doctor in May 2021. In addition to the amazing SJTEIL editors and staff, Jeffrey would like to wholeheartedly thank his partner, Jason Weisfield, as well as his family, professors, and colleagues for their tireless commitment in support of all of his endeavors. Without any of them, this article would not be possible.

¹ See generally William Foster Lloyd, *W.F. Lloyd on the Checks to Population*, 6 POPULATION AND DEV. REV. 473 (1980); W.F. LLOYD, TWO LECTURES ON THE CHECKS TO POPULATION (The University of Oxford 1832), https://philosophy.lander.edu/intro/articles/lloyd_commons.pdf [<https://perma.cc/E797-ADEH>].

² Lloyd, *supra* note 1, at 483.

³ *Id.*

⁴ *Id.*

[T]he rational herdsman concludes that the only sensible course for him to pursue is to add another animal to his herd. And another; and another.... But this is the conclusion reached by each and every rational herdsman sharing a commons. Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit—in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all.⁵

Ultimately, these two economic scholars conclude that a common resource available and accessible to all leads people to pursue their own self-interest without regard for the damage and costs imposed on the greater community.

Much like the herdsman in England, a similar issue is emerging in local communities throughout the world when cryptocurrency miners use cheap energy and public utility infrastructure to pursue economic self-interest at the expense of the local communities in which they operate. If cryptocurrency miners have no incentive to invest in the energy resources they utilize and can simply move from one cheap energy source to another, then the economic, environmental, and public health deterioration in the local communities that provide this cheap power will continue. To solve this problem, federal and state legislators and regulators must work together to create a systematic and uniform regulatory scheme to control the enormous energy use by cryptocurrency miners. Otherwise, much like William Foster Lloyd argued, the invisible hand of the free market will fail when it comes to private actors utilizing common resources.

B. *A Case Study About the Problem*

A recent example from the Mid-Columbia River Basin in Eastern Washington provides a poignant case study on the effects of cryptocurrency mining on local communities, public utility infrastructure, and the environment. This case study is important because it highlights the tangible effects of a process that is often seen as existing only in cyber-space. This region of the country is particularly attractive to cryptocurrency miners because the Columbia River provides a nearly limitless energy source.

⁵ Garret Hardin, *The Tragedy of the Commons*, SCI. MAG., Dec. 13, 1968, at 1244, <https://science.sciencemag.org/content/sci/162/3859/1243.full.pdf> [<https://perma.cc/34LY-ZA4N>].

For example, the city of East Wenatchee, Washington, sits along five hydro-electric dams that straddle the Columbia River.⁶ These dams provide an enormous amount of energy for the city and region.⁷ As a result, energy from these dams is readily available, cheap, and easy to abuse by cryptocurrency miners.

Initially, mining for cryptocurrencies did not require as much power as it does now. Mining one Bitcoin required roughly 1200 watts of electricity, which is the equivalent of the amount of energy required to power a hairdryer or microwave.⁸ At this rate, miners could spend roughly two dollars to mine one bitcoin worth twelve dollars.⁹ This extremely profitable return on investment, combined with Bitcoin's skyrocketing price, incentivized miners to find cheaper and cheaper power sources to run their mines.¹⁰ Thus, miners began to turn their attention to the Mid-Columbia River Basin, where electricity was available for about two-and-a-half cents per kilowatt.¹¹ Comparatively, this price is about a quarter of the price of electricity in Seattle, which is the closest urban center.¹² The five hydro-electric dams generate nearly six times the amount of energy used by the region's residents.¹³ Before the mining craze took off in the early part of 2017, local public utility companies exported surplus energy to urban regions like Seattle and Los Angeles, allowing utility companies to sell power locally at well below its cost of production.¹⁴ Given this incredibly cheap and plentiful source of power, miners began to flock to the region at a quicker pace, renting out old warehouses and abandoned business in order to set up shop.¹⁵

By 2014, the energy use in East Wenatchee was skyrocketing—the regional public utility companies received requests from current and potential miners for a total of 220 megawatts of power.¹⁶ This request was larger than the amount of energy used by the region's 70,000 residents.¹⁷ Furthermore, by the end of 2017, when the price of bitcoin hit all-time

⁶ Paul Roberts, *This Is What Happens When Bitcoin Miners Take Over Your Town*, POLITICO MAG. (Mar./Apr. 2018), <https://www.politico.com/magazine/story/2018/03/09/bitcoin-mining-energy-prices-smalltown-feature-217230> [<https://perma.cc/SSN9-QREV>].

⁷ See *Dams: history and purpose*, NORTHWEST POWER & CONSERVATION COUNCIL, <https://www.nwcouncil.org/reports/columbia-river-history/damshistory> [<https://perma.cc/5YUW-F65C>].

⁸ Roberts, *supra* note 6.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

highs, the miners coming into the region were no longer interested in building five-megawatt mines; instead, they were building fifty-megawatt mines.¹⁸ This development represented enough power for about 22,000 homes, which is more energy than an Amazon Web Services' data center uses.¹⁹ The combination of cheap power, cheap space, and rising prices of Bitcoin led to the creation of a mining Mecca that was drawing more and more people to the Mid-Columbia River Basin to exploit its resources for explosive economic gain.

This explosion of individual miners in the region had a disastrous effect on the public utility infrastructure. The local utility grid was not prepared for such an increase in use. The regional mining operations quickly overwhelmed the residential power grid, and, in one example, a miner overloaded a transformer and caused a brush fire.²⁰ Further, public utility resources were drained in order to hunt down miners who did not possess the requisite permits to operate cryptocurrency mines.²¹ Combined, both individual and commercial miners drained the region's power at an alarming rate without realizing the grave consequences of their use or paying for the damage which they caused. The dams in the region currently yield about 3,000 megawatts, which is enough electricity to power Los Angeles; however, cryptocurrency mines now use roughly 70% of that output.²² Considering that the region used to sell 80% of its output to other areas of the country, these mining operations have severely limited the energy that the region can sell to other municipalities to help offset the cost of energy for its residents.²³ Accordingly, in order to subsidize the growth in mining operations, the public utility companies will have to raise rates, build new infrastructure, and buy power from outside sources, all at the expense of local taxpayers.

C. *Apparent Implications*

The case study from the Columbia River Basin raises the specter that cryptocurrency miners, inadvertently or not, will exploit towns with access to cheap power for their own economic gain without imparting an equivalent benefit on the communities they exploit. Further, the considerable costs of mining operations will likely fall on the local taxpayers. To mitigate the effects that unregulated mining has on both the environment

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

and public health of local communities, the United States government needs to implement a federal regulatory scheme that seeks to internalize the external costs of mining activity to control the energy use required for the mining of cryptocurrencies. Crafting a federal regulatory scheme instead of multiple state regulatory schemes helps avoid the classic “race to the bottom” scenario that has seemingly plagued areas of the law such as corporate law, where one state, through lax regulatory, statutory, and judicial schemes, has created a more accommodating environment for large corporations.²⁴ Accordingly, if left to the states to regulate, states would simply compete with one another to be more attractive to miners, putting their own economic interest above the interests of their various communities. Furthermore, because the Securities and Exchange Commission (SEC) and other financial regulatory agencies have failed to adequately regulate bitcoin as a currency or commodity, this article proposes using environmental and public utility regulations to control the energy use of mining.

This article will first discuss how cryptocurrency mining works and why it is so energy-intensive. It will next analyze both the origins of this problem and the ongoing effects of cryptocurrency mining proliferation. Then this article considers the impact such energy use has on the environment, public utility infrastructure, and public health. Next, it examines and analyzes existing regulatory schemes in the United States as well as in individual states and localities currently regulating cryptocurrency transactions and mining. Additionally, this article evaluates and compares the current regulations in China and Iran. Finally, it will propose three distinct regulatory schemes of which cost internalization will best achieve the policy goal of decreasing the impact mining has on the environment, public health, and public utility infrastructure.

II. CRYPTOCURRENCIES EXPLAINED

In order to fully understand the impacts that cryptocurrency mining has on both the United States’ public utility infrastructure and the environment, it is critical to define cryptocurrency mining and explain what it entails. The typical economic transaction involves using a credit or debit card for payment to a vendor. This type of payment uses a third party, often a bank, as a middleman to transmit monies from one account to another account. Inherently, such a transaction involves a significant amount of trust between both parties and the banks. Satoshi Nakamoto, the creator

²⁴ Mark J. Roe, *Delaware’s Competition*, 117 HARV. L. REV. 588, 594-95 (2003) (discussing the evolution and significance of corporate law’s race to the bottom).

of Bitcoin, inspired by the complex relationship among consumers, businesses, and banks, created “an electronic payment system based on cryptographic proof instead of trust.”²⁵ Accordingly, a cryptocurrency is a peer-to-peer electronic payment system that removes the middleman from the equation.²⁶ However, without a third party to verify transactions, the problem of double-spending arises, whereby parties can spend the same amount twice because there is no authority debiting your account. Cryptocurrencies solve that problem by using the blockchain.

In its simplest form, a blockchain is a database shared across a network of computers.²⁷ This database underlies a cryptocurrency and serves as a public ledger for every transaction made via the specific cryptocurrency.²⁸ Each transaction is recorded in the blockchain; however, before the transaction can go through, it must be verified against the ledger to ensure its validity.²⁹ This process replaces the need for a third party to certify that there is no double-spending or fraud by any party involved in the transaction.³⁰ Cryptocurrency mining is this verification process. Because mining adds transaction records to the Bitcoin’s public ledger, called the Blockchain, “it exists so that every transaction can be confirmed, and every single user of the network can access this ledger.”³¹ By competing with each other, miners serve the cryptocurrency community “by confirming every transaction and making sure that every single one of them is legitimate.”³² Miners, therefore, serve as the third party, verifying every transaction made via the cryptocurrency and adding that transaction to the blockchain, in exchange for a payment of the cryptocurrency.

Bitcoin, the first decentralized cryptocurrency, began operating in 2009; however, today, hundreds of cryptocurrencies are being traded as part of peer-to-peer transactions.³³ As of 2017, the current number of

²⁵ SATOSHI NAKAMOTO, BITCOIN: A PEER-TO-PEER ELEC. CASH SYS. 1 (2008), <https://bitcoin.org/bitcoin.pdf> [<https://perma.cc/VQ5S-YGD6>].

²⁶ *Id.*

²⁷ Maryanne Murray, *Blockchain Explained*, REUTERS GRAPHICS (June 15, 2018), <http://graphics.reuters.com/TECHNOLOGY-BLOCKCHAIN/010070P11GN/index.html#:~:targetText=A%20blockchain%20is%20a%20database,is%20very%20difficult%20to%20change.&targetText=The%20records%20that%20the%20network,previous%20block%20in%20the%20chain> [<https://perma.cc/S6UR-GA8D>].

²⁸ GARRICK HILEMAN & MICHEL RAUCHS, Global Cryptocurrency Benchmarking Study 15 (2017), <https://cdn.crowdfundinsider.com/wp-content/uploads/2017/04/Global-Cryptocurrency-Benchmarking-Study.pdf> [<https://perma.cc/AQ9M-ZKQB>].

²⁹ *Id.*

³⁰ *Id.*

³¹ *What is Bitcoin Mining*, COINTELEGRAPH, <https://cointelegraph.com/bitcoin-for-beginners/what-is-mining#complications> [<https://perma.cc/C9V9-D5JA>] [hereinafter “*What is Bitcoin Mining?*”].

³² *Id.*

³³ HILEMAN & RAUCHS, *supra* note 28, at 15.

unique active users of cryptocurrencies worldwide is estimated to be between 2.9 million and 5.8 million.³⁴ This number has undoubtedly increased since then and will likely continue to increase as cryptocurrencies attract more users around the world. Even more staggering, from 2016 to 2017, the total cryptocurrency market capitalization nearly quadrupled from a mere \$7 billion in 2016 to more than \$27 billion in April 2017.³⁵ Moreover, in 2016, mining revenue eclipsed \$2 billion worldwide,³⁶ while the industry employed nearly 2,000 full-time workers.³⁷ These statistics demonstrate how quickly the industry is growing and how big of a role the cryptocurrency industry will likely play in the future.

Miners must use computers to put every listed transaction through a highly complex mathematical formula that takes the information from a transaction and turns it into a much shorter series of letters and numbers, called a “hash.”³⁸ At its core,

The lack of a centraliz[ed], trusted authority means that blockchain needs a ‘consensus mechanism’ to ensure trust across the network. In the case of bitcoin, consensus is achieved by a method called ‘Proof-of-Work’ (PoW), where computers on the network – ‘miners’ – compete with each other to solve a complex math puzzle. Each guess a miner makes at the solution is known as a ‘hash,’ while the number of guesses taken by the miner each second is known as its ‘hashrate.’ Once the puzzle is solved, the latest ‘block’ of transactions is approved and added to the ‘chain’ of transactions.³⁹

To secure the information, each “hash” includes information from the previous block, and all “hash” sequences are the same length.⁴⁰ Further, if someone attempts to erase information from a block of transactions in order to use those bitcoins again, i.e., counterfeiting, the “hash” sequence will immediately change.⁴¹ These attributes of the blockchain make it nearly impossible to penetrate.

As a reward for serving as the de facto “ledger-keeper” of the blockchain, miners receive “coins” in return.⁴² The process incentivizes

³⁴ *Id.* at 27.

³⁵ *Id.* at 16.

³⁶ *Id.* at 89.

³⁷ *Id.* at 25.

³⁸ George Kamiya, *Bitcoin energy use – mined the gap*, INT’L ENERGY AGENCY (July 5, 2019), <https://www.iea.org/newsroom/news/2019/july/bitcoin-energy-use-mined-the-gap.html> [<https://perma.cc/4V9S-2CCQ>].

³⁹ *Id.*

⁴⁰ *What is Bitcoin Mining?*, *supra* note 31.

⁴¹ *Id.*

⁴² *How Bitcoin Mining Works*, BITCOINMINING.COM, <https://www.bitcoinmining.com/> [<https://perma.cc/4WU8-T9G3>].

miners to compete with one another to solve the puzzles.⁴³ Mining will inevitably become more competitive and will require miners to become ever more sophisticated while employing more energy-intensive computer systems. This adverse incentive, which is embedded into all cryptocurrency systems, will lead to bigger mines, more computers, and more energy being utilized by miners to beat one another in the race for fewer and fewer cryptocurrency coins.

III. ENERGY USE IN CRYPTOCURRENCY MINING

One of the most significant flaws of a cryptocurrency system is the enormous amount of energy necessary to mine the coins. Unfortunately, as alluded to before, the amount of energy a cryptocurrency system uses is a “side effect of relying on the ever-increasing computing power of competing miners to validate transactions through PoW.”⁴⁴ Further, the energy use involved is caught in a vicious cycle. As the difficulty in solving the puzzle increases with each block added to the chain, the energy that is required to power the computers of miners to solve those puzzles also increases.⁴⁵ Globally, computers just on the Bitcoin network are currently crunching 26 quintillion hashes every second of every day in order to continue mining more coins.⁴⁶ This number will only increase as the puzzles get harder and harder to solve. Moreover, 83% of cryptocurrency mining is conducted in North America and Asia, meaning that the United States should be especially concerned with the amount of energy required to continue these practices.⁴⁷ The current processes for sustaining a viable cryptocurrency network rely on an inordinate amount of computing power which, inevitably, requires a continuous and abundant supply of energy.

A cryptocurrency network of computers uses an astronomical amount of power. Alex de Vries, a Bitcoin specialist at PricewaterhouseCoopers, estimates, “that the current global power consumption for the servers that run Bitcoin’s software is a minimum of 2.55 gigawatts (GW),

⁴³ *What is Bitcoin Mining?*, *supra* note 31; one wrinkle in the process is that there only exists a finite number of the cryptocurrency. For example, only 21 million bitcoins will ever exist, and, as of 2018, 17.3 million of those have been mined. Ben Brown, *How Many Bitcoins Are There? (Hint: Not That Many...)*, BLOCKEXPLORER NEWS (Sept. 10, 2018), <https://blockexplorer.com/news/how-many-bitcoins-are-there-hint-not-that-many/#:~:targetText=There%20are%2017.3%20million%20bitcoins,there%20is%20much%20more%20complicated> [<https://perma.cc/6FME-B87A>]. Furthermore, the number of bitcoins that a miner is rewarded after successfully completing a block in the blockchain halves after 210,000 blocks are mined. *Id.*

⁴⁴ Kamiya, *supra* note 38.

⁴⁵ HILEMAN & RAUCHS, *supra* note 28, at 99.

⁴⁶ Pete Evans, *Bitcoin is an energy hog: New numbers suggest how big a problem it is*, CANADIAN BROADCAST. CORP. (May 21, 2018), <https://www.cbc.ca/news/business/bitcoin-electricity-1.4668768> [<https://perma.cc/QE39-MT8X>].

⁴⁷ HILEMAN & RAUCHS, *supra* note 28, at 22.

which amounts to energy consumption of 22 terawatt-hours (TWh) per year—almost the same as Ireland. Google, by comparison, used 5.7 TWh worldwide in 2015.”⁴⁸ Furthermore, de Vries observes that Bitcoin miners in 2018 will consume about five times more power than they did in 2017 and that there is no sign of a slowdown given the rising price of Bitcoin as well as the increased computing power required to solve the puzzles that are becoming more and more difficult every day.⁴⁹ Alternatively, a single Bitcoin transaction uses as much electricity as a typical Canadian home would consume in a month — and there are 200,000 transactions being processed each day.⁵⁰ Thus, the amount of energy being used to conduct Bitcoin transactions in a single day would be enough to power entire cities for a month.

When you look at the amount of energy used for cryptocurrencies beyond just Bitcoin, the numbers are even more eye-popping. For instance, from January 1, 2016 to June 30, 2018, cryptocurrency networks consumed an average of eleven MegaJoules to generate one U.S. dollar.⁵¹ Comparatively, conventional mining of aluminum consumed an average of 122 MegaJoules to generate one U.S. dollar.⁵² Given this reality, if we are concerned about the environmental effects of traditional mining activities, then cryptocurrency mining should give us more concern.

As aforementioned, cryptocurrency mining is incredibly energy-intensive because the systems are designed to require more and more computing power as less of the currency becomes available. Indeed, "the way the bitcoin algorithm works is that it's designed to waste as much electricity as possible. And the more popular Bitcoin becomes, the more electricity it wastes," said Keith Stewart, a spokesperson for Greenpeace.⁵³ Because there is a fixed number of coins available of any cryptocurrency, the system is set up to require more complex computing to solve the necessary equations to mine the coins. For example, "[t]he Bitcoin system is designed, so only a limited number of the cryptocurrency can be mined every

⁴⁸ G.F., *Why bitcoin uses so much energy*, *ECONOMIST* (July 9, 2018), <https://www.economist.com/the-economist-explains/2018/07/09/why-bitcoin-uses-so-much-energy> [<https://perma.cc/8925-99L2>].

⁴⁹ *Id.*

⁵⁰ Evans, *supra* note 46.

⁵¹ Max J. Kraus & Thabet Tolaymat, *Quantification of energy and carbon costs for mining cryptocurrencies*, 1 *NATURE SUSTAINABILITY* 711, 712 (2018).

⁵² *Id.*

⁵³ Kyle Bakx, *Bitcoin mining uses so much electricity that 1 city could curtail facility's power during heat waves*, *CANADIAN BROADCASTING CORP.* (Sept. 24, 2018), <https://www.cbc.ca/news/business/hut8-medicine-hat-bitcoin-mining-1.4834027> [<https://perma.cc/HWW3-JDAQ>].

day. Over time, as more miners compete for a decreasing number of available bitcoins, facilities will have to use more electricity compared to the amount of the cryptocurrency they collect.”⁵⁴

More specifically, “[e]very 2016 blocks (roughly every two weeks), the system is recalibrated. Miners are obliged therefore to keep upgrading in order to earn rewards as fast as competitors. And more computing power requires more electricity.”⁵⁵ Since over time the calculations needed to verify a block of transactions become more difficult, more and more computing power is necessary to solve it. Further, Bitcoin’s market price currently remains extremely volatile—although, as with all commodities, volatility can change over time.⁵⁶ Accordingly, “[t]hese factors have created an arms race to develop better computer hardware to more rapidly verify transactions and a push to devote ever-increasing amounts of electricity to the task.”⁵⁷ It is essential to keep the evolving difficulty of cryptocurrency mining in mind when determining how best to regulate cryptocurrencies going forward because the amount of energy used is inextricably linked to the current design of the system. Without taking this into account, there is no way to effectively regulate the amount of energy that cryptocurrency systems use.

IV. THE IMPACTS OF CRYPTOCURRENCY MINING

The exorbitant amount of energy used to mine cryptocurrencies has many different impacts. First, this section will address the negative impacts of cryptocurrency mining on public health and infrastructure. It will then focus on the wide range of adverse environmental impacts that cryptocurrency mining has on the planet. Finally, this section will explore the ways in which cryptocurrency mining positively impacts investment in renewable energy sources.

A. Public Health and Utility Infrastructure Impacts

Cryptocurrency mining often uses enough energy to power entire countries.⁵⁸ Miners often target smaller and more rural towns, such as East Wenatchee, in the Mid-Columbia River Basin, to set up shop because

⁵⁴ *Id.*

⁵⁵ G.F., *supra* note 48.

⁵⁶ *Bitcoin Price Index*, COINTELEGRAPH, <https://cointelegraph.com/bitcoin-price-index> [https://perma.cc/G3ND-TU4D].

⁵⁷ Umair Irfan, *Bitcoin is an energy hog. Where is all that electricity coming from?*, VOX (June 18, 2019), <https://www.vox.com/2019/6/18/18642645/bitcoin-energy-price-renewable-china> [https://perma.cc/V8HR-HA3N].

⁵⁸ See G.F., *supra* note 48.

those towns often offer cheap rent and cheap energy.⁵⁹ This combination leads to an influx of miners on small towns who use a disproportionate amount of the locality's energy supply.⁶⁰ Moreover, most of these affected town's energy grids were not constructed with such use in mind.⁶¹

First and foremost, the heavy energy usage by miners directly impacts the amount of energy available to local residents; as the local surplus decreases, the price of energy for residents dramatically increases to cover the cost of not being able to sell to foreign municipalities.⁶² In fact, by the end of 2018, 15% to 30% of all mining operations in the world could be traced to mining pools located in the Mid-Columbia River Basin.⁶³ In this region, five hydro-electric dams generate up to six times as much electricity than residents in the region consume, and most of the surplus energy is exported at higher prices.⁶⁴ This surplus enabled the residents to pay 26% less for the energy than the national average and commercial businesses to pay 21% less than the national average.⁶⁵ However, as miners continued to travel to the region searching for cheap energy and began to operate mines that consumed large amounts of this energy, exports of energy surpluses decreased and significantly raised the cost of residential electricity prices.⁶⁶ From 2012 through 2020, the average cost of residential electricity increased from 2.70 cents per kilowatt to 3.22 cents per kilowatt—this represents a nearly 20% increase in electricity prices in an eight-year period.⁶⁷ Accordingly, this increase in prices for residents has a real human cost associated with it—residents, who are often less financially secure, will now have to devote more money from a limited income to pay for

⁵⁹ Roberts, *supra* note 6.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ Roberts, *supra* note 6.

⁶⁴ *Id.*

⁶⁵ Wendy Culverwell, *Power is what powers the Mid-Columbia economy*, TRI-CITY HERALD (Aug. 5, 2017), <https://www.tri-cityherald.com/news/local/article165721382.html> [<https://perma.cc/5864-V42G>].

⁶⁶ Heidi Samford & Lovely-Francis Domingo, *The Political Geography and Environmental Impacts of Cryptocurrency Mining*, UNIVERSITY OF WASHINGTON HENRY M. JACKSON SCHOOL OF INTERNATIONAL STUDIES (July 10, 2019), <https://jsis.washington.edu/news/the-political-geography-and-environmental-impacts-of-cryptocurrency-mining/> [<https://perma.cc/CEA6-MRED>].

⁶⁷ I calculated the percentage increase by comparing the historical electricity rates in Chelan County, Washington published on the following websites: Public Utility District No. 1 of Chelan County, *Electric Rate Schedules* (2011), <https://www.chelanpud.org/docs/default-source/default-document-library/electric-rate-schedules-2019.pdf>; *Chelan, WA Electricity Statistics*, ELEC. LOCAL, <https://www.electricitylocal.com/states/washington/chelan/#:~:text=The%20average%20residential%20electricity%20rate%20in%20Chelan%20is%203.22%20C%2A2%20of%2011.88%20C%2A2%20FkWh> [<https://perma.cc/8V9P-NCU4>] (Oct. 1, 2020).

energy as opposed to a number of other needs such as food, health insurance, and housing.⁶⁸

In addition to the financial impacts to residents, there is also a risk that, given the extreme levels of energy consumed by cryptocurrency mines, energy will be diverted away from actual consumers. As of June 2018, the world's seven biggest mines are located in Washington State; Iceland; Dalian, China; Linthal, Switzerland; and Russia.⁶⁹ Each of these mines, because of its location, is susceptible to extreme heatwaves, especially as climate change raises average temperatures around the globe.⁷⁰

Heatwaves are often unpredictable until weeks or days before they occur. In response, local municipalities often fail to account for the uptick in energy required for the use of air-conditioning in residential homes and commercial buildings that is essential to withstand the intolerable heat.⁷¹ Inevitably, this uptick in air-conditioning usage requires much more energy than normal. If cryptocurrency mines are consuming a disproportionate amount of energy, then there is a risk that there will not be enough energy to provide habitable shelter for residents and businesses. This risk was recognized by the city of Medicine Hat in Alberta, Canada, which is also a locality on which cryptocurrency miners have converged in order to take advantage of its cheap energy supply.⁷² According to the Mayor of Medicine Hat, "[t]hat's why, in the event of a summer heat wave, the city has provisions in place to pull the plug on the electricity it provides to [it's

⁶⁸ See Richard Florida, *Wages Are Higher in Urban Areas, But Growing Faster in Rural Ones*, CITYLAB (Oct. 23, 2018), <https://www.citylab.com/life/2018/10/wages-are-higher-urban-areas-growing-faster-rural-ones/571534/> [https://perma.cc/D9TD-5MZ4].

⁶⁹ Julia Magas, *Top Five Biggest Crypto Mining Areas: Which Farms Are Pushing Forward the New Gold Rush?*, COINTELEGRAPH (June 23, 2018), <https://cointelegraph.com/news/top-five-biggest-crypto-mining-areas-which-farms-are-pushing-forward-the-new-gold-rush> [https://perma.cc/F5HB-3QCC].

⁷⁰ Evan Bush, *Seattle unprepared for deadly heat waves made worse by global warming, researchers say*, SEATTLE TIMES (June 14, 2019), <https://www.seattletimes.com/seattle-news/environment/heat-waves-could-kill-hundreds-more-in-seattle-as-globe-warms-researchers-say/> [https://perma.cc/3TJE-XAHV]; Andie Sophia Fontaine, *Heat Wave Broils Iceland This Week*, REYKJAVIK GRAPEVINE (June 4, 2018), <https://grapevine.is/news/2018/06/04/heat-wave-broils-iceland-this-week/#:~:targetText=Temperatures%20are%20set%20to%20climb,itself%20for%20a%20heat%20wave.&targetText=The%20sun's%20rage%20is%20expected,the%20afternoons%20all%20this%20week> [https://perma.cc/UV63-8Q27]; *Heatwave latest: No relief as Switzerland continues to swelter*, THE LOCAL (June 27, 2019), <https://www.thelocal.ch/20190626/swiss-heatwave-set-to-reach-record-breaking-peak-weather> [https://perma.cc/56CR-RUHB]; Li Lei, *Heat wave devastates sea cucumber farmers*, CHINA DAILY (Aug. 7, 2018), <http://www.china-daily.com.cn/a/201808/07/WS5b68f137a3100d951b8c8f2c.html> [https://perma.cc/92GP-LMPA]; Hannah Hoag, *Russian summer tops 'universal' heatwave index*, NATURE (Oct. 29, 2014), <https://www.nature.com/news/russian-summer-tops-universal-heatwave-index-1.16250> [https://perma.cc/H53F-KDJ7].

⁷¹ See Kendra Pierre-Louis, *The World Wants Air-Conditioning. That Could Warm the World.*, N.Y. TIMES (May 15, 2018), <https://www.nytimes.com/2018/05/15/climate/air-conditioning.html> [https://perma.cc/3NZY-PASR].

⁷² Bakx, *supra* note 53.

cryptocurrency mines], so there won't be any blackouts for residents.”⁷³ Although this one city has taken proactive measures to prevent harm to its residents in the event of heatwaves, the risk remains an active threat to regions of the world that are home to the largest cryptocurrency mines. Furthermore, the threat of this harm and the ease of the solution should provide an incentive for elected leaders everywhere to act similarly.

As long as the prices of cryptocurrencies keep rising, more and more individuals will set up mining operations in regions that provide the cheapest supply of power. If these regions are not prepared for the influx of miners, then public utility districts can quickly become overwhelmed, and, as a result, effective and responsible operation of the power grids becomes untenable.⁷⁴ For example, the Chelan County Public Utility District (PUD) in Washington State reported in 2018 that the unprecedented demand for electricity, particularly from these new cryptocurrency mining operations, overwhelmed the public utility district's ability to support the large volume of applications for crypto-mining operations, threatened the district's electrical grid infrastructure capacity, and caused a number of public health and safety concerns.⁷⁵ Furthermore, the attractiveness of easy money and quick returns that cryptocurrencies often offer incentivizes individuals to set up small-scale cryptocurrency mines in homes and residential areas, instead of commercial areas.⁷⁶ These operators, attracted to the promise of exponential returns, pose a unique risk to the communities in which they reside because continual electricity usage at peak levels places a substantial strain on residential power grids.

Consider another example out of Chelan County, Washington: after discovering multiple unauthorized cryptocurrency mines in apartment buildings, homes, and mini-storage units, the Chelan County PUD determined that “[e]ach operation was using enough power to create fire risks for neighbors and damage grid equipment not sized for the load.”⁷⁷ The incentives created by the easy returns from mining increase both the unauthorized consumption of exorbitant amounts of power as well as the fire risk to communities.

⁷³ *Id.*

⁷⁴ Kimberlee Craig, *PUD commissioners halt work on applications from bitcoin & similar data operations*, CHELAN CNTY. PUD (Mar. 19, 2018), <http://www.chelanpud.org/about-us/newsroom/news/2018/03/20/pud-commissioners-halt-work-on-applications-from-bitcoin-similar-data-operations> [https://perma.cc/YA5M-TY2T].

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Kimberlee Craig, *PUD Board acts to halt unauthorized bitcoin mining*, CHELAN CNTY. PUD (Apr. 2, 2018), <https://www.chelanpud.org/about-us/newsroom/news/2018/04/03/pud-board-acts-to-halt-unauthorized-bitcoin-mining> [https://perma.cc/YV97-KGJ9].

Chelan County and the Mid-Columbia River Basin are not the only regions in the United States to experience the negative impacts of cryptocurrency mining energy consumption.⁷⁸ Plattsburgh, New York, is an extremely attractive place for cryptocurrency miners to set up shop since residents pay about four-and-a-half cents per kilowatt-hour (compared to the national average of ten cents per kilowatt-hour) and industrial enterprises only pay two cents per kilowatt-hour.⁷⁹ Since the influx of miners began, this small town of about 30,000 residents was forced to purchase additional electricity and, accordingly, much like in Chelan County, electric bills for residents skyrocketed by \$100 or \$200.⁸⁰ These two examples demonstrate how fast and effectively miners monopolize regions of the country that provide cheap and plentiful power to the severe detriment of both the residents and public utility infrastructure.

B. *Environmental Impacts of Mining*

In addition to the impacts on electricity prices, public health, and public utility infrastructure, the excessive energy consumption of cryptocurrency mines also poses a unique environmental threat, especially when the energy used comes from coal-powered facilities. As previously mentioned, cryptocurrency mining is incredibly energy-intensive. For example, Bitcoin alone currently uses about seventy-seven billion kilowatts of electricity per year.⁸¹ This amount of energy consumption is roughly equivalent to the amount of energy the country of Venezuela consumes in an entire year, which is roughly seventy-four billion kilowatts, according to the most recent data from the Central Intelligence Agency.⁸² For perspective, Venezuela is a country of nearly twenty-nine million people.⁸³ More astonishing is that this amount of energy consumption represents a nearly 100% increase from January 2018 to March 2020.⁸⁴ These statistics beg the question: from where is this energy coming? In short, the answer is China.

⁷⁸ Thuy Ong, *Plattsburgh has become the first city in the US to ban cryptocurrency mining*, THE VERGE (Mar. 16, 2018), <https://www.theverge.com/2018/3/16/17128678/plattsburgh-new-york-ban-cryptocurrency-mining> [https://perma.cc/72EJ-CTQ8].

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Bitcoin Energy Consumption Index*, DIGICONOMIST, <https://digiconomist.net/bitcoin-energy-consumption> [https://perma.cc/GAU7-PSFF] (Mar. 3, 2020) (there are one billion kilowatts in one terawatt).

⁸² *The World Fact Book*, CENTRAL INTEL. AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2233rank.html> [https://perma.cc/ZB9X-UMRD].

⁸³ *Venezuela Population*, WORLDOMETER (2020), <https://www.worldometers.info/world-population/venezuela-population/> [https://perma.cc/WGM8-ZWAZ].

⁸⁴ DIGICONOMIST, *supra* note 81.

According to a report by EndCoal, a worldwide organization that advocates for renewable energy and tracks the amount of coal-powered power plants around the world, as of January 2020, China currently operates 1,004,948 coal plants with another 99,710 under construction and 106,176 either announced, pre-permitted, or permitted.⁸⁵ As a result, in total, China is on track to operate nearly 1.2 million coal-powered power plants in the coming years. Comparatively, the United States currently operates 246,187 coal-powered power plants, with zero coal-powered power plants planned or under construction, and over 28,000 planned coal-powered power plants canceled in last year.⁸⁶

China's bullish attitude towards coal as a power source has attracted many cryptocurrency mining operations to consider China because it provides access to cheap power.⁸⁷ Accordingly, "the [current] majority of ... bitcoin miners are located in China and that makes sense because electricity is cheap in China, especially coal-based electricity is cheap in China. ... That's where it gets really painful. All of this coal-based electricity is going into the bitcoin network and coal electricity has a massive carbon footprint."⁸⁸ Moreover, it is likely that as cryptocurrency prices remain volatile, miners will continue searching for cheaper power.⁸⁹ Mining organizations' sole concern for the bottom line creates an energy race to the bottom and only incentivizes countries like China to return to producing "dirty energy" to attract more miners and boost economic activity.

Given its heavy reliance on coal-powered energy sources, cryptocurrency mining leads to an increase in carbon-dioxide (CO₂) emissions into the Earth's atmosphere.⁹⁰ The amount of CO₂ emitted, however, is difficult to precisely determine, but, according to one source, the electricity used for Bitcoin produces about twenty-two megatons of CO₂ annually, which is equivalent to the CO₂ emissions of Kansas City, Missouri.⁹¹ Another source estimates that the number is actually much higher. According

⁸⁵ *Coal Plants by Country*, ENDCOAL (Jan. 2020), https://docs.google.com/spreadsheets/d/1W-gobE-QugqTR_PP0iczJCrdaR-vYkJ0DzztSsCJXuKw/edit#gid=0 [<https://perma.cc/C3WA-2F7U>].

⁸⁶ *Id.* This halt on power plant construction could be reversed now that the Trump Administration has announced its plan to withdraw from the Paris Climate Accords and has signaled its intention to renew construction of these power plants. *Trump Administration Weakens Climate Plan To Help Coal Plants Stay Open*, NATIONAL PUBLIC RADIO (June 19, 2019), <https://www.npr.org/2019/06/19/733800856/trump-administration-weakens-climate-plan-to-help-coal-plants-stay-open> [<https://perma.cc/XJ39-K3HF>].

⁸⁷ *Is bitcoin an environmental hazard?*, CANADIAN BROAD. CORP. (Jan. 2, 2018), <https://www.cbc.ca/radio/thecurrent/the-current-for-tuesday-january-2-2018-1.4469360/is-bitcoin-an-environmental-hazard-1.4469361> [<https://perma.cc/97SJ-EUZK>].

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Christian Stoll, Lena Klaaßen, & Ulrich Gallersdörfer, *The Carbon Footprint of Bitcoin*, 3 JOULE 1647, 1655 (2019).

⁹¹ *Id.*

to a study published in late 2018 by Nature Climate Change, a journal dedicated to publishing the most significant and cutting-edge research on the nature, underlying causes, or impacts of global climate change and its implications for the economy, **Bitcoin alone produced nearly sixty-nine million metric tons (sixty-nine megatons) of CO₂ emissions in 2017.**⁹² Based on the research currently available, it appears that cryptocurrency mining has a significant impact on global warming and climate change.

It is important to keep in mind that predictions regarding the environmental impact of cryptocurrency mining are at best speculative and based on current data that varies wildly from study to study. However, regardless of degree, the science is unequivocal in that mining based on coal-intensive energy resources is increasing emissions of CO₂ into the Earth's atmosphere. Some critics argue that the degree of environmental damage is highly uncertain and hinges on efficiency improvements in hardware, cryptocurrency price trends, and regulatory restrictions on mining and cryptocurrency usage in markets throughout the world.⁹³ However, these critics concede that more needs to be done to monitor the environmental effects of mining to determine the best course of action to tackle the problem. Consistent with this argument, George Kamiya, a Digital Energy Analyst for the International Energy Agency, asserts that, "[s]ensational predictions about bitcoin consuming the entire world's electricity – and, by itself, leading our world to beyond 2°C – would appear just that...sensational. That said, this is a very dynamic area that certainly requires careful monitoring and rigorous analysis – particularly, a careful monitoring of local hotspots."⁹⁴ **There is no debate over the amount of electricity consumed by cryptocurrency mining and its effect on the environment—the only debate is to what degree mining is negatively impacting our environment by furthering reliance on coal-intensive power sources that continue to emit massive amounts of CO₂ into the atmosphere.**

In addition to the increased CO₂ emissions related to cryptocurrency mining activity, it is also important to consider the effect of the con-

⁹² Camilo Mora et al., *Bitcoin emissions alone could push global warming above 2°C*, 8 NATURE CLIMATE CHANGE 931, 931 (2018). Given this amount of emissions, the researchers predict that bitcoin alone could push global temperatures over the 2°C catastrophic threshold in less than three decades if the cryptocurrency gets adopted at the same pace as other broadly used technologies. *Id.*; See generally David Tittley, *Why is climate change's 2 degrees Celsius of warming limit so important?*, CONVERSATION (Aug. 22, 2017), <https://theconversation.com/why-is-climate-changes-2-degrees-celsius-of-warming-limit-so-important-82058> [<https://perma.cc/VZ2G-RWWA>].

⁹³ Kamiya, *supra* note 38.

⁹⁴ *Id.*

tinuous consumption and disposal of electronic waste on our environment.⁹⁵ Currently, Bitcoin mining activity alone creates on average, roughly eleven kilotons of electronic waste per year.⁹⁶ That metric is roughly comparable to the amount of electronic waste created by the country of Luxembourg.⁹⁷ This number likely increases when you add together the electronic waste emitted by every single cryptocurrency aside from just Bitcoin. Moreover, and in addition to mining activity, each bitcoin transaction generates roughly ninety grams of electronic waste—essentially the size of two golf balls.⁹⁸ Although seeming small, there are over 366,000 Bitcoin transactions per day.⁹⁹ The astonishing amount of electronic waste generated by cryptocurrencies is due, in part, to the fact that the mining devices used by most miners quickly go obsolete, often in just two years, and they cannot be effectively repurposed for anything other than mining.¹⁰⁰ Considering that cryptocurrency programing makes it harder and harder to mine each additional coin, miners are consistently engaged in a never-ending cycle whereby they must continually upgrade their machinery in order to stay competitive. This cycle provides a strong incentive for miners to disregard environmental concerns in favor of economic gain, and no amount of green energy can fix the increasing amount of electronic waste.

Currently, there is a mixed consensus among both large and small miners about whether the negative environmental externalities of mining should be a cause for concern. For instance, 64% of large mining operations believe that negative environmental externalities are only a minor concern compared to fossil fuel extraction and mining of precious metals. Additionally, 73% of large mining operations believe that the negative environmental externalities are necessary for maintaining a secure distributed computer system (i.e. blockchain).¹⁰¹ However, it is more comforting to know that only a small minority of miners—9% of large miners and

⁹⁵ *What is E-Waste?*, CALRECYCLE, <https://www.calrecycle.ca.gov/electronics/whatisewaste> [<https://perma.cc/LJV8-MGCR>] (June 23, 2020) (explaining that electronic waste is a popular, informal name for electronic products nearing the end of their "useful life." Computers, televisions, VCRs, stereos, copiers, and fax machines are common electronic products).

⁹⁶ *Bitcoin Electronic Waste Monitor*, DIGICONOMIST, <https://digiconomist.net/bitcoin-electronic-waste-monitor/> [<https://perma.cc/UE9S-TZFH>] (Mar. 3, 2020).

⁹⁷ *Id.*

⁹⁸ DIGICONOMIST, *supra* note 96.

⁹⁹ *Blockchain Charts*, BLOCKCHAIN, <https://www.blockchain.com/en/charts#:~:targetText=Transactions%20per%20Day%20323%2C552%20Transactions,in%20the%20past%2024%20hours> [<https://perma.cc/JY9C-PXA4>] (Mar. 3, 2020).

¹⁰⁰ Irfan, *supra* note 57.

¹⁰¹ HILEMAN & RAUCHS, *supra* note 28, at 99.

17% of small miners—do not believe that the negative environmental externalities of mining are an issue at all.¹⁰² This industry-wide understanding means that there is plenty of room in the mining community to accept certain environmental regulations over mining operations if access to and cost of power remains at consistent levels. Furthermore, the study provides us with guideposts about how to successfully regulate a growing industry without interfering with economic growth.¹⁰³

C. *Alternative Positive Impacts*

Although coal is a major source of the energy used to power cryptocurrency mines causing many of the environmental hazards mentioned above, more miners are turning towards renewable energy sources to operate their mines. According to a recent study by CoinShares, a cryptocurrency asset management and analysis firm, the Bitcoin network gets nearly 75% of its electricity from renewable energy sources making it “more renewables-driven than almost every other large-scale industry in the world.”¹⁰⁴ These renewable energy sources include wind, solar, and hydropower.¹⁰⁵ For example, if we return to the Mid-Columbia River Basin region of Washington State, most of the electricity produced and used by miners there is from hydro-electric dams.¹⁰⁶ If this is the case, and this trend continues, then some of the vast environmental problems posed by cryptocurrency proliferation can be rendered moot.

Shifting the cryptocurrency networks onto renewable energy sources can help revitalize underused renewable energy projects and incentivize communities to invest in such projects. According to the findings of the CoinShares study,

Bitcoin mining is acting as a global electricity buyer of last resort and therefore tends to cluster around comparatively under-utilized renewables infrastructure. This could help turn loss making renewables projects profitable and in time—as the industry matures and settles

¹⁰² *Id.*

¹⁰³ See generally HILEMAN & RAUCHS, *supra* note 28.

¹⁰⁴ CHRISTOPHER BENDIKSEN & SAMUEL GIBBONS, THE BITCOIN MINING NETWORK 2 (CoinShares Research, 2019), <https://coinsharesgroup.com/assets/resources/Research/bitcoin-mining-network-june-2019-fidelity-foreword.pdf> [<https://perma.cc/9SRZ-JMBW>].

¹⁰⁵ *Id.*

¹⁰⁶ Roberts, *supra* note 6. It is important to note that while the Environmental Protection Agency considers “Low-impact small hydropower” a renewable energy source, some in the scientific community criticize its use because of the resulting negative environmental impacts. ENV’T PROT. AGENCY, *Renewable Energy at the EPA*, <https://www.epa.gov/greeningepa/renewable-energy-epa> [<https://perma.cc/8T62-RYJM>]; see also UNION OF CONCERNED SCIENTISTS, *Environmental Impacts of Hydroelectric Power* (Mar. 5, 2013), <https://www.ucsusa.org/resources/environmental-impacts-hydroelectric-power> [<https://perma.cc/37JL-8CVE>].

as permanent in the public eye—could act as a driver of new renewables developments in locations that were previously uneconomical.¹⁰⁷

This theory suggests that as cryptocurrencies continue to catch on with the general public, rural communities with plenty of land will choose to invest in renewable energy projects to attract cryptocurrency miners to the area. In turn, this will help drive competition in the renewable energy space and boost the production of renewable energy sources around the world. However, if competition for mining operations helps push renewable energy prices down, then increased demand for renewables will help push the price right back up and drive miners to consider coal-powered energy sources again. In an industry, like cryptocurrencies, that is dominated by an extremely volatile price, reducing costs, such as the price of electricity, will always be the primary goal of miners in order to maximize their return on investment. Therefore, the same factors that drove cryptocurrency miners to use renewable energy could again easily lead them back to coal-powered energy sources.

Although promising, renewable energy will likely never be a complete substitute for “dirty” energy sources because of seasonality and the amount of energy that cryptocurrencies demand. Hydropower, in particular, is mostly a seasonal source of energy, which increases in the wet season and decreases during the dryer seasons.¹⁰⁸ As a result, cryptocurrency miners must use energy produced from fossil fuels to supplement their energy use when renewable sources fail to provide sufficient amounts of energy. In addition, both wind and solar energy are also extremely seasonal energy sources.¹⁰⁹ Altogether, renewable energy resources only amount to roughly 15% of global energy production, and the U.S. alone only produced roughly 742 TWh of renewable energy in 2018.¹¹⁰ Given that Bitcoin alone will use roughly 75 TWh this year, the total amount of renewable energy production is not large enough to sustainably power the entire cryptocurrency industry.¹¹¹ As a result, until the United States and other countries around the world commit to producing more renewable

¹⁰⁷ BENDIKSEN & GIBBONS, *supra* note 104, at 10.

¹⁰⁸ Irfan, *supra* note 57.

¹⁰⁹ *Id.*

¹¹⁰ *Case Study: World Energy Use*, LUMEN, <https://courses.lumenlearning.com/boundless-physics/chapter/case-study-world-energy-use/#:~:targetText=In%20the%20US%2C%20only%2010,oil%2C%20natural%20gases%20and%20coal> [<https://perma.cc/MK83-DCDK>] (last visited Mar. 3, 2020); *Electric Power Monthly*, U.S. ENERGY INFO. ADMIN. (Feb. 26, 2020), https://www.eia.gov/electricity/monthly/epm_table_grapher.php?t=epmt_1_01 [<https://perma.cc/42NE-HAZD>].

¹¹¹ DIGICONOMIST, *supra* note 81.

energy, cryptocurrency miners will continue to supplement their renewable energy use with fossil fuel-powered energy, and the impact on the environment that cryptocurrency mining is causing will largely go unresolved.

V. CURRENT CRYPTOCURRENCY MINING REGULATIONS

Although researchers, activists, and commentators are drawing more attention to the cryptocurrency energy crisis, federal regulators have done little to address the growing adverse effects on the environment. Currently in the United States, there are no major regulatory schemes in place at the federal level to address this emerging crisis. Furthermore, most countries around the world have also shown a reluctance to regulate this emerging industry in any meaningful way—the only major countries that have currently shown an interest in such regulation are China and Iran. This section will first look at the current federal regulatory schemes, or lack thereof, that the United States government has adopted. Then it will look at both the multiple regulatory schemes adopted by several states as well as the different regulatory schemes adopted by countries around the world.

A. Current Federal Regulations in the United States

In recent years, both federal and state lawmakers in the United States have begun to focus more attention on cryptocurrencies. However, the United States Congress has yet to take any meaningful steps to address the impact that cryptocurrency mining has on our environment.¹¹² Instead, the focus remains on protecting consumers from fraud, preventing money-laundering, and ensuring the United States remains competitive in this emerging industry.¹¹³ In a statement by two Members of the House of Representatives, Representatives Darren Soto (D-FL) and Ted Budd (R-NC) declared,

¹¹² Jason Brett, *Congress Considers Federal Crypto Regulators In New Cryptocurrency Act Of 2020*, FORBES (Dec. 19, 2019), <https://www.forbes.com/sites/jasonbrett/2019/12/19/congress-considers-federal-crypto-regulators-in-new-cryptocurrency-act-of-2020/#42c0a6985fd> [<https://perma.cc/2858-JV36>]. The Crypto-Currency Act of 2020, introduced in the House of Representatives on March 9, 2020 has not passed through the House of Representatives at the times of this writing; the bill would clarify which federal agencies regulate digital assets and require those agencies to notify the public of any federal licenses, certifications, or registrations required to create or trade in such assets, and for other purposes. Crypto-Currency Act of 2020, H.R. 6154, 116th Cong. (2020).

¹¹³ Kate Rooney, *Bipartisan lawmakers seek cryptocurrency rules to protect consumers and keep US competitive*, CNBC (Dec. 6, 2018), <https://www.cnbc.com/2018/12/06/bipartisan-lawmakers-seek-cryptocurrency-rules-to-keep-us-competitive-.html> [<https://perma.cc/WT2Y-ATCL>].

[v]irtual currencies and the underlying blockchain technology has a profound potential to be a driver of economic growth. That's why we must ensure that the United States is at the forefront of protecting consumers and the financial well-being of virtual currency investors, while also promoting an environment of innovation to maximize the potential of these technological advances.¹¹⁴

These concerns, although well-founded and important, fail to recognize the environmental hazards of leaving mining activities alone while focusing on the transactions and underlying technology.

Although many lawmakers have expressed concern over cryptocurrencies and the underlying technology, much of the federal government's focus has been at the administrative and agency level, including the Securities and Exchange Commission (SEC), the Commodities and Futures Trading Commission (CFTC), the Federal Trade Commission (FTC), and the Department of the Treasury, at both the Internal Revenue Service (IRS) and the Financial Crime Enforcement Network (FinCEN).¹¹⁵ This regulatory focus suggests that the federal government and most lawmakers believe that cryptocurrencies pose little threat outside the financial sector and that the United States must be careful not to over-regulate the industry so as not to drive investment in the technology overseas. In a joint statement in October 2019 by the heads of the CFTC, FinCEN, and the SEC, the leaders emphasized that their primary focus is to enforce the Bank Secrecy Act in order to prevent money laundering schemes and the financing of terrorism.¹¹⁶

In a White House briefing in July 2019, the Secretary of the Treasury reiterated his concerns over the threat that cryptocurrencies pose to national security because of how they can be used to fund illicit activity.¹¹⁷ Echoing the concerns of the heads of the CFTC, FinCEN, and the SEC, the Secretary said that cryptocurrencies must comply with the Bank Secrecy Act and register with the Financial Crimes Enforcement Network, while also meeting the same anti-money laundering and counterfeiting

¹¹⁴ *Id.*

¹¹⁵ Joe Dewey, *Blockchain & Cryptocurrency Regulation 2020* | USA, GLOBAL LEGAL INSIGHTS, <https://www.globallegalinsights.com/practice-areas/blockchain-laws-and-regulations/usa> [https://perma.cc/W8SC-NJ22].

¹¹⁶ U.S. SECURITIES AND EXCHANGE COMMISSION, LEADERS OF CFTC, FINCEN, AND SEC ISSUE JOINT STATEMENT ON ACTIVITIES INVOLVING DIGITAL ASSETS (Oct. 11, 2019), <https://www.sec.gov/news/public-statement/cftc-fincen-secjointstatementdigitalassets> [https://perma.cc/LD83-LE36].

¹¹⁷ Alan Rappeport & Nathaniel Popper, *Cryptocurrencies Pose National Security Threat, Mnuchin Says*, N.Y. TIMES (July 15, 2019), <https://www.nytimes.com/2019/07/15/us/politics/mnuchin-face-book-libra-risk.html?searchResultPosition=2> [https://perma.cc/VQD2-9FSS].

standards as traditional financial firms.¹¹⁸ This concern primarily reflects the attitude of the entire Trump Administration.¹¹⁹ To date, however, there have been no major pronouncements by lawmakers or administration officials about the threat that mining activity could pose to either the environment or the well-being of our communities.

Even given this well-intentioned concern among legislators and policy makers, there is a wide-spread understanding of the difficulty of applying current financial regulatory laws to digital assets such as cryptocurrencies. According to a joint statement by leaders of the SEC and the Financial Industry Regulatory Authority (FINRA),

[a]s a threshold matter, it should be recognized by market participants that the application of the federal securities laws, FINRA rules and other bodies of laws to digital assets, digital asset securities and related innovative technologies raise novel and complex regulatory and compliance questions and challenges. For example, and as discussed in more detail below, the ability of a broker-dealer to comply with aspects of the Customer Protection Rule is greatly facilitated by established laws and practices regarding the loss or theft of a security, that may not be available or effective in the case of certain digital assets.¹²⁰

More importantly, however, it seems that even if current statutes do apply to digital assets, such as cryptocurrencies, enforcement remains the main barrier to regulation under securities laws. The leaders of these regulatory authorities are at a loss about how to go about enforcing current regulations other than by simply asking nicely. The former CFTC's Director of Enforcement commented: "While there is a lot of excitement surrounding Bitcoin and other virtual currencies, innovation does not excuse those acting in this space from following the same rules applicable to all participants in the commodity derivatives markets."¹²¹ Given the federal government's inaction, it is no surprise that a report created by the Law

¹¹⁸ *Id.*

¹¹⁹ Billy Bambrough, *The U.S. Treasury Secretary Made A Dire Warning Over The Future Of Bitcoin*, FORBES (July 27, 2019), <https://www.forbes.com/sites/billybambrough/2019/07/27/the-u-s-treasury-secretary-made-a-dire-warning-over-the-future-of-bitcoin/#3b21798a2c93> [<https://perma.cc/PZ3Z-BCM2>].

¹²⁰ U.S. SECURITIES AND EXCHANGE COMMISSION, JOINT STAFF STATEMENT ON BROKER-DEALER CUSTODY OF DIGITAL ASSET SECURITIES (July 8, 2019), <https://www.sec.gov/news/public-statement/joint-staff-statement-broker-dealer-custody-digital-asset-securities> [<https://perma.cc/64NC-6NGY>].

¹²¹ COMMODITY FUTURES TRADING COMMISSION, CFTC ORDERS BITCOIN OPTIONS TRADING PLATFORM OPERATOR AND ITS CEO TO CEASE ILLEGALLY OFFERING BITCOIN OPTIONS AND TO CEASE OPERATING A FACILITY FOR TRADING OR PROCESSING OF SWAPS WITHOUT REGISTERING (Sept. 17, 2015), <https://www.cftc.gov/PressRoom/PressReleases/pr7231-15> [<https://perma.cc/J7FC-NMKV>].

Library of Congress found that the United States is among many countries that currently use neither tax laws nor anti-money laundering/anti-terrorism financing laws to regulate cryptocurrencies.¹²² Considering this relative inaction of legislators and policy makers, it is clear why cryptocurrencies currently go unregulated in the United States.

B. *Current State-by-State Regulations in the United States*

Where the federal government has failed to act, some states have taken it upon themselves to attempt to regulate cryptocurrency use and production. Generally, states have taken one of two approaches to cryptocurrency regulation: (1) promote the technology by exempting cryptocurrencies from state securities laws, money transmission statutes, and other state regulatory requirements; or (2) issue warnings about investment and pass generally restrictive statutes.¹²³ The Uniform Law Commission has also crafted model legislation that seeks to regulate companies engaged in the business of cryptocurrencies.

States that have adopted the first approach hope to incentivize not only investment in the technology but also, by default, investment in their states. Accordingly, these investments will help stimulate local economies and improve public services. For example, Wyoming passed a bill in March 2018 exempting cryptocurrencies from property taxation.¹²⁴ As a result, many have praised Wyoming for becoming the most cryptocurrency-friendly jurisdiction in the United States.¹²⁵ In addition, the governor of Colorado signed the “Cyber Coding Cryptology for State Records” bill into law in May 2018, which promotes the use of blockchain technology throughout the state government.¹²⁶ In 2018, Ohio became the first state to allow taxpayers to pay state taxes in the form of cryptocurrency.¹²⁷ These measures effectively promote cryptocurrencies by citing its many

¹²² THE LAW LIBRARY OF CONGRESS, REGULATIONS OF CRYPTOCURRENCY AROUND THE WORLD 5 (June 2018), <https://www.loc.gov/law/help/cryptocurrency/cryptocurrency-world-survey.pdf> [<https://perma.cc/KZ5G-42ZL>].

¹²³ Dewey, *supra* note 115.

¹²⁴ 2019 Wyo. Sess. Laws 485, <https://wyoleg.gov/2019/SessionLaws.pdf> [<https://perma.cc/KMN4-KRBQ>]; Rachel Wolfson, *U.S. State of Wyoming Defines Cryptocurrency ‘Utility Tokens’ As New Asset Class*, FORBES (Mar. 13, 2018), <https://www.forbes.com/sites/rachelwolfson/2018/03/13/u-s-state-of-wyoming-defines-cryptocurrency-utility-tokens-as-new-asset-class/#6d2c6a514816> [<https://perma.cc/3YJL-MPHJ>].

¹²⁵ Dewey, *supra* note 115.

¹²⁶ COLO. REV. STAT. § 24-37.5-407 (2019); Jared Verner, *Gov. Hickenlooper signs bill for cyber workforce development and research funding*, UCCS COMMUNIQUE (May 30, 2018), <https://communique.uccs.edu/?p=32147> [<https://perma.cc/49ZY-LKL5>].

¹²⁷ Paul Vigna, *Pay Taxes With Bitcoin? Ohio Says Sure*, WALL ST. J. (Nov. 26, 2018), <https://www.wsj.com/articles/pay-taxes-with-bitcoin-ohio-says-sure-1543161720> [<https://perma.cc/DN3R-MXN4>].

economic benefits without considering the perverse environmental effects. The varied approaches by individual states further demonstrate the need for standardized federal regulations because states can only be trusted to act in the best interest of their citizenry and not in the best environmental interests of the country as a whole.

On the other hand, some states have taken minor steps to address the growing concern over cryptocurrency use and investment. These states have also issued guidance, opinion letters, and other information from their financial regulatory agencies regarding whether virtual currencies are "money" under existing state rules. Additionally, other states have enacted piecemeal legislation amending existing definitions to either specifically include or exclude digital currencies from the definition.¹²⁸ Moreover, whenever states attempt to enact more regulation over the cryptocurrency industry, like New York did with its "BitLicense" scheme,¹²⁹ an exodus of blockchain and virtual currency businesses from states attempting to treat all virtual currency operators identically with traditional money transmitters ensues.¹³⁰ This result exemplifies the problem that states face in attempting to address the issue of cryptocurrency regulation alone—states compete with one another, and businesses will flock to the states which offer more favorable treatment.

Currently, only one state, Rhode Island, has fully enacted the Uniform Law Commission's Model Regulation of Virtual Currency Businesses Act.¹³¹ The Act provides a statutory framework for the regulation of companies engaging in "virtual-currency business activity," such as exchanging, transferring, or storing virtual currencies.¹³² The Act has been endorsed by the American Bar Association and does not attempt to regulate the virtual currencies but rather the people engaged in the use of the

¹²⁸ Matthew E. Kohen & Justin S. Wales, *State Regulations on Virtual Currency and Blockchain Technologies*, CARLTON FIELDS (Aug. 29, 2019), <https://www.carltonfields.com/insights/publications/2018/state-regulations-on-virtual-currency-and-blockchain-technologies> [<https://perma.cc/Z9YL-B7V8>].

¹²⁹ Under 23 NYCRR 200.3(a), "No Person shall, without a license obtained from the superintendent . . . , engage in any Virtual Currency Business Activity." Pursuant to this statutory scheme, any individual engaged in storing virtual currencies on behalf of others, buying and selling virtual currencies as a customer business, performing exchange services as a customer business, or issuing virtual currencies must obtain a license from the State of New York. *Virtual Currency Business Activity (BitLicense)*, N.Y. STATE DEP'T OF FIN. SERV., https://www.dfs.ny.gov/apps_and_licensing/virtual_currency_businesses [<https://perma.cc/WHS8-6QU2>].

¹³⁰ Kohen, *supra* note 128.

¹³¹ *Regulation of Virtual-Currency Businesses Act*, UNIFORM LAW COMM'N (2017), <https://www.uniformlaws.org/committees/community-home?CommunityKey=e104aaa8-c10f-45a7-a34a-0423c2106778#:~:targetText=The%20Uniform%20Regulation%20of%20Virtual,virtual%20currency%20or%20legal%20tender> [<https://perma.cc/5EVC-J8J7>].

¹³² *Id.*

currency.¹³³ Although the Act does not explicitly regulate cryptocurrency, it establishes and recognizes a uniform set of definitions to help states further adapt their regulatory schemes—without a common understanding of the industry states cannot act together.¹³⁴

All in all, most states have failed to adopt any meaningful regulations over cryptocurrencies, let alone recognize the environmental impacts of cryptocurrency mining. Furthermore, absent federal regulation, states lack an incentive to further regulate cryptocurrencies out of fear that they may miss out on any economic gain derived from cryptocurrency activity in their state. Without federal involvement, most states will refrain from restricting cryptocurrency use further, especially states that are losing main industries and want to capitalize on any economic boom derived from cryptocurrencies. Under threat of any regulation, cryptocurrency business and mining operations will just move from state to state. Thus, the inability of states to adequately address the environmental issues associated with cryptocurrencies is the reason we need to enact a federal regulatory scheme.

C. Current International Regulatory Schemes

Although the United States has failed to regulate either cryptocurrencies or cryptocurrency mining activity and its effect on the environment, other countries, including China and Iran, have taken decisive action, including strict regulation, in order to address these concerns. In recent years, China has taken a hardline approach vis a vis the financial regulation of cryptocurrencies. Nearly two years ago China decided to block all websites related to cryptocurrency trading and initial coin offerings in order to quash the market for cryptocurrencies completely.¹³⁵ According to the People's Bank of China, "To prevent financial risks, China will step up measures to remove any onshore or offshore platforms related to virtual currency trading or ICOs."¹³⁶ China has become increasingly worried about social unrest that is linked to the increase in use of cryptocurrencies and the outbreak of fraud associated with the blockchain systems.¹³⁷ This reasoning largely comports with China's strict control of domestic financial institutions, even though their motivation is similar to the concerns of

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Xie Yu, *China to stamp out cryptocurrency trading completely with ban on foreign platforms*, SOUTH CHINA MORNING POST (Feb. 5, 2018), <https://www.scmp.com/business/banking-finance/article/2132009/china-stamp-out-cryptocurrency-trading-completely-ban> [https://perma.cc/V88E-VMQE].

¹³⁶ *Id.*

¹³⁷ *Id.*

officials and regulators in the United States.¹³⁸ Even further, in April of 2019, China's central state planning agency, the National Development and Reform Commission (NDRC), revealed it might curb cryptocurrency mining in the country altogether.¹³⁹ The draft proposal for a revised list added cryptocurrency mining, including that of Bitcoin, to more than 450 activities the NDRC said should be phased out as they did not adhere to relevant laws and regulations, were unsafe, wasted resources, or polluted the environment.¹⁴⁰ This strict ban on mining, motivated largely by environmental concerns, would be a first for any country around the world and surprising for a country that seemingly always puts economic gain ahead of environmental protection.

In November 2019, China's President Xi Jinping announced a reversal of the two-year ban on cryptocurrency trading and initial coin offerings in an effort to dominate blockchain technology and improve tracking of its citizens.¹⁴¹ President Xi told Politburo members the following day that China must "seize the opportunity" for blockchain to play "an important role in the next round of technological transformations in areas such as financing businesses, mass transit and poverty alleviation."¹⁴² Furthermore, Chinese authorities have also recently reversed course on proposals to ban mining activity.¹⁴³ According to Blockstream CSO Samson Mow, "China's National Development and Reform Commission has removed #cryptocurrency mining from the list of industries they want to eliminate."¹⁴⁴ This announcement is a rapid reversal of a policy that was announced only earlier this year.¹⁴⁵ Even more disheartening is that the reasoning for both reversals is similar to the reasoning proffered by American legislators and policy makers: to capitalize on economic gain and to

¹³⁸ See generally DOUGLAS J. ELLIOTT & KAI YAN, *THE CHINESE FINANCIAL SYSTEM: AN INTRODUCTION AND OVERVIEW* (The John L. Thornton China Center at Brookings 2013), <https://www.brookings.edu/wp-content/uploads/2016/06/chinese-financial-system-elliott-yan.pdf> [<https://perma.cc/3499-PUSM>].

¹³⁹ Stephen O'Neal, *Will China Ban Crypto Mining?*, COINTELEGRAPH (Apr. 12, 2019), <https://cointelegraph.com/news/will-china-ban-crypto-mining> [<https://perma.cc/DWF7-GGT5>].

¹⁴⁰ Brenda Goh & Alun John, *China wants to ban bitcoin mining*, REUTERS (Apr. 8, 2019), <https://www.reuters.com/article/us-china-cryptocurrency/china-says-it-wants-to-eliminate-bitcoin-mining-idUSKCN1RL0C4> [<https://perma.cc/25W9-JYKW>].

¹⁴¹ Chriss Street, *China Reverses Cryptocurrency Ban and Now Wants to Dominate It*, EPOCH TIMES (Nov. 8, 2019), https://www.theepochtimes.com/china-reverses-cryptocurrency-ban-and-now-wants-to-dominate-it_3140036.html [<https://perma.cc/PZ3A-UANU>].

¹⁴² *Id.*

¹⁴³ William Suberg, *'Bullish for Bitcoin' — China Scraps Plans to Ban Cryptocurrency Mining*, COINTELEGRAPH (Nov. 6, 2019), <https://cointelegraph.com/news/bullish-for-bitcoin-china-scraps-plans-to-ban-cryptocurrency-mining> [<https://perma.cc/7JT8-X4R7>].

¹⁴⁴ *Id.*

¹⁴⁵ Goh & John, *supra* note 140.

not lose out on technological innovation. Again, leaders are putting revenue streams ahead of environmental concerns when crafting policies. Although unfortunate, the ban on mining in China would have put additional strain on U.S. cities that provide cheap power as more international miners would have sought out regions, such as the Mid-Columbia Basin, that provide cheap energy.

Iran has also recently taken a stricter approach to cryptocurrency mining than other countries around the world. In June 2019, Iran announced that it was cutting off all power to cryptocurrency mines since the country's power grid had become unstable due to increased mining activity.¹⁴⁶ An Iran Ministry of Energy official revealed that the country had seen a 7% spike in electricity consumption over the course of a single monthly period ending on June 21, 2019.¹⁴⁷ Afterward, the country embarked on a debate over the future of cryptocurrency mining in the country.

In August 2019, Iran announced that mining cryptocurrencies is legal both inside and outside metropolises, in addition to free and special trade zones, provided applicants obtain a permit from the Ministry of Industry, Mine and Trade.¹⁴⁸ The permitting process, however, includes a set of regulations that could serve as a welcome example of how to effectively regulate the industry. First, the electricity price offered to miners will be equal to the average Rial price at which Iran exports its electricity to other nations.¹⁴⁹ Secondly, using electricity or natural gas to mine cryptocurrencies is forbidden in peak consumption times, whereas, using clean and sustainable sources of energy is permitted at all times.¹⁵⁰ Lastly, mining companies are prohibited from using electricity and gas provided at household, agricultural, or industrial grades.¹⁵¹ Although many critics predict that these regulations will drive many miners to consider operating elsewhere, the regulatory scheme protects consumers and incentivizes miners to use clean energy resources.

Both China and Iran present examples of how to regulate cryptocurrency activity, including mining. However, only Iran has demonstrated

¹⁴⁶ *Iran blames bitcoin mining for surge in electricity consumption*, IRAN DAILY (June 24, 2019), <http://www.iran-daily.com/News/254817.html> [https://perma.cc/W2F2-S2PT].

¹⁴⁷ Helen Partz, *Iranian Government to Cut Off Power to Crypto Mining Until Approval of New Energy Prices*, COINTELEGRAPH (June 25, 2019), <https://cointelegraph.com/news/iranian-government-to-cut-off-power-to-crypto-mining-until-approval-of-new-energy-prices> [https://perma.cc/M8RA-NGNZ].

¹⁴⁸ Maziar Motamedi, *Iran's government recognises cryptocurrency mining with caveat*, ALJAZEERA (Aug. 4, 2019), <https://www.aljazeera.com/ajimpact/iran-government-recognises-cryptocurrency-mining-caveat-190804193912792.html> [https://perma.cc/XBT9-DVKU].

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

the ability to enact a set of smart and logical regulations that consider consumer protection concerns and environmental concerns. In contrast, China abandoned all regulatory efforts in favor of capitalizing off of the technology.

VI. ALTERNATIVE CONCERNS REGARDING REGULATORY SCHEMES

Although this article and analysis casts serious doubt on the environmental feasibility of cryptocurrency mining due to the extreme energy use required, when considering regulatory schemes to also take into account the effects such regulations would have on firms and technologies that also use copious amounts of energy that serve a more valuable societal purpose. Primarily, the goal of regulating energy consumption is not meant to inhibit the use of energy to fuel the data centers of big technology companies. Data centers currently play a critical role in our advanced and developing society—powering the internet and subsequently connecting our communities.¹⁵² However, this role comes at a heavy energy price. Currently, the data centers which power the internet consume about 2% of the world's electricity with that number potentially rising to 8% by 2030.¹⁵³ The conventional wisdom that this article embraces would suggest that data centers play an equally disastrous role with regard to the environment as cryptocurrency mining and should be regulated as such. However, when you consider the societal function, the benefits to vast populations, and the incentives to invest in renewable energy sources, data centers pose much less of a threat to our environment than the proliferation of cryptocurrency mining.

Data centers are an indispensable part of our lives. As the foundation of cloud computing, which enables the on-demand availability of computer system resources, data centers have an indelible impact on our social lives, education, development, and healthcare.¹⁵⁴ These benefits are largely public benefits that affect everyone and do not discriminate based on where you live, how much money you make, or what you do for a living. Technology firms such as Google, YouTube, and Facebook, which have harnessed the power of data centers, have made this world infinitesimally smaller by connecting not only old friends who have lost touch but

¹⁵² *Sustainable data centers*, FACEBOOK SUSTAINABILITY, <https://sustainability.fb.com/innovation-for-our-world/sustainable-data-centers/> [https://perma.cc/8UUK-AYJT].

¹⁵³ Robert Walton, *The rise of cloud computing is having an impact on data center efficiency — and it's not great*, UTILITYDIVE (Dec. 17, 2019), <https://www.utilitydive.com/news/the-rise-of-cloud-computing-is-having-an-impact-on-data-center-efficiency/569183/> [https://perma.cc/D3RY-5822].

¹⁵⁴ Maamar Ferkoun, *How cloud computing is impacting everyday life*, IBM (Apr. 4, 2013), <https://www.ibm.com/blogs/cloud-computing/2013/04/04/how-cloud-computing-is-impacting-everyday-life/> [https://perma.cc/X69V-3ULP].

also politicians with their constituencies. Moreover, educational institutions that have embraced cloud technology have enabled students to learn from anywhere while using data to reduce administrative expenses.¹⁵⁵

More importantly, although the direct effects of cloud technology mostly implicate the developed world, citizens from developing countries benefit from these technologies through instantaneous access to educational material.¹⁵⁶ The cloud technology that data centers help power enable developing countries to tap into the data and applications already developed that are essential to building infrastructure programs. Without cloud technology, these programs would otherwise be too costly to invest in.

Data centers also help store and organize healthcare data from patients around the world. This process helps medical professionals research diseases, diagnose patients, and develop more effective treatment plans.¹⁵⁷ The worldwide implications of cloud technology are only made possible by further investment in data centers—data centers that use increasing amounts of energy every day. However, given the largely magnanimous effects that have materialized over the last decade of innovation, there is no doubt that the technology largely helps the global community.

Lastly, data centers help revitalize communities through job creation. According to a report issued by Google in 2018, “...as of 2016, Google data centers generated \$1.3 billion in economic activity across the US, and have generated over 11,000 jobs.”¹⁵⁸ These statistics depict a world in which the economic benefits of cryptocurrency mining flow to a select population, whereas a large majority of people benefit directly from investment in data centers. Consequently, energy policy should reflect this statistical landscape—cryptocurrency miners should not be able to exploit energy generated by publicly funded utilities for a largely exclusive economic benefit.

The main difference between the benefits of data center energy use and cryptocurrency energy use is the number and size of the populations that ultimately see the benefits. By some estimates, there are currently only about 1,000,000 cryptocurrency miners throughout the world, which represents roughly .014% of the global population.¹⁵⁹ Furthermore,

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ Urs Hölzle, *Measuring our impact in data center communities*, GOOGLE (Apr. 23, 2018), <https://www.blog.google/topics/environment/measuring-our-impact-data-center-communities/> [https://perma.cc/HRH4-7L8T].

¹⁵⁹ *How Many Bitcoins Are There?*, BUY BITCOIN WORLD, <https://www.buybitcoinworld-wide.com/how-many-bitcoins-are-there/> [https://perma.cc/3WB3-4V9P] (Mar. 3, 2020).

only about 14% of Americans reported owning a cryptocurrency in 2019.¹⁶⁰ Conversely, 72% of adult Americans reported using a social media platform in 2019, while 90% of adult Americans reported utilizing the internet.¹⁶¹

Technology firms that use data centers have a strong economic incentive and the economic scale to invest in renewable energy resources that cryptocurrency miners simply do not have. In the long term, renewable energy sources will be both cheaper and more plentiful than traditional coal powered energy. According to the Bloomberg New Energy Finance Report for 2019, wind and solar energy sources will make up 50% of world electricity by 2050, and by 2030 the cost of wind and solar energy sources will undercut the cost of coal and gas almost anywhere throughout the world.¹⁶² Given this outlook, it makes financial sense for technology firms to invest now in developing renewable energy alternatives that will power their data center operations. However, cryptocurrency miners do not benefit from long-term economic analysis and, as such, will not plan accordingly. This lack of incentive means that miners, as rational economic actors, will use the cheapest available energy source today instead of investing working capital in renewable infrastructure for tomorrow.

Unlike their cryptocurrency counterparts, technology firms such as Apple, Google, Facebook, and Microsoft are using their economic scale to invest in renewable energy alternatives. Although renewable energy resources are limited in the United States, according to Yale researchers, these firms are signing contracts with other countries to receive a dedicated supply from existing wind and solar farms: “The availability of renewable energy is one reason Google and Microsoft have recently built hubs in Finland, and Facebook in Denmark and Sweden.”¹⁶³ Furthermore, “Google last year also signed a deal to buy all the energy from the Netherlands’ largest solar energy park, to power one of its four European data centers.”¹⁶⁴

¹⁶⁰ Richard Laycock, *A rising number of Americans own crypto*, FINDER (Nov. 20, 2019), <https://www.finder.com/how-many-people-own-cryptocurrency> [https://perma.cc/77BE-U6L9].

¹⁶¹ *Social Media Fact Sheet*, PEW RSCH. CTR. (June 12, 2019), <https://www.pewresearch.org/internet/fact-sheet/social-media/> [https://perma.cc/X2M6-FJG7]; *Internet/Broadband Fact Sheet*, PEW RESEARCH CENTER (June 12, 2019), <https://www.pewresearch.org/internet/fact-sheet/internet-broadband/> [https://perma.cc/3XNL-777P].

¹⁶² Seb Henbest et al., *New Energy Outlook 2019*, BLOOMBERG, <https://about.bnef.com/new-energy-outlook/> [https://perma.cc/5Q5W-D94Q].

¹⁶³ FRED PEARCE, *ENERGY HOGS: CAN WORLD’S HUGE DATA CENTERS BE MADE MORE EFFICIENT?* (Yale School of Forestry & Environmental Studies, 2018), <https://e360.yale.edu/features/energy-hogs-can-huge-data-centers-be-made-more-efficient> [https://perma.cc/8BEN-DLKE].

¹⁶⁴ *Id.*

Google, in particular, is using its artificial intelligence technology to continuously improve its data center efficiency.¹⁶⁵ These artificial intelligence systems analyze how their data centers are working and help the centers adjust accordingly in real time—they learn and evolve to maximize productivity.¹⁶⁶ In addition, by placing data centers in cooler climates like Finland, Google uses cold seawater, instead of energy-intensive cooling systems, to cool their data centers.¹⁶⁷ These solutions require both the ingenuity and financial resources that are rare among major mining operations, and exemplifies why technology firms are better positioned to tackle their carbon footprint on their own than are cryptocurrency miners. Ultimately, the comparison between cryptocurrency mines and data centers in terms of energy usage further highlights the need for mining regulations because miners lack the economic incentive to make the shift towards majority renewable energy use.

VII. PROPOSED REGULATORY SCHEMES

There are currently three primary regulatory schemes that would effectively reduce the largely negative impact that cryptocurrency mining operations currently have on our public utility infrastructure and the environment. These options include (1) a ban on all cryptocurrency mining operations within the United States, (2) a cost-internalization scheme that more effectively places the costs of mining on the miners and not the communities within which they operate, and (3) a system of transaction fees that help control the adoption of a cryptocurrency market as well as raise revenue to help offset the negative externalities of the mining process.

A. Cryptocurrency Ban

The first possible solution is to ban cryptocurrency mining activity altogether. Such bans would effectively halt mining operations everywhere within the United States. Although such a solution seems ideal and practical, an outright ban would be misguided and could have several unintended consequences without considering the possible constitutional implications.

First and foremost, technology bans do not eliminate the technology but actually drive its use, development, and benefits elsewhere. If the

¹⁶⁵ Michael Isberto, *What is the Environmental Impact of a Data Center?*, COLOCATION AMERICA (May 3, 2018), <https://www.colocationamerica.com/blog/data-center-environmental-impacts> [<https://perma.cc/42BP-UFEU>].

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

United States were to ban cryptocurrency mining operations, the blockchain technology underpinning the mining technology would continue to exist as the technology is decentralized. As such, operations would not halt; rather, they would just move to another country, allowing other governments to capture the benefits and possibly abuse its use. For instance, China just passed a cryptography law aimed at boosting cryptocurrency usage and development.¹⁶⁸ If the United States were to proceed with an outright ban, miners would most likely shift their operations to a more cryptocurrency-friendly country, such as China, and the United States would lose out on any potential economic or technological benefit. In fact, this is the main reason why China suddenly reversed course on its plans for a cryptocurrency ban and instead is seeking to capitalize on its growing popularity.¹⁶⁹ By placing a ban on cryptocurrency mining while at a critical but early stage in its development, the United States would be foreclosing on all possible opportunities of benefiting from the cryptocurrency market in the future. Even though doing so would help further the environmental cause at home while protecting public utility infrastructure, it would do nothing to stop the environmental degradation around the world because miners can simply move their operations abroad.

Furthermore, an outright ban on cryptocurrency mining in the United States would limit the development of blockchain technology at home while abdicating any extraordinary benefits, such as increased digital privacy and security. Moreover, a ban would reduce the chances of miners embracing renewable energy alternatives if mines become more expensive to operate. Additionally, in a world increasingly inundated with scams and fraud, blockchain technology helps businesses secure transactions, recover data, and verify information.¹⁷⁰ The benefits of the blockchain to business are unique and powerful: the technology allows for verification without having to be dependent on third-parties, it uses protected cryptography to secure the data ledgers, the transactions stored in the blocks are contained in millions of computers participating in the chain so there is no possibility that the data if lost cannot be recovered, and the origin of any ledger can be tracked along the chain to its point of origin.¹⁷¹ Although China's ban on cryptocurrency mining is laudable for its impact

¹⁶⁸ Ben Blanchard, *China passes cryptography law as gears up for digital currency*, REUTERS (Oct. 26, 2019), <https://www.reuters.com/article/us-china-lawmaking/china-passes-cryptography-law-as-gears-up-for-digital-currency-idUSKBN1X600Z> [<https://perma.cc/ZE6B-83ME>].

¹⁶⁹ *Id.*

¹⁷⁰ Ankit Patel, *The Top Advantages Of Blockchain For Businesses*, SMARTDATACOLLECTIVE (Nov. 17, 2018), <https://www.smartdatacollective.com/top-advantages-blockchain-for-businesses/> [<https://perma.cc/GHQ2-B53Y>].

¹⁷¹ *Id.*

on the environment, it would be unwise for the United States to move forward with such a ban in order to protect the environment and public utility infrastructure because it will inhibit the continued development of such a valuable emerging technology.

B. Transaction Fees

A second policy solution involves issuing transaction fees, i.e., a tax on each cryptocurrency transaction. The proposed fee would make transactions more expensive and subsequently reduce the demand for cryptocurrencies. This proposal, however, is misguided because of the individuals on whom the tax incidence ultimately falls. Coinbase, one of the largest brokerage firms for cryptocurrencies, currently charges exorbitant fees for using cryptocurrencies.¹⁷² In addition to a 0.50% markup on the prevailing market price of the cryptocurrency, also known as the spread fee, broker charges range from \$0.99 to \$2.99 per transaction for any amount between \$0.00 and \$200.00. For amounts above \$200.00, the firm charges a 1.49% transaction fee.¹⁷³ As a result, these transaction fees make using cryptocurrencies in the marketplace very expensive and prohibitive for a lot of potential users. Although these fees reduce the amount of transactions that occur, the fees do little to combat the increase in energy consumption by miners since the cost falls almost entirely on the cryptocurrency users.

A recent study out of Cornell University suggests that transaction fees may be contributing to Bitcoin's energy waste.¹⁷⁴ Transaction fees began as a way for users to pay for their transactions to be added to the blockchain faster than other users' transactions.¹⁷⁵ In theory, this makes sense from a market perspective; however, it has impractical real-life implications. For example, according to the Cornell study, "to use bitcoin to buy a \$4 latte at Starbucks, you might have to either wait several hours for the purchase to go through or pay \$5 to speed it up."¹⁷⁶ As previously mentioned, the blockchain system forces miners to compete to solve and complete the transaction so that only one miner gets paid. According to the study, "with more [transaction] fees, mining becomes more profitable,

¹⁷² Matthew De Silva, *Stock trading is virtually free—why isn't crypto?*, QUARTZ (Oct. 31, 2019), <https://qz.com/1738595/crypto-trading-fees-remain-high-at-exchanges-coinbase-gemini/> [<https://perma.cc/B9QN-D9JA>].

¹⁷³ *Id.*

¹⁷⁴ Melanie Lefkowitz, *Transaction fees change the culture of bitcoin, study says*, CORNELL CHRON. (Oct. 30, 2019), <https://news.cornell.edu/stories/2019/10/transaction-fees-change-culture-bitcoin-study-says> [<https://perma.cc/PQ4A-CAJ7>].

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

which then induces more miners to enter, which then uses more electricity.”¹⁷⁷ In essence, transaction fees make an already competitive ecosystem even more competitive and when more competition means more energy use, it is not necessarily a good thing.

Ultimately, while well-intentioned, transaction fees only place a burden on the consumer and increase the number of miners competing for a financial reward that comes with completing the transaction on the blockchain. Thus, there is no reduction or alteration of mining behavior while energy use continues to increase and consumers continue to pay more to use cryptocurrencies.

C. Cost Internalization

Finally, and most effectively, the United States could adopt a Pigouvian tax scheme on cryptocurrency mining activity. A Pigouvian tax is a tax on any market activity that generates negative externalities. In this case, the market activity, cryptocurrency mining, produces several negative externalities such as environmental degradation and damage to our public utility infrastructure. In order to correct the market failure, the Pigouvian tax is set to equal the social cost of the negative externalities to create a more efficient market outcome.¹⁷⁸ Such a tax scheme forces the cryptocurrency miners (or market participants) to internalize the costs that their activity imposes on the broader community.

A cost internalization regulatory scheme would largely reflect the “polluter-pays principles” in the environmental plan adopted by the European Union in Article 191(2) of the Treaty on the Functioning of the European Union: “Union policy [...] shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at the source and that the polluter should pay.”¹⁷⁹ Such a scheme raises revenue through the tax and forces miners to take financial responsibility for the harm they inflict on the environment and local public utility infrastructure. This outcome both incentivizes a switch to more renewable energy resources and reduces the costs that society is forced to pay.¹⁸⁰

¹⁷⁷ *Id.*

¹⁷⁸ See T.H. Tietenberg, *On Taxation and the Control of Externalities: Comment*, 64 THE AM. ECON. REV. 462 (1974).

¹⁷⁹ *Consolidated version of the Treaty on the Functioning of the European Union*, EUR-LEX, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A12008E191> [<https://perma.cc/77P3-UCVX>].

¹⁸⁰ Jon Turby, *Decarbonizing Bitcoin: Law and policy choices for reducing the energy consumption of Blockchain technologies and digital currencies*, ENERGY RSCH. & SOC. SCI. 3 (2018).

There are many examples of how these taxes have been successfully implemented to reduce the negative effects of certain conduct on the broader society. Taxes on plastic bags, for instance, help increase the use of more environmentally friendly paper bags by making plastic bags the more expensive choice. Likewise, taxes on carbon output help incentivize heavy polluters to invest in alternative energy sources, such as renewables. It is also important to consider who the tax burden ultimately falls on because that will determine whose behavior is changed.¹⁸¹ In this case, the burden would fall entirely on the miners and traders of cryptocurrencies—the exact population whose conduct the regulation is aimed at controlling.

Given that the United States should prioritize capturing the technological and economic benefits of cryptocurrency mining activity, a cost-internalization scheme will help contain the damage to our environment and infrastructure while incentivizing miners to innovate and use alternative energy sources. Such a regulatory scheme seems like a win-win scenario that can be easily adopted and enforced and poses little political risk.

VIII. CONCLUSION

The proliferation of cryptocurrency mining—which is a direct result of cheap energy, lax regulations, and price volatility—has and will continue to have a devastating impact on the United States' public utility infrastructure and environment. Without a sound regulatory scheme to combat the effects of cryptocurrency mining, the country will continue to see the negative social and environmental impacts of cryptocurrency mining. Given the available solutions, a regulatory scheme that embraces cost-internalization by imposing a Pigouvian tax on mining activity is the best model to combat the negative externalities that inevitably result from cryptocurrency mining. Moreover, although mining has several negative effects on the broader society, an outright ban on mining or increased transaction fees for cryptocurrency use will neither help resolve the environmental problems that mining created nor allow the United States to capitalize on the numerous technological and economic benefits that the development of blockchain technology presents.

¹⁸¹ *Id.*

POLITICS

WA looks to address housing shortage with density, zoning changes

A 'strange bedfellows' political alignment has brought together Democrats, Republicans, business, labor and others in search of a fix.

by [Joseph O'Sullivan](#) / March 17, 2023 / Updated at 4:30 p.m. on March 17



Homes and apartments in the Queen Anne neighborhood seen from the Space Needle on Friday, May 20, 2022. Washington lawmakers and Gov. Jay Inslee are working on a host of proposals to reshape housing policy amid the state's dire affordability and homelessness crisis. (Amanda Snyder/Crosscut)

As Washington lawmakers in recent weeks rushed through the perennial frenzy to pass legislation off the House and Senate floors by a key deadline, something unusual happened: A slate of big-picture housing legislation, some of which had languished for years, was brought to the floor and passed by wide margins.

[House Bill 1110](#), sponsored by Rep. Jessica Bateman, D-Olympia, which would provide for more duplexes, fourplexes and other multi-unit housing in Washington cities with more than 25,000 people, passed the House with a wide bipartisan vote of 75-21. A pair of Republican-sponsored proposals passed nearly unanimously: [House Bill 1245](#) would allow homeowners to split larger lots to build a cottage or additional home, while [House Bill 1293](#) is intended to streamline the permitting process for housing construction in urban growth areas. Senate lawmakers meanwhile passed two Democratic-sponsored key bills by wide margins: [Senate Bill 5235](#), to allow for accessory dwelling units like backyard cottages, and [Senate Bill 5466](#), to increase housing density near transit.

This initial – and by some accounts, surprising – success comes as Gov. Jay Inslee’s ambitious housing-bond proposal is also seeing signs of life. If passed by the Legislature, the proposal would ask Washington voters in November to consider approving a \$4 billion bond sale, outside the state’s debt limit, to build more housing.

Taken all together, lawmakers this year have a real shot at delivering an ambitious package of reforms intended to fix one of Washington’s most pernicious societal problems: a lack of affordable shelter.

Next: [Rifle ban, housing bills and more advance in the WA Legislature](#)

Washington is currently short hundreds of thousands of homes and apartments, driving up prices for both home ownership and apartment and house rentals even as state residents contend with higher prices for other goods like gas and groceries. Legislative leaders have said another 1 million units of housing will be needed in the next two decades. Housing and rental costs are also a key part of [pushing people living on the socioeconomic margins into homelessness](#).

This year’s progress in the 105-day scheduled legislative session comes as Democratic and Republican lawmakers have come together to find housing solutions. They have been aided by a coalition of Washington’s biggest businesses, labor unions and political advocacy groups from across the political spectrum who signed a letter agreeing on the need for bold steps.

That letter came from a meeting convened by Sen. Yasmin Trudeau, D-Tacoma, and Democratic Lt. Gov. Denny Heck, which produced a statement calling for lawmakers to take “strong state action” to boost housing.

In an interview, Heck said that if he had been told last year about how much progress could be made in tackling the problem, “I would have been gobsmacked.”

Next: [Seattle's social housing measure is likely to pass](#)

“There’s been a sea change in perspective,” Heck said. “People understand there’s a housing problem.”

That coalition began to coalesce after two key bills – Bateman’s previous “missing middle” proposal and a backyard cottage proposal – stalled last year.

But big hurdles remain. Housing reform can generate opposition because it eats into local government control of planning and zoning, and some contend that a blanket approach could be harmful or counterproductive. Meanwhile, reforms can be a sore spot for people who already own homes and who may not want to see changes in their cities.

Known as the “missing middle” housing proposal, [House Bill 1110](#) is scheduled for a public hearing Friday in the Senate Housing Committee. In its current version, the bill creates some density requirements for cities with at least 25,000 people to, among other things, build duplexes, fourplexes and sixplexes.

Bateman said the conversation around housing solutions is changing swiftly as more and more Washingtonians get locked out of home ownership, wealth-building and stability.

Next: [How WA's legislature is addressing the housing crisis in 2023](#)

“Like my little sister who's 27 and a pediatric nurse,” said Bateman. “And she can't afford a family home in Seattle, with a combined income.”

As the problem worsens, thinking about the prospect of multifamily housing next to your single-family home becomes less scary, she added.

Back to his policy roots

Elected to the lieutenant governor's office in 2020, Heck spent many years prior serving in Congress, which included work on housing issues. Since becoming lieutenant governor, Heck's office has produced a series of reports outlining and clarifying the extent of Washington's housing problems. One 2021 study highlights how restrictive and exclusionary local zoning laws, “not in my backyard” attitudes and costly permitting processes and regulations may [have stymied progress on housing](#).

A February 2022 report highlighted [housing costs as the most substantial impediment](#) to the state's business climate.

A third report details how the wealth gap between white Americans and people of color is essentially a product of housing discrimination that has left Black, Indigenous and Latino Americans in particular underrepresented among homeowners.

Next: [Q&A: Washington Governor Jay Inslee talks housing, guns, climate](#)

“The adverse impacts of the racial wealth gap do not stop with Americans of color,” [that report continues](#). “When a large swath of our population is kept from homeownership and from full economic participation, the entire economy suffers.”

House Bill 1110 seeks to address that problem by potentially helping to add 200,000 more housing units statewide in the coming years, Bateman said, [citing a figure from the Puget Sound Regional Council](#).

According to a legislative analysis, the bill would allow for more multi-unit buildings of different sizes in cities of more than 25,000 people, with a couple different pathways for those cities to achieve that goal. Among other things, it would include incentivizing multifamily housing near transit stops.

The bill does not apply to lots that are designated with critical areas or buffers, or to a variety of watersheds, [according to the analysis](#). Meanwhile, cities can still deny building permits to lots that won't have an adequate water supply. And the proposal also wouldn't stop cities like Seattle from pursuing their own affordable-housing plans, according to Bateman.

The bill can also preserve single-family zoning in up to 25% of a city's lots if certain conditions are met.

“And if they do the underlying bill, then they get safe harbor from growth management hearings board litigation,” Bateman said, and they also can charge fees to developers to pay for costs for infrastructure.

For Bateman, that combination to develop more housing in cities is a win-win.

Next: [Inslee's proposed \\$70B WA state budget focuses on housing](#)

“Infill housing is the most cost-effective type of housing, the most energy-efficient type of housing, and we also get the ancillary benefits of people living closer to work, groceries, so it helps us reduce” carbon emissions, Bateman said.

The Association of Washington Cities, a nonprofit organization representing 281 cities in the state, has in recent years resisted such proposals, which take away some local control, according to Carl Schroeder, deputy director of governmental relations. But the organization has met with Bateman and others for the past year to try to find areas of agreement, such as more density around transit stops and city amenities.

Amendments that altered HB 1110 as the bill moved forward got it "closer to what we are going to be able to support and will hopefully be able to offer support,” Schroeder said.

Others remain unpersuaded, like Everett City Council member Ben Zarlingo. While missing-middle housing is one answer to the crisis, he said, “Generally, my concern is a one-size-fits-all” approach by the state.

Zarlingo pointed to efforts Everett is making to improve density, including projects that will create scores of new housing units. He worries that providing more housing all across the city could strain resources: “We aren't set up for that in terms of the streets, the services, the parking.”

“For example, the idea that you would mandate fourplexes and sixplexes in large chunks of the city doesn’t do anything to concentrate density to the best place where we can handle it,” said Zarlingo, who works on planning issues for the city.

Rep. Andrew Barkis, a Republican from Olympia who works in property management, is sponsoring the lot-splitting proposal, HB 1245; co-sponsoring Bateman’s bill; and supporting the slate of proposals.

“It's Econ 101, it's supply and demand,” he said. “And our demand is outpacing supply.”

Next: [Housing vouchers sit unused at some rural Washington agencies](#)

Eclectic collaboration

This year’s momentum comes after [Bateman’s middle housing bill](#) and another piece of legislation to expand accessory dwelling units both stalled last year. After that, Bateman began meeting regularly with the Association of Washington Cities and others to hear their concerns.

Meanwhile, Trudeau and Heck gathered a bunch of eclectic and often opposing groups across the political spectrum in what he described as a classic political “strange bedfellows” situation.

The result was a strongly worded letter urging lawmakers to recognize that the lack of affordable shelter “manifests in several ways harmful to our state and its citizens.”

The letter asserts that the current situation is damaging to low-income families and older adults on a fixed income, and points out that housing policy has systematically excluded Black, Indigenous and people of color. Meanwhile, the underproduction of new houses is a factor in slowing economic growth, and housing sprawl damages the environment and threatens the permanent loss of Washington’s food-producing agricultural lands.

The letter urged lawmakers to take “strong state action” to reform zoning laws through missing-middle housing, accessory dwelling units and other policy changes; to pass bills that reduce permitting and ease construction costs; and to invest state dollars in affordable housing, among other things.

The Building Industry Association of Washington, a powerful group and big donor to Republican political causes, signed on to the letter, alongside Seattle-based advocacy organizations like the Sightline Institute, Fuse Washington and Futurewise. Three branches of the Service Employees International Union – representing tens of thousands of nurses, education workers and daycare and home-care providers – put their mark on it, as did the Washington State Labor Council. Those unions are some of the most powerful backers in Democratic politics. Joining them were Microsoft, Amazon, the Seattle Metropolitan Chamber of Commerce and the Master Builders of King and Snohomish counties.

American Farmland Trust, a nonprofit organization founded by farmers and environmentalists collaborating to preserve agricultural lands and save society from soil erosion – key tasks in an era of dire climate predictions and the precarious business of farming – signed on to the letter. So did AARP Washington and the Washington Build Back Black Alliance.

Trudeau sponsored [the Senate version](#) of Bateman’s bill, which was co-sponsored by Senate Minority Leader John Braun, R-Centralia. Braun has praised lawmakers’ work on advancing housing proposals this year, even when he doesn’t agree with some of the specifics.

Next: [Washington state may boost 988 hotline funding as demand grows](#)

The first woman of color to be elected senator from the 27th Legislative District, Trudeau is now tasked with shepherding Bateman’s bill through the upper chamber. For her, the policy debate also must include a reckoning over the [generations of systemic exclusion that people of color have faced](#) when trying to buy a home, including through local zoning laws.

"We need to think about it equitably, especially because of the history. Why is it that lower-income and predominant Black communities are in urban cores?" she said. "That was intentional, as is single-family zoning for many of the same reasons."

Housing construction bonds

The governor in December [announced his own go-big proposal](#), asking voters to weigh in on a bond proposal for the construction of affordable housing across Washington, along with supportive housing for individuals who may need help and additional shelter beds.

That plan would first have to pass the Legislature. Then voters would weigh in this fall on whether Washington could raise \$4 billion beyond the official debt limit over the next several years by issuing bonds to boost housing projects.

Late last month, Inslee even called into a KIRO radio news program to make a pitch to citizens, [according to Mynorthwest.com](#).

That proposal has picked up a little momentum, with House Speaker Laurie Jenkins, D-Tacoma, saying last month that its chances were inching up. Jenkins added that if the plan does move forward, she said, “The House will put its mark on that proposal.”

Bateman, who sits on the House Capital Budget Committee currently reviewing the proposal, said she supports Inslee’s measure.

Schroeder, of the Association of Washington Cities, said his organization supports that measure, or a proposed increase in the real estate excise tax (REET), sometimes known as the homesellers' tax, to boost housing construction.

This latter bill is [House Bill 1628](#), the only legislation this year being sponsored by Rep. Frank Chopp, D-Seattle. The longest serving House speaker in Washington history, [Chopp is known among other things](#) for his lifelong fight to create affordable housing and shelter for those who need it.

Next: [This WA bill could make it easier and safer to change your name](#)

“I think it would be a massive misstep if we did not get one of those two proposals passed in what’s supposed to be the year of housing,” Schroeder said.

At least one Republican is also willing to come to the table on Inslee’s proposal. Barkis said he would want to make sure the money in the bond proposal is spent for the “highest and best use,” but that he was open to supporting it.

“If in fact that comes to the table, I’m more than happy to be at that table. I can’t speak on behalf of our leadership, but I would sit down with stakeholders,” Barkis said. “I would rather see something along those lines, rather than a REET increase or other tax increase.”

Meanwhile, as the housing bills move through the House and Senate in the remaining days of the legislative session, opponents “will keep chipping at them,” Barkis said.

“These are good policies that will start to create a foundation for getting at supply quickly,” he said. If the bills remain largely intact and get to Inslee’s desk, he added: “We will have taken some pretty significant steps on a pathway to start getting at this supply issue.”

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SUBSTITUTE HOUSE BILL 1245

State of Washington

68th Legislature

2023 Regular Session

By House Housing (originally sponsored by Representatives Barkis, Robertson, Wylie, Fitzgibbon, Peterson, Walsh, Chambers, Kloba, Gregerson, Graham, Waters, Reed, Walen, Christian, Riccelli, Macri, Bateman, and Doglio)

READ FIRST TIME 02/06/23.

1 AN ACT Relating to increasing housing options through lot
2 splitting; adding a new section to chapter 36.70A RCW; and creating a
3 new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that allowing an
6 existing residential lot to be split into two lots can offer many
7 advantages to both the existing homeowner and to prospective
8 homebuyers. Lot splitting can provide current owners the opportunity
9 to maintain homeownership in changing life circumstances, while also
10 providing new homebuyers with a more affordable ownership
11 opportunity. Additionally, lot splitting will provide additional
12 opportunities for sales to affordable housing providers or
13 homeownership facilitators that may be exempt from state real estate
14 excise tax under chapter 82.45 RCW. Therefore, it is the intent of
15 the legislature to ease restrictions on, and expand opportunities
16 for, lot splitting in cities planning under chapter 36.70A RCW, the
17 growth management act.

18 NEW SECTION. **Sec. 2.** A new section is added to chapter 36.70A
19 RCW to read as follows:

1 (1)(a) Cities planning under this chapter must adopt or amend by
2 ordinance, and incorporate into their development regulations, zoning
3 regulations, and other official controls the requirements of
4 subsection (2) of this section by July 1, 2024, to apply within the
5 city's urban growth area.

6 (b) Beginning July 1, 2024, the requirements of subsection (2) of
7 this section apply and take effect in any city that has not adopted
8 or amended ordinances, regulations, or other official controls as
9 required under this section and supersede, preempt, and invalidate
10 any conflicting local development regulations.

11 (2) Through ordinances, development regulations, zoning
12 regulations, and other official controls as required under subsection
13 (1) of this section, cities may not:

14 (a) Prohibit, within a residential zone that allows for the
15 development of detached single-family residences, the splitting of a
16 single residential lot into two residential lots if the following
17 conditions are met:

18 (i) The resulting lots are at least 1,500 square feet;

19 (ii) The resulting lots are at least 40 percent of the size of
20 the original lot;

21 (iii) The resulting lots are consistent with the minimum review
22 standards under chapter 58.17 RCW;

23 (iv) The original lot was not created through the splitting of a
24 single residential lot authorized by this section; and

25 (v) The lot split would not require demolition or alteration of
26 any housing that is rent restricted, rent subsidized, or that has
27 been occupied by a tenant paying market-rate rent within the
28 preceding 12 months;

29 (b) Impose regulations on a residential lot that is the result of
30 a lot split that:

31 (i) Require more than one off-street parking space per lot;

32 (ii) Require more than 20 feet of frontage width per lot;

33 (iii) Require easement widths of more than four feet for access
34 to rear lots unless site-specific conditions, such as access to
35 utilities, require wider easements;

36 (iv) Impose permitting requirements, design standards, or impacts
37 fees on construction on a lot resulting from a lot split that are
38 greater than those imposed on new residential construction generally
39 within the same zone; or

1 (v) Impose requirements for dedications of rights-of-way or for
2 the construction of off-site improvements unless site-specific
3 conditions require otherwise.

4 (3) Any construction on the resulting lots is subject to all
5 existing state and local laws except for the provisions specified in
6 subsection (2) of this section.

--- END ---

SECOND SUBSTITUTE HOUSE BILL 1110

State of Washington

68th Legislature

2023 Regular Session

By House Appropriations (originally sponsored by Representatives Bateman, Barkis, Reed, Taylor, Riccelli, Berry, Fitzgibbon, Peterson, Duerr, Lekanoff, Alvarado, Street, Ryu, Ramel, Cortes, Doglio, Macri, Mena, Gregerson, Thai, Bergquist, Farivar, Wylie, Stonier, Pollet, Santos, Fosse, and Ormsby)

READ FIRST TIME 02/24/23.

1 AN ACT Relating to creating more homes for Washington by
2 increasing middle housing in areas traditionally dedicated to single-
3 family detached housing; amending RCW 36.70A.030, 36.70A.280,
4 43.21C.495, and 43.21C.229; adding new sections to chapter 36.70A
5 RCW; adding a new section to chapter 64.34 RCW; adding a new section
6 to chapter 64.32 RCW; adding a new section to chapter 64.38 RCW;
7 adding new sections to chapter 64.90 RCW; and creating new sections.

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

9 NEW SECTION. **Sec. 1.** The legislature finds that Washington is
10 facing an unprecedented housing shortage for its current population
11 and without significant action will not meet its goal of creating
12 1,000,000 homes by 2044.

13 Increasing housing options that are more affordable to various
14 income levels is critical to achieving the state's housing goals,
15 including those codified by the legislature under chapter 254, Laws
16 of 2021.

17 There is continued need for the development of housing at all
18 income levels, including middle housing that will provide a wider
19 variety of housing options and configurations to allow Washingtonians
20 to live near where they work.

1 To unlock opportunity for Washingtonians it is necessary to lift
2 bans on the development of modest home choices in cities near job
3 centers, transit, and amenity-rich neighborhoods.

4 Homes developed at higher densities and gentle density housing
5 types are more affordable by design for Washington residents both in
6 their construction and reduced household energy and transportation
7 costs.

8 While creating more housing options, it is essential for cities
9 to identify areas at higher risk of displacement and establish
10 antidisplacement policies as required in Engrossed Second Substitute
11 House Bill No. 1220 (chapter 254, Laws of 2021).

12 The state has made historic investments in subsidized affordable
13 housing through the housing trust fund, yet even with these historic
14 investments, the magnitude of the housing shortage requires both
15 public and private investment.

16 In addition to addressing the housing shortage, allowing more
17 housing options in areas already served by urban infrastructure will
18 reduce the pressure to develop natural and working lands, support key
19 strategies for climate change, food security, and Puget Sound
20 recovery, and save taxpayers and ratepayers money.

21 **Sec. 2.** RCW 36.70A.030 and 2021 c 254 s 6 are each amended to
22 read as follows:

23 Unless the context clearly requires otherwise, the definitions in
24 this section apply throughout this chapter.

25 (1) "Administrative design review" means a development permit
26 process whereby an application is reviewed, approved, or denied by
27 the planning director or the planning director's designee based
28 solely on objective design and development standards without a public
29 meeting or hearing, unless such review is otherwise required by state
30 or federal law or the structure is listed on a local historic
31 register through a local preservation ordinance.

32 (2) "Adopt a comprehensive land use plan" means to enact a new
33 comprehensive land use plan or to update an existing comprehensive
34 land use plan.

35 ((+2)) (3) "Affordable housing" means, unless the context
36 clearly indicates otherwise, residential housing whose monthly costs,
37 including utilities other than telephone, do not exceed thirty
38 percent of the monthly income of a household whose income is:

1 (a) For rental housing, sixty percent of the median household
2 income adjusted for household size, for the county where the
3 household is located, as reported by the United States department of
4 housing and urban development; or

5 (b) For owner-occupied housing, eighty percent of the median
6 household income adjusted for household size, for the county where
7 the household is located, as reported by the United States department
8 of housing and urban development.

9 ~~((+3+))~~ (4) "Agricultural land" means land primarily devoted to
10 the commercial production of horticultural, viticultural,
11 floricultural, dairy, apiary, vegetable, or animal products or of
12 berries, grain, hay, straw, turf, seed, Christmas trees not subject
13 to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish
14 in upland hatcheries, or livestock, and that has long-term commercial
15 significance for agricultural production.

16 ~~((+4+))~~ (5) "City" means any city or town, including a code city.

17 ~~((+5+))~~ (6) "Community amenity" means:

18 (a) A public school as defined in RCW 28A.150.010 or a common
19 school as defined in RCW 28A.150.020; or

20 (b) A designated entrance or pedestrian access point to a
21 community park operated by the state or a local government for the
22 use of the general public.

23 (7) "Comprehensive land use plan," "comprehensive plan," or
24 "plan" means a generalized coordinated land use policy statement of
25 the governing body of a county or city that is adopted pursuant to
26 this chapter.

27 ~~((+6+))~~ (8) "Cottage housing" means detached dwelling units
28 arranged on two or more sides of a landscaped central area.

29 (9) "Courtyard apartments" means attached dwelling units arranged
30 on two or more sides of a landscaped central courtyard.

31 (10) "Critical areas" include the following areas and ecosystems:

32 (a) Wetlands; (b) areas with a critical recharging effect on aquifers
33 used for potable water; (c) a watershed serving a reservoir for
34 potable water if that watershed is listed, or was listed as of the
35 effective date of this section, as impaired or threatened under
36 section 303(d) of the federal clean water act (33 U.S.C. Sec.
37 1313(d)); (d) fish and wildlife habitat conservation areas; ~~((+d+))~~
38 (e) frequently flooded areas; and ~~((+e+))~~ (f) geologically hazardous
39 areas. "Fish and wildlife habitat conservation areas" does not
40 include such artificial features or constructs as irrigation delivery

1 systems, irrigation infrastructure, irrigation canals, or drainage
2 ditches that lie within the boundaries of and are maintained by a
3 port district or an irrigation district or company.

4 ~~((+7))~~ (11) "Department" means the department of commerce.

5 ~~((+8))~~ (12) "Development regulations" or "regulation" means the
6 controls placed on development or land use activities by a county or
7 city, including, but not limited to, zoning ordinances, critical
8 areas ordinances, shoreline master programs, official controls,
9 planned unit development ordinances, subdivision ordinances, and
10 binding site plan ordinances together with any amendments thereto. A
11 development regulation does not include a decision to approve a
12 project permit application, as defined in RCW 36.70B.020, even though
13 the decision may be expressed in a resolution or ordinance of the
14 legislative body of the county or city.

15 ~~((+9))~~ (13) "Emergency housing" means temporary indoor
16 accommodations for individuals or families who are homeless or at
17 imminent risk of becoming homeless that is intended to address the
18 basic health, food, clothing, and personal hygiene needs of
19 individuals or families. Emergency housing may or may not require
20 occupants to enter into a lease or an occupancy agreement.

21 ~~((+10))~~ (14) "Emergency shelter" means a facility that provides
22 a temporary shelter for individuals or families who are currently
23 homeless. Emergency shelter may not require occupants to enter into a
24 lease or an occupancy agreement. Emergency shelter facilities may
25 include day and warming centers that do not provide overnight
26 accommodations.

27 ~~((+11))~~ (15) "Extremely low-income household" means a single
28 person, family, or unrelated persons living together whose adjusted
29 income is at or below thirty percent of the median household income
30 adjusted for household size, for the county where the household is
31 located, as reported by the United States department of housing and
32 urban development.

33 ~~((+12))~~ (16) "Forestland" means land primarily devoted to
34 growing trees for long-term commercial timber production on land that
35 can be economically and practically managed for such production,
36 including Christmas trees subject to the excise tax imposed under RCW
37 84.33.100 through 84.33.140, and that has long-term commercial
38 significance. In determining whether forestland is primarily devoted
39 to growing trees for long-term commercial timber production on land
40 that can be economically and practically managed for such production,

1 the following factors shall be considered: (a) The proximity of the
2 land to urban, suburban, and rural settlements; (b) surrounding
3 parcel size and the compatibility and intensity of adjacent and
4 nearby land uses; (c) long-term local economic conditions that affect
5 the ability to manage for timber production; and (d) the availability
6 of public facilities and services conducive to conversion of
7 forestland to other uses.

8 ~~((13))~~ (17) "Freight rail dependent uses" means buildings and
9 other infrastructure that are used in the fabrication, processing,
10 storage, and transport of goods where the use is dependent on and
11 makes use of an adjacent short line railroad. Such facilities are
12 both urban and rural development for purposes of this chapter.
13 "Freight rail dependent uses" does not include buildings and other
14 infrastructure that are used in the fabrication, processing, storage,
15 and transport of coal, liquefied natural gas, or "crude oil" as
16 defined in RCW 90.56.010.

17 ~~((14))~~ (18) "Geologically hazardous areas" means areas that
18 because of their susceptibility to erosion, sliding, earthquake, or
19 other geological events, are not suited to the siting of commercial,
20 residential, or industrial development consistent with public health
21 or safety concerns.

22 ~~((15))~~ (19) "Long-term commercial significance" includes the
23 growing capacity, productivity, and soil composition of the land for
24 long-term commercial production, in consideration with the land's
25 proximity to population areas, and the possibility of more intense
26 uses of the land.

27 ~~((16))~~ (20) "Low-income household" means a single person,
28 family, or unrelated persons living together whose adjusted income is
29 at or below eighty percent of the median household income adjusted
30 for household size, for the county where the household is located, as
31 reported by the United States department of housing and urban
32 development.

33 ~~((17))~~ (21)(a) "Major transit stop," except as provided in (b)
34 of this subsection, means:

35 (i) A stop on a high capacity transportation system funded or
36 expanded under the provisions of chapter 81.104 RCW;

37 (ii) Commuter rail stops;

38 (iii) Stops on rail or fixed guideway systems, including
39 transitways; or

40 (iv) Stops on bus rapid transit routes.

1 (b) Alternatively, a definition of "major transit stop" adopted
2 before the effective date of this section by a regional agency
3 planning under the multicounty planning policies authority pursuant
4 to RCW 36.70A.210(7) shall apply to counties and cities which are
5 subject to those multicounty planning policies.

6 (22) "Middle housing" means buildings that are compatible in
7 scale, form, and character with single-family houses and contain two
8 or more attached, stacked, or clustered homes including duplexes,
9 triplexes, fourplexes, fiveplexes, sixplexes, townhouses, courtyard
10 apartments, and cottage housing.

11 (23) "Minerals" include gravel, sand, and valuable metallic
12 substances.

13 ~~((18))~~ (24) "Moderate-income household" means a single person,
14 family, or unrelated persons living together whose adjusted income is
15 at or below 120 percent of the median household income adjusted for
16 household size, for the county where the household is located, as
17 reported by the United States department of housing and urban
18 development.

19 ~~((19))~~ (25) "Permanent supportive housing" is subsidized,
20 leased housing with no limit on length of stay that prioritizes
21 people who need comprehensive support services to retain tenancy and
22 utilizes admissions practices designed to use lower barriers to entry
23 than would be typical for other subsidized or unsubsidized rental
24 housing, especially related to rental history, criminal history, and
25 personal behaviors. Permanent supportive housing is paired with on-
26 site or off-site voluntary services designed to support a person
27 living with a complex and disabling behavioral health or physical
28 health condition who was experiencing homelessness or was at imminent
29 risk of homelessness prior to moving into housing to retain their
30 housing and be a successful tenant in a housing arrangement, improve
31 the resident's health status, and connect the resident of the housing
32 with community-based health care, treatment, or employment services.
33 Permanent supportive housing is subject to all of the rights and
34 responsibilities defined in chapter 59.18 RCW.

35 ~~((20))~~ (26) "Public facilities" include streets, roads,
36 highways, sidewalks, street and road lighting systems, traffic
37 signals, domestic water systems, storm and sanitary sewer systems,
38 parks and recreational facilities, and schools.

1 (~~((21))~~) (27) "Public services" include fire protection and
2 suppression, law enforcement, public health, education, recreation,
3 environmental protection, and other governmental services.

4 (~~((22))~~) (28) "Recreational land" means land so designated under
5 RCW 36.70A.1701 and that, immediately prior to this designation, was
6 designated as agricultural land of long-term commercial significance
7 under RCW 36.70A.170. Recreational land must have playing fields and
8 supporting facilities existing before July 1, 2004, for sports played
9 on grass playing fields.

10 (~~((23))~~) (29) "Rural character" refers to the patterns of land
11 use and development established by a county in the rural element of
12 its comprehensive plan:

13 (a) In which open space, the natural landscape, and vegetation
14 predominate over the built environment;

15 (b) That foster traditional rural lifestyles, rural-based
16 economies, and opportunities to both live and work in rural areas;

17 (c) That provide visual landscapes that are traditionally found
18 in rural areas and communities;

19 (d) That are compatible with the use of the land by wildlife and
20 for fish and wildlife habitat;

21 (e) That reduce the inappropriate conversion of undeveloped land
22 into sprawling, low-density development;

23 (f) That generally do not require the extension of urban
24 governmental services; and

25 (g) That are consistent with the protection of natural surface
26 water flows and groundwater and surface water recharge and discharge
27 areas.

28 (~~((24))~~) (30) "Rural development" refers to development outside
29 the urban growth area and outside agricultural, forest, and mineral
30 resource lands designated pursuant to RCW 36.70A.170. Rural
31 development can consist of a variety of uses and residential
32 densities, including clustered residential development, at levels
33 that are consistent with the preservation of rural character and the
34 requirements of the rural element. Rural development does not refer
35 to agriculture or forestry activities that may be conducted in rural
36 areas.

37 (~~((25))~~) (31) "Rural governmental services" or "rural services"
38 include those public services and public facilities historically and
39 typically delivered at an intensity usually found in rural areas, and
40 may include domestic water systems(~~((7))~~) and fire and police

1 protection services(~~(, transportation and public transit services,~~
2 ~~and other public utilities)~~) associated with rural development and
3 normally not associated with urban areas. Rural services do not
4 include storm or sanitary sewers, except as otherwise authorized by
5 RCW 36.70A.110(4).

6 ~~((+26+))~~ (32) "Short line railroad" means those railroad lines
7 designated class II or class III by the United States surface
8 transportation board.

9 ~~((+27+))~~ (33) "Townhouses" means dwelling units constructed in a
10 row of two or more attached units where each dwelling unit shares at
11 least one common wall with an adjacent unit and is accessed by a
12 separate outdoor entrance.

13 (34) "Urban governmental services" or "urban services" include
14 those public services and public facilities at an intensity
15 historically and typically provided in cities, specifically including
16 storm and sanitary sewer systems, domestic water systems, street
17 cleaning services, fire and police protection services, public
18 transit services, and other public utilities associated with urban
19 areas and normally not associated with rural areas.

20 ~~((+28+))~~ (35) "Urban growth" refers to growth that makes
21 intensive use of land for the location of buildings, structures, and
22 impermeable surfaces to such a degree as to be incompatible with the
23 primary use of land for the production of food, other agricultural
24 products, or fiber, or the extraction of mineral resources, rural
25 uses, rural development, and natural resource lands designated
26 pursuant to RCW 36.70A.170. A pattern of more intensive rural
27 development, as provided in RCW 36.70A.070(5)(d), is not urban
28 growth. When allowed to spread over wide areas, urban growth
29 typically requires urban governmental services. "Characterized by
30 urban growth" refers to land having urban growth located on it, or to
31 land located in relationship to an area with urban growth on it as to
32 be appropriate for urban growth.

33 ~~((+29+))~~ (36) "Urban growth areas" means those areas designated
34 by a county pursuant to RCW 36.70A.110.

35 ~~((+30+))~~ (37) "Very low-income household" means a single person,
36 family, or unrelated persons living together whose adjusted income is
37 at or below fifty percent of the median household income adjusted for
38 household size, for the county where the household is located, as
39 reported by the United States department of housing and urban
40 development.

1 (~~((31))~~) (38) "Wetland" or "wetlands" means areas that are
2 inundated or saturated by surface water or groundwater at a frequency
3 and duration sufficient to support, and that under normal
4 circumstances do support, a prevalence of vegetation typically
5 adapted for life in saturated soil conditions. Wetlands generally
6 include swamps, marshes, bogs, and similar areas. Wetlands do not
7 include those artificial wetlands intentionally created from
8 nonwetland sites, including, but not limited to, irrigation and
9 drainage ditches, grass-lined swales, canals, detention facilities,
10 wastewater treatment facilities, farm ponds, and landscape amenities,
11 or those wetlands created after July 1, 1990, that were
12 unintentionally created as a result of the construction of a road,
13 street, or highway. Wetlands may include those artificial wetlands
14 intentionally created from nonwetland areas created to mitigate
15 conversion of wetlands.

16 NEW SECTION. **Sec. 3.** A new section is added to chapter 36.70A
17 RCW to read as follows:

18 (1) Any city that is required or chooses to plan under RCW
19 36.70A.040 must provide by ordinance and incorporate into its
20 development regulations, zoning regulations, and other official
21 controls, authorization for the following:

22 (a) For cities with a population of at least 25,000 but less than
23 75,000 based on office of financial management population estimates:

24 (i) The development of at least two units per lot on all lots
25 zoned predominantly for residential use;

26 (ii) The development of at least four units per lot on all lots
27 zoned predominantly for residential use within one-half mile walking
28 distance of a major transit stop or community amenity; and

29 (iii) The development of at least four units per lot on all lots
30 zoned predominantly for residential use if at least one unit is
31 affordable housing.

32 (b) For cities with a population of at least 75,000, or any city
33 within a contiguous urban growth area with a city with a population
34 above 200,000, based on office of financial management population
35 estimates:

36 (i) The development of at least four units per lot on all lots
37 zoned predominantly for residential use;

1 (ii) The development of at least six units per lot on all lots
2 zoned predominantly for residential use within one-quarter mile
3 walking distance of a major transit stop or community amenity; and

4 (iii) The development of at least six units per lot on all lots
5 zoned predominantly for residential use if at least two units are
6 affordable housing.

7 (2)(a) To qualify for the additional units allowed under
8 subsection (1) of this section, the applicant must commit to renting
9 or selling the required number of units as affordable housing. The
10 units must be maintained as affordable for a term of at least 50
11 years, and the property must satisfy that commitment and all required
12 affordability and income eligibility conditions adopted by the local
13 government under this chapter. A city must require the applicant to
14 record a covenant or deed restriction that ensures the continuing
15 rental of units subject to these affordability requirements
16 consistent with the conditions in chapter 84.14 RCW for a period of
17 no less than 50 years. The covenant or deed restriction must also
18 address criteria and policies to maintain public benefit if the
19 property is converted to a use other than which continues to provide
20 for permanently affordable low-income housing.

21 (b) The units dedicated as affordable must be provided in a range
22 of sizes comparable to other units in the development. To the extent
23 practicable, the number of bedrooms in affordable units must be in
24 the same proportion as the number of bedrooms in units within the
25 entire development. The affordable units must generally be
26 distributed throughout the development and have substantially the
27 same functionality as the other units in the development.

28 (c) If a city has enacted a program under RCW 36.70A.540, the
29 terms of that program govern to the extent they vary from the
30 requirements of this subsection.

31 (3) If a city has enacted a program under RCW 36.70A.540,
32 subsection (1) of this section does not preclude the city from
33 requiring any development, including development described in
34 subsection (1) of this section, to provide affordable housing, either
35 on-site or through an in-lieu payment, nor limit the city's ability
36 to expand such a program or modify its requirements.

37 (4) A city must allow at least six of the eight types of middle
38 housing to achieve the unit density required in subsection (1) of
39 this section.

40 (5) Any city subject to the requirements of this section:

1 (a) May only adopt objective development and design standards on
2 the development of middle housing;

3 (b) May only apply administrative design review;

4 (c) Except as provided in (a) of this subsection, shall not
5 require through development regulations any standards for middle
6 housing that are more restrictive than those required for detached
7 single-family residences, but may apply any objective development
8 regulations that are required for detached single-family residences,
9 including set-back and tree canopy and retention requirements;

10 (d) Shall apply to middle housing the same development permit and
11 environmental review processes that apply to detached single-family
12 residences, unless otherwise required by state law including, but not
13 limited to, shoreline regulations under chapter 90.58 RCW, building
14 codes under chapter 19.27 RCW, energy codes under chapter 19.27A RCW,
15 or electrical codes under chapter 19.28 RCW;

16 (e) Shall not require off-street parking as a condition of
17 permitting development of middle housing within one-half mile walking
18 distance of a major transit stop;

19 (f) Shall not require more than one off-street parking space per
20 unit as a condition of permitting development of middle housing on
21 lots smaller than 6,000 square feet; and

22 (g) Shall not require more than two off-street parking spaces per
23 unit as a condition of permitting development of middle housing on
24 lots greater than 6,000 square feet.

25 (6) The provisions of subsection (5)(e) through (g) of this
26 section do not apply:

27 (a) If a local government submits to the department an empirical
28 study prepared by a credentialed transportation or land use planning
29 expert that clearly demonstrates, and the department finds and
30 certifies, that the application of the parking limitations of
31 subsection (5)(e) through (g) of this section for middle housing will
32 be significantly less safe for vehicle drivers or passengers,
33 pedestrians, or bicyclists than if the jurisdiction's parking
34 requirements were applied to the same location for the same number of
35 detached houses. The department must develop guidance to assist
36 cities on items to include in the study; or

37 (b) To portions of cities within a one-mile radius of a
38 commercial airport in Washington with at least 9,000,000 annual
39 enplanements.

(7) The provisions of this section do not apply to lots designated with critical areas or their buffers as designated in RCW 36.70A.060.

(8) Nothing in this section prohibits a city from permitting detached single-family residences.

(9) A city must comply with the requirements of this section on the latter of:

(a) Six months after its next periodic comprehensive plan update required under RCW 36.70A.130; or

(b) 12 months after a determination by the office of financial management that the city has reached a population threshold established under this section.

NEW SECTION. **Sec. 4.** A new section is added to chapter 36.70A RCW to read as follows:

Population associated with permits for middle housing units are exempt from the threshold of an office of financial management population projection to a county or a county population allocation to a city.

NEW SECTION. **Sec. 5.** A new section is added to chapter 36.70A RCW to read as follows:

(1)(a) The department is directed to provide technical assistance to cities as they implement the requirements under section 3 of this act.

(b) The department shall prioritize such technical assistance to cities demonstrating the greatest need.

(2)(a) The department shall publish model middle housing ordinances no later than six months following the effective date of this section.

(b) In any city subject to section 3 of this act that has not passed ordinances, regulations, or other official controls within the time frames provided under section 3(9) of this act, the model ordinance supersedes, preempts, and invalidates local development regulations until the city takes all actions necessary to implement section 3 of this act.

(3)(a) The department is directed to establish a process by which cities implementing the requirements of section 3 of this act may seek approval of alternative local action necessary to meet the requirements of this act.

(b) The department may approve actions under this section for cities that have, by January 1, 2023, adopted a comprehensive plan that is substantially similar to the requirements of this act and, within one year of the effective date of this section, adopts permanent development regulations that are substantially similar to the requirements of this act. In determining whether a city's adopted comprehensive plan and permanent development regulations are substantially similar, the department must find as substantially similar plans and regulations that:

(i) Result in an overall increase in housing units allowed in single-family zones that is at least 75 percent of the increase in housing units allowed in single-family zones if the specific provisions of this act were adopted;

(ii) Allow for middle housing throughout the city, rather than just in targeted locations; and

(iii) Allow for additional density near major transit stops and community amenities, and for projects that incorporate dedicated affordable housing.

(c) The department may determine that a comprehensive plan and development regulations that do not meet these criteria are otherwise substantially similar to the requirements of this act if the city can clearly demonstrate that the regulations adopted will result in a greater increase in housing production within existing urban areas.

(d) Any local actions approved by the department pursuant to (a) of this subsection to implement the requirements under section 3 of this act are exempt from appeals under this chapter and chapter 43.21C RCW.

(e) The department's final decision to approve or reject actions by cities implementing section 3 of this act may be appealed to the growth management hearings board by filing a petition as provided in RCW 36.70A.290.

(4) For the purpose of this section, "single-family zones" means those zones where single-family detached housing is the predominate land use.

NEW SECTION. **Sec. 6.** A new section is added to chapter 36.70A RCW to read as follows:

Any city subject to the requirements of section 3 of this act may apply to the department for, and the department may certify, an extension for areas at risk of displacement as determined by the

1 antidisplacement analysis that a jurisdiction is required to complete
2 under RCW 36.70A.070(2). The city must create a plan for implementing
3 antidisplacement policies by their next implementation progress
4 report required by RCW 36.70A.130(9).

5 **Sec. 7.** RCW 36.70A.280 and 2011 c 360 s 17 are each amended to
6 read as follows:

7 (1) The growth management hearings board shall hear and determine
8 only those petitions alleging either:

9 (a) That, except as provided otherwise by this subsection, a
10 state agency, county, or city planning under this chapter is not in
11 compliance with the requirements of this chapter, chapter 90.58 RCW
12 as it relates to the adoption of shoreline master programs or
13 amendments thereto, or chapter 43.21C RCW as it relates to plans,
14 development regulations, or amendments, adopted under RCW 36.70A.040
15 or chapter 90.58 RCW. Nothing in this subsection authorizes the board
16 to hear petitions alleging noncompliance with RCW 36.70A.5801;

17 (b) That the twenty-year growth management planning population
18 projections adopted by the office of financial management pursuant to
19 RCW 43.62.035 should be adjusted;

20 (c) That the approval of a work plan adopted under RCW
21 36.70A.735(1)(a) is not in compliance with the requirements of the
22 program established under RCW 36.70A.710;

23 (d) That regulations adopted under RCW 36.70A.735(1)(b) are not
24 regionally applicable and cannot be adopted, wholly or partially, by
25 another jurisdiction; ~~((or))~~

26 (e) That a department certification under RCW 36.70A.735(1)(c) is
27 erroneous; or

28 (f) That the department's final decision to approve or reject
29 actions by a city implementing section 3 of this act is erroneous.

30 (2) A petition may be filed only by: (a) The state, or a county
31 or city that plans under this chapter; (b) a person who has
32 participated orally or in writing before the county or city regarding
33 the matter on which a review is being requested; (c) a person who is
34 certified by the governor within sixty days of filing the request
35 with the board; or (d) a person qualified pursuant to RCW 34.05.530.

36 (3) For purposes of this section "person" means any individual,
37 partnership, corporation, association, state agency, governmental
38 subdivision or unit thereof, or public or private organization or
39 entity of any character.

1 (4) To establish participation standing under subsection (2)(b)
2 of this section, a person must show that his or her participation
3 before the county or city was reasonably related to the person's
4 issue as presented to the board.

5 (5) When considering a possible adjustment to a growth management
6 planning population projection prepared by the office of financial
7 management, the board shall consider the implications of any such
8 adjustment to the population forecast for the entire state.

9 The rationale for any adjustment that is adopted by the board
10 must be documented and filed with the office of financial management
11 within ten working days after adoption.

12 If adjusted by the board, a county growth management planning
13 population projection shall only be used for the planning purposes
14 set forth in this chapter and shall be known as the "board adjusted
15 population projection." None of these changes shall affect the
16 official state and county population forecasts prepared by the office
17 of financial management, which shall continue to be used for state
18 budget and planning purposes.

19 NEW SECTION. **Sec. 8.** A new section is added to chapter 36.70A
20 RCW to read as follows:

21 (1) Any city subject to the requirements of section 3 of this act
22 may apply to the department for, and the department may certify, an
23 extension of the implementation timelines established under section
24 3(9) of this act.

25 (2) An extension certified under this section may be applied only
26 to specific areas where a city can demonstrate that water, sewer,
27 stormwater, or fire protection services lack capacity to accommodate
28 the density required in section 3 of this act, and the city has:

29 (a) Included an improvement within its capital facilities plan to
30 increase capacity; or

31 (b) Identified which special district is responsible for
32 providing the necessary infrastructure if the infrastructure is
33 provided by a special purpose district.

34 (3) An extension granted under this section remains in effect
35 until the earliest of:

36 (a) The infrastructure is improved to accommodate the capacity;

37 (b) The city completes its next periodic comprehensive plan
38 update under RCW 36.70A.130; or

1 (c) The city submits its implementation progress report to the
2 department as required under RCW 36.70A.130(9).

3 (4) A city that has received an extension under this section may
4 reapply for any needed extension with its next periodic comprehensive
5 plan update under RCW 36.70A.130 or its implementation progress
6 report to the department under RCW 36.70A.130(9). The application for
7 an additional extension must include a list of infrastructure
8 improvements necessary to meet the capacity required in section 3 of
9 this act.

10 (5) The department may establish by rule any standards or
11 procedures necessary to implement this section.

12 (6) The department must provide the legislature with a list of
13 projects identified in a city's capital facilities plan that were the
14 basis for the extension under this section, including planning level
15 estimates. Additionally, the city must contact special purpose
16 districts to identify additional projects associated with extensions
17 under this section.

18 (7) A city granted an extension for a specific area must allow
19 development as provided under section 3 of this act if the developer
20 commits to providing the necessary water, sewer, or stormwater
21 infrastructure.

22 **Sec. 9.** RCW 43.21C.495 and 2022 c 246 s 3 are each amended to
23 read as follows:

24 (1) Adoption of ordinances, development regulations and
25 amendments to such regulations, and other nonproject actions taken by
26 a city to implement: The actions specified in section 2, chapter 246,
27 Laws of 2022 unless the adoption of such ordinances, development
28 regulations and amendments to such regulations, or other nonproject
29 actions has a probable significant adverse impact on fish habitat;
30 and the increased residential building capacity actions identified in
31 RCW 36.70A.600(1), with the exception of the action specified in RCW
32 36.70A.600(1)(f), are not subject to administrative or judicial
33 appeals under this chapter.

34 (2) Amendments to development regulations and other nonproject
35 actions taken by a city to implement the requirements under section 3
36 of this act pursuant to section 5(3)(b) of this act are not subject
37 to administrative or judicial appeals under this chapter.

1 **Sec. 10.** RCW 43.21C.229 and 2020 c 87 s 1 are each amended to
2 read as follows:

3 (1) In order to accommodate infill development and thereby
4 realize the goals and policies of comprehensive plans adopted
5 according to chapter 36.70A RCW, a city or county planning under RCW
6 36.70A.040 is authorized by this section to establish categorical
7 exemptions from the requirements of this chapter. An exemption
8 adopted under this section applies even if it differs from the
9 categorical exemptions adopted by rule of the department under RCW
10 43.21C.110(1)(a). An exemption may be adopted by a city or county
11 under this section if it meets the following criteria:

12 (a) It categorically exempts ~~((government))~~:

13 (i) Government action related to development proposed to fill in
14 an urban growth area, designated according to RCW 36.70A.110, where
15 current density and intensity of use in the area is roughly equal to
16 or lower than called for in the goals and policies of the applicable
17 comprehensive plan and the development is either:

18 ~~((i))~~ (A) Residential development;

19 ~~((ii))~~ (B) Mixed-use development; or

20 ~~((iii))~~ (C) Commercial development up to sixty-five thousand
21 square feet, excluding retail development; or

22 (ii) Government action to amend development regulations to remove
23 requirements for parking from development proposed to fill in an
24 urban growth area designated according to RCW 36.70A.110.

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

29 (c) The local government considers the specific probable adverse
30 environmental impacts of the proposed action and determines that
31 these specific impacts are adequately addressed by the development
32 regulations or other applicable requirements of the comprehensive
33 plan, subarea plan element of the comprehensive plan, planned action
34 ordinance, or other local, state, or federal rules or laws; and

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

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

4 (2) Any categorical exemption adopted by a city or county under
5 this section shall be subject to the rules of the department adopted
6 according to RCW 43.21C.110(1)(a) that provide exceptions to the use
7 of categorical exemptions adopted by the department.

8 NEW SECTION. **Sec. 11.** A new section is added to chapter 36.70A
9 RCW to read as follows:

10 A city that adopts development regulations that are consistent
11 with and implement this act and RCW 35A.21.430 or 35.21.683 shall be
12 deemed in compliance with the requirements of RCW 36.70A.070(2)(d)
13 until June 30, 2032.

14 NEW SECTION. **Sec. 12.** A new section is added to chapter 64.34
15 RCW to read as follows:

16 A declaration created after the effective date of this section
17 and applicable to an area within a city subject to the middle housing
18 requirements in section 3 of this act may not actively or effectively
19 prohibit the construction, development, or use of additional housing
20 units as required in section 3 of this act.

21 NEW SECTION. **Sec. 13.** A new section is added to chapter 64.32
22 RCW to read as follows:

23 A declaration created after the effective date of this section
24 and applicable to an association of apartment owners located within
25 an area of a city subject to the middle housing requirements in
26 section 3 of this act may not actively or effectively prohibit the
27 construction, development, or use of additional housing units as
28 required in section 3 of this act.

29 NEW SECTION. **Sec. 14.** A new section is added to chapter 64.38
30 RCW to read as follows:

31 Governing documents of associations within cities subject to the
32 middle housing requirements in section 3 of this act that are created
33 after the effective date of this section may not actively or
34 effectively prohibit the construction, development, or use of
35 additional housing units as required in section 3 of this act.

1 NEW SECTION. **Sec. 15.** A new section is added to chapter 64.90
2 RCW to read as follows:

3 Declarations and governing documents of a common interest
4 community within cities subject to the middle housing requirements in
5 section 3 of this act that are created after the effective date of
6 this section may not actively or effectively prohibit the
7 construction, development, or use of additional housing units as
8 required in section 3 of this act.

9 NEW SECTION. **Sec. 16.** A new section is added to chapter 64.90
10 RCW to read as follows:

11 The department of commerce may establish by rule any standards or
12 procedures necessary to implement this act.

13 NEW SECTION. **Sec. 17.** If specific funding for the purposes of
14 this act, referencing this act by bill or chapter number, is not
15 provided by June 30, 2023, in the omnibus appropriations act, this
16 act is null and void.

--- END ---

SUBSTITUTE HOUSE BILL 1293

State of Washington

68th Legislature

2023 Regular Session

By House Housing (originally sponsored by Representatives Klicker, Leavitt, Barkis, Jacobsen, Waters, Chapman, Reed, and Graham)

READ FIRST TIME 02/09/23.

1 AN ACT Relating to streamlining development regulations; amending
2 RCW 43.21C.229 and 36.70B.160; and adding a new section to chapter
3 36.70A RCW.

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

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

7 (1) ~~((In order))~~ The purpose of this section is to accommodate
8 infill and housing development and thereby realize the goals and
9 policies of comprehensive plans adopted according to chapter 36.70A
10 RCW~~((, a))~~.

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

18 (a) It categorically exempts government action related to
19 development proposed to fill in an urban growth area, designated
20 according to RCW 36.70A.110, where current density and intensity of
21 use in the area is roughly equal to or lower than called for in the

goals and policies of the applicable comprehensive plan and the development is either:

- (i) Residential development;
- (ii) Mixed-use development; or
- (iii) Commercial development up to ~~((sixty-five thousand))~~ 65,000 square feet, excluding retail development;

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

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

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

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

~~((2) Any))~~ (3) All project actions that propose to develop one or more residential housing units within an urban growth area designated pursuant to RCW 36.70A.110 shall be categorically exempt from the requirements of this chapter. A project action shall be eligible for categorical exemption under this subsection only if it meets the following criteria:

(a) The proposed development is not inconsistent with an applicable comprehensive plan adopted according to chapter 36.70A RCW by the jurisdiction in which the development is proposed;

(b) The proposed development would not exceed the density or intensity of use called for in the goals and policies of that applicable comprehensive plan; and

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

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

4 (4) Any categorical exemption under this section applies even if
5 it differs from the categorical exemptions adopted by rule of the
6 department under RCW 43.21C.110(1)(a). However, any categorical
7 exemption ((adopted by a city or county)) under this section shall be
8 subject to the rules of the department adopted according to RCW
9 43.21C.110(1)(a) that provide exceptions to the use of categorical
10 exemptions adopted by the department.

11 NEW SECTION. Sec. 2. A new section is added to chapter 36.70A
12 RCW to read as follows:

13 (1) For purposes of this section, "design review" means a
14 formally adopted local government process by which projects are
15 reviewed for compliance with design standards for the type of use
16 adopted through local ordinance.

17 (2) Except as provided in subsection (3) of this section,
18 counties and cities planning under RCW 36.70A.040 may apply in any
19 design review process only clear and objective development
20 regulations governing the exterior design of new development. For
21 purposes of this section, a clear and objective development
22 regulation:

23 (a) Must include one or more ascertainable guideline, standard,
24 or criterion by which an applicant can determine whether a given
25 building design is permissible under that development regulation; and

26 (b) May not have the effect, either alone or together with other
27 development regulations, of discouraging needed housing through
28 unreasonable cost, delay, or uncertainty.

29 (3) The provisions of subsection (2) of this section do not apply
30 to development regulations that apply only to structures listed in
31 the Washington heritage register as described in RCW 27.34.220 or the
32 national register of historic places as defined in the national
33 historic preservation act of 1966 (Title 1, Sec. 101, Public Law
34 89-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter
35 amended.

36 (4) Any design review process must be conducted concurrently, or
37 otherwise logically integrated, with the consolidated review and
38 decision process for project permits set forth in RCW 36.70B.120(3),

1 and no design review process may include more than one public meeting
2 within the meaning of RCW 36.70B.020.

3 **Sec. 3.** RCW 36.70B.160 and 1995 c 347 s 420 are each amended to
4 read as follows:

5 (1) Each local government is encouraged to adopt further project
6 review provisions to provide prompt, coordinated and objective review
7 and ensure accountability to applicants and the public, including
8 expedited review for project permit applications for projects that
9 are consistent with adopted development regulations and within the
10 capacity of systemwide infrastructure improvements.

11 (2) Nothing in this chapter is intended or shall be construed to
12 prevent a local government from requiring a preapplication conference
13 or a public meeting by rule, ordinance, or resolution, where
14 otherwise required by applicable state law.

15 (3) Each local government shall adopt procedures to monitor and
16 enforce permit decisions and conditions.

17 (4) Nothing in this chapter modifies any independent statutory
18 authority for a government agency to appeal a project permit issued
19 by a local government.

--- END ---

SUBSTITUTE SENATE BILL 5235

State of Washington

68th Legislature

2023 Regular Session

By Senate Local Government, Land Use & Tribal Affairs (originally sponsored by Senators Shewmake, Frame, Lovelett, Nguyen, Pedersen, and Salomon)

READ FIRST TIME 02/10/23.

1 AN ACT Relating to accessory dwelling units; amending RCW
2 36.70A.696, 36.70A.697, and 36.70A.698; reenacting and amending RCW
3 36.70A.070; adding new sections to chapter 36.70A RCW; and creating a
4 new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that there is a
7 shortage of affordable housing units available for home ownership or
8 long-term rental within most urban growth areas of the state. This
9 lack of affordable housing forces many residents to spend more than
10 30 percent of their household income on housing, greatly increasing
11 housing insecurity and contributing to the state's crisis of
12 unacceptable numbers of persons experiencing homelessness. Increasing
13 the availability of accessory dwelling units, also referred to as
14 "ADUs," may increase opportunities for people to age in their own
15 home and increase multigenerational family ties along with offering
16 opportunities to reduce intergenerational poverty by increasing home
17 ownership. The legislature finds that accessory dwelling units can be
18 one way to add affordable long-term housing and to provide a needed
19 increase in housing density within urban growth areas with benefits
20 to reducing fossil fuel use and other contributions to climate change
21 due to housing and transportation patterns. The legislature seeks to

1 encourage accessory dwelling unit availability as a modest housing
2 option by streamlining local government regulations that may
3 unintentionally make accessory dwelling units less economical. Since
4 residents in a region may be choosing between cities, it is important
5 to acknowledge that one city cannot build affordability on its own.
6 An expansion in supply of affordable housing in a small city, but not
7 neighboring cities, may satisfy some of the demand for affordable
8 housing, but without a regional strategy, small cities will not be
9 able to build affordability on their own. Statewide action is needed.
10 Furthermore, the legislature finds that research from several cities
11 shows that when accessory dwelling units are built or that are
12 converted and offered for short-term rental for tourists and business
13 visitors, they may not improve housing affordability. Therefore, it
14 is the intent of the legislature to meet these important policy goals
15 by increasing the availability of accessory dwelling units as modest
16 housing options, limiting the restrictions that can be imposed on the
17 development and use of accessory dwelling units within urban growth
18 areas, and authorizing local governments to adopt programs to
19 incentivize or reduce local government-imposed cost or time related
20 obstacles to the development of accessory dwelling units when the
21 accessory dwelling units will be utilized for long-term housing.

22 **Sec. 2.** RCW 36.70A.070 and 2022 c 246 s 2 and 2022 c 220 s 1 are
23 each reenacted and amended to read as follows:

24 The comprehensive plan of a county or city that is required or
25 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,
26 and descriptive text covering objectives, principles, and standards
27 used to develop the comprehensive plan. The plan shall be an
28 internally consistent document and all elements shall be consistent
29 with the future land use map. A comprehensive plan shall be adopted
30 and amended with public participation as provided in RCW 36.70A.140.
31 Each comprehensive plan shall include a plan, scheme, or design for
32 each of the following:

33 (1) A land use element designating the proposed general
34 distribution and general location and extent of the uses of land,
35 where appropriate, for agriculture, timber production, housing,
36 commerce, industry, recreation, open spaces, general aviation
37 airports, public utilities, public facilities, and other land uses.
38 The land use element shall include population densities, building
39 intensities, and estimates of future population growth. The land use

1 element shall provide for protection of the quality and quantity of
2 groundwater used for public water supplies. Wherever possible, the
3 land use element should consider utilizing urban planning approaches
4 that promote physical activity. Where applicable, the land use
5 element shall review drainage, flooding, and stormwater runoff in the
6 area and nearby jurisdictions and provide guidance for corrective
7 actions to mitigate or cleanse those discharges that pollute waters
8 of the state, including Puget Sound or waters entering Puget Sound.

9 (2) A housing element ensuring the vitality and character of
10 established residential neighborhoods that:

11 (a) Includes an inventory and analysis of existing and projected
12 housing needs that identifies the number of housing units necessary
13 to manage projected growth, as provided by the department of
14 commerce, including:

15 (i) Units for moderate, low, very low, and extremely low-income
16 households; and

17 (ii) Emergency housing, emergency shelters, and permanent
18 supportive housing;

19 (b) Includes a statement of goals, policies, objectives, and
20 mandatory provisions for the preservation, improvement, and
21 development of housing, including single-family residences, and
22 within an urban growth area boundary, moderate density housing
23 options including, but not limited to, duplexes, triplexes, and
24 townhomes;

25 (c) Identifies sufficient capacity of land for housing including,
26 but not limited to, government-assisted housing, housing for
27 moderate, low, very low, and extremely low-income households,
28 manufactured housing, multifamily housing, group homes, foster care
29 facilities, emergency housing, emergency shelters, permanent
30 supportive housing, and within an urban growth area boundary,
31 consideration of duplexes, triplexes, and townhomes;

32 (d) Makes adequate provisions for existing and projected needs of
33 all economic segments of the community, including:

34 (i) Incorporating consideration for low, very low, extremely low,
35 and moderate-income households;

36 (ii) Documenting programs and actions needed to achieve housing
37 availability including gaps in local funding, barriers such as
38 development regulations, and other limitations;

39 (iii) Consideration of housing locations in relation to
40 employment location; and

1 (iv) Consideration ((of the role)) and utilization of accessory
2 dwelling units in meeting housing needs in compliance with RCW
3 36.70A.698;

4 (e) Identifies local policies and regulations that result in
5 racially disparate impacts, displacement, and exclusion in housing,
6 including:

7 (i) Zoning that may have a discriminatory effect;

8 (ii) Disinvestment; and

9 (iii) Infrastructure availability;

10 (f) Identifies and implements policies and regulations to address
11 and begin to undo racially disparate impacts, displacement, and
12 exclusion in housing caused by local policies, plans, and actions;

13 (g) Identifies areas that may be at higher risk of displacement
14 from market forces that occur with changes to zoning development
15 regulations and capital investments; and

16 (h) Establishes antidisplacement policies, with consideration
17 given to the preservation of historical and cultural communities as
18 well as investments in low, very low, extremely low, and moderate-
19 income housing; equitable development initiatives; inclusionary
20 zoning; community planning requirements; tenant protections; land
21 disposition policies; and consideration of land that may be used for
22 affordable housing.

23 In counties and cities subject to the review and evaluation
24 requirements of RCW 36.70A.215, any revision to the housing element
25 shall include consideration of prior review and evaluation reports
26 and any reasonable measures identified. The housing element should
27 link jurisdictional goals with overall county goals to ensure that
28 the housing element goals are met.

29 The adoption of ordinances, development regulations and
30 amendments to such regulations, and other nonproject actions taken by
31 a city that is required or chooses to plan under RCW 36.70A.040 that
32 increase housing capacity, increase housing affordability, and
33 mitigate displacement as required under this subsection (2) and that
34 apply outside of critical areas are not subject to administrative or
35 judicial appeal under chapter 43.21C RCW unless the adoption of such
36 ordinances, development regulations and amendments to such
37 regulations, or other nonproject actions has a probable significant
38 adverse impact on fish habitat.

39 (3) A capital facilities plan element consisting of: (a) An
40 inventory of existing capital facilities owned by public entities,

1 showing the locations and capacities of the capital facilities; (b) a
2 forecast of the future needs for such capital facilities; (c) the
3 proposed locations and capacities of expanded or new capital
4 facilities; (d) at least a six-year plan that will finance such
5 capital facilities within projected funding capacities and clearly
6 identifies sources of public money for such purposes; and (e) a
7 requirement to reassess the land use element if probable funding
8 falls short of meeting existing needs and to ensure that the land use
9 element, capital facilities plan element, and financing plan within
10 the capital facilities plan element are coordinated and consistent.
11 Park and recreation facilities shall be included in the capital
12 facilities plan element.

13 (4) A utilities element consisting of the general location,
14 proposed location, and capacity of all existing and proposed
15 utilities((~~r~~)) including, but not limited to, electrical lines,
16 telecommunication lines, and natural gas lines.

17 (5) Rural element. Counties shall include a rural element
18 including lands that are not designated for urban growth,
19 agriculture, forest, or mineral resources. The following provisions
20 shall apply to the rural element:

21 (a) Growth management act goals and local circumstances. Because
22 circumstances vary from county to county, in establishing patterns of
23 rural densities and uses, a county may consider local circumstances,
24 but shall develop a written record explaining how the rural element
25 harmonizes the planning goals in RCW 36.70A.020 and meets the
26 requirements of this chapter.

27 (b) Rural development. The rural element shall permit rural
28 development, forestry, and agriculture in rural areas. The rural
29 element shall provide for a variety of rural densities, uses,
30 essential public facilities, and rural governmental services needed
31 to serve the permitted densities and uses. To achieve a variety of
32 rural densities and uses, counties may provide for clustering,
33 density transfer, design guidelines, conservation easements, and
34 other innovative techniques that will accommodate appropriate rural
35 economic advancement, densities, and uses that are not characterized
36 by urban growth and that are consistent with rural character.

37 (c) Measures governing rural development. The rural element shall
38 include measures that apply to rural development and protect the
39 rural character of the area, as established by the county, by:

40 (i) Containing or otherwise controlling rural development;

1 (ii) Assuring visual compatibility of rural development with the
2 surrounding rural area;

3 (iii) Reducing the inappropriate conversion of undeveloped land
4 into sprawling, low-density development in the rural area;

5 (iv) Protecting critical areas, as provided in RCW 36.70A.060,
6 and surface water and groundwater resources; and

7 (v) Protecting against conflicts with the use of agricultural,
8 forest, and mineral resource lands designated under RCW 36.70A.170.

9 (d) Limited areas of more intensive rural development. Subject to
10 the requirements of this subsection and except as otherwise
11 specifically provided in this subsection (5)(d), the rural element
12 may allow for limited areas of more intensive rural development,
13 including necessary public facilities and public services to serve
14 the limited area as follows:

15 (i) Rural development consisting of the infill, development, or
16 redevelopment of existing commercial, industrial, residential, or
17 mixed-use areas, whether characterized as shoreline development,
18 villages, hamlets, rural activity centers, or crossroads
19 developments.

20 (A) A commercial, industrial, residential, shoreline, or mixed-
21 use area are subject to the requirements of (d)(iv) of this
22 subsection, but are not subject to the requirements of (c)(ii) and
23 (iii) of this subsection.

24 (B) Any development or redevelopment other than an industrial
25 area or an industrial use within a mixed-use area or an industrial
26 area under this subsection (5)(d)(i) must be principally designed to
27 serve the existing and projected rural population.

28 (C) Any development or redevelopment in terms of building size,
29 scale, use, or intensity may be permitted subject to confirmation
30 from all existing providers of public facilities and public services
31 of sufficient capacity of existing public facilities and public
32 services to serve any new or additional demand from the new
33 development or redevelopment. Development and redevelopment may
34 include changes in use from vacant land or a previously existing use
35 so long as the new use conforms to the requirements of this
36 subsection (5) and is consistent with the local character. Any
37 commercial development or redevelopment within a mixed-use area must
38 be principally designed to serve the existing and projected rural
39 population and must meet the following requirements:

1 (I) Any included retail or food service space must not exceed the
2 footprint of previously occupied space or 5,000 square feet,
3 whichever is greater, for the same or similar use; and

4 (II) Any included retail or food service space must not exceed
5 2,500 square feet for a new use;

6 (ii) The intensification of development on lots containing, or
7 new development of, small-scale recreational or tourist uses,
8 including commercial facilities to serve those recreational or
9 tourist uses, that rely on a rural location and setting, but that do
10 not include new residential development. A small-scale recreation or
11 tourist use is not required to be principally designed to serve the
12 existing and projected rural population. Public services and public
13 facilities shall be limited to those necessary to serve the
14 recreation or tourist use and shall be provided in a manner that does
15 not permit low-density sprawl;

16 (iii) The intensification of development on lots containing
17 isolated nonresidential uses or new development of isolated cottage
18 industries and isolated small-scale businesses that are not
19 principally designed to serve the existing and projected rural
20 population and nonresidential uses, but do provide job opportunities
21 for rural residents. Rural counties may allow the expansion of small-
22 scale businesses as long as those small-scale businesses conform with
23 the rural character of the area as defined by the local government
24 according to RCW 36.70A.030(23). Rural counties may also allow new
25 small-scale businesses to utilize a site previously occupied by an
26 existing business as long as the new small-scale business conforms to
27 the rural character of the area as defined by the local government
28 according to RCW 36.70A.030(23). Public services and public
29 facilities shall be limited to those necessary to serve the isolated
30 nonresidential use and shall be provided in a manner that does not
31 permit low-density sprawl;

32 (iv) A county shall adopt measures to minimize and contain the
33 existing areas of more intensive rural development, as appropriate,
34 authorized under this subsection. Lands included in such existing
35 areas shall not extend beyond the logical outer boundary of the
36 existing area, thereby allowing a new pattern of low-density sprawl.
37 Existing areas are those that are clearly identifiable and contained
38 and where there is a logical boundary delineated predominately by the
39 built environment, but that may also include undeveloped lands if
40 limited as provided in this subsection. The county shall establish

1 the logical outer boundary of an area of more intensive rural
2 development. In establishing the logical outer boundary, the county
3 shall address (A) the need to preserve the character of existing
4 natural neighborhoods and communities, (B) physical boundaries, such
5 as bodies of water, streets and highways, and land forms and
6 contours, (C) the prevention of abnormally irregular boundaries, and
7 (D) the ability to provide public facilities and public services in a
8 manner that does not permit low-density sprawl;

9 (v) For purposes of this subsection (5)(d), an existing area or
10 existing use is one that was in existence:

11 (A) On July 1, 1990, in a county that was initially required to
12 plan under all of the provisions of this chapter;

13 (B) On the date the county adopted a resolution under RCW
14 36.70A.040(2), in a county that is planning under all of the
15 provisions of this chapter under RCW 36.70A.040(2); or

16 (C) On the date the office of financial management certifies the
17 county's population as provided in RCW 36.70A.040(5), in a county
18 that is planning under all of the provisions of this chapter pursuant
19 to RCW 36.70A.040(5).

20 (e) Exception. This subsection shall not be interpreted to permit
21 in the rural area a major industrial development or a master planned
22 resort unless otherwise specifically permitted under RCW 36.70A.360
23 and 36.70A.365.

24 (6) A transportation element that implements, and is consistent
25 with, the land use element.

26 (a) The transportation element shall include the following
27 subelements:

28 (i) Land use assumptions used in estimating travel;

29 (ii) Estimated traffic impacts to state-owned transportation
30 facilities resulting from land use assumptions to assist the
31 department of transportation in monitoring the performance of state
32 facilities, to plan improvements for the facilities, and to assess
33 the impact of land-use decisions on state-owned transportation
34 facilities;

35 (iii) Facilities and services needs, including:

36 (A) An inventory of air, water, and ground transportation
37 facilities and services, including transit alignments and general
38 aviation airport facilities, to define existing capital facilities
39 and travel levels as a basis for future planning. This inventory must

1 include state-owned transportation facilities within the city or
2 county's jurisdictional boundaries;

3 (B) Level of service standards for all locally owned arterials
4 and transit routes to serve as a gauge to judge performance of the
5 system. These standards should be regionally coordinated;

6 (C) For state-owned transportation facilities, level of service
7 standards for highways, as prescribed in chapters 47.06 and 47.80
8 RCW, to gauge the performance of the system. The purposes of
9 reflecting level of service standards for state highways in the local
10 comprehensive plan are to monitor the performance of the system, to
11 evaluate improvement strategies, and to facilitate coordination
12 between the county's or city's six-year street, road, or transit
13 program and the office of financial management's (~~(ten-year)~~) 10-year
14 investment program. The concurrency requirements of (b) of this
15 subsection do not apply to transportation facilities and services of
16 statewide significance except for counties consisting of islands
17 whose only connection to the mainland are state highways or ferry
18 routes. In these island counties, state highways and ferry route
19 capacity must be a factor in meeting the concurrency requirements in
20 (b) of this subsection;

21 (D) Specific actions and requirements for bringing into
22 compliance locally owned transportation facilities or services that
23 are below an established level of service standard;

24 (E) Forecasts of traffic for at least (~~(ten)~~) 10 years based on
25 the adopted land use plan to provide information on the location,
26 timing, and capacity needs of future growth;

27 (F) Identification of state and local system needs to meet
28 current and future demands. Identified needs on state-owned
29 transportation facilities must be consistent with the statewide
30 multimodal transportation plan required under chapter 47.06 RCW;

31 (iv) Finance, including:

32 (A) An analysis of funding capability to judge needs against
33 probable funding resources;

34 (B) A multiyear financing plan based on the needs identified in
35 the comprehensive plan, the appropriate parts of which shall serve as
36 the basis for the six-year street, road, or transit program required
37 by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW
38 35.58.2795 for public transportation systems. The multiyear financing
39 plan should be coordinated with the (~~(ten-year)~~) 10-year investment

1 program developed by the office of financial management as required
2 by RCW 47.05.030;

3 (C) If probable funding falls short of meeting identified needs,
4 a discussion of how additional funding will be raised, or how land
5 use assumptions will be reassessed to ensure that level of service
6 standards will be met;

7 (v) Intergovernmental coordination efforts, including an
8 assessment of the impacts of the transportation plan and land use
9 assumptions on the transportation systems of adjacent jurisdictions;

10 (vi) Demand-management strategies;

11 (vii) Pedestrian and bicycle component to include collaborative
12 efforts to identify and designate planned improvements for pedestrian
13 and bicycle facilities and corridors that address and encourage
14 enhanced community access and promote healthy lifestyles.

15 (b) After adoption of the comprehensive plan by jurisdictions
16 required to plan or who choose to plan under RCW 36.70A.040, local
17 jurisdictions must adopt and enforce ordinances which prohibit
18 development approval if the development causes the level of service
19 on a locally owned transportation facility to decline below the
20 standards adopted in the transportation element of the comprehensive
21 plan, unless transportation improvements or strategies to accommodate
22 the impacts of development are made concurrent with the development.
23 These strategies may include increased public transportation service,
24 ride-sharing programs, demand management, and other transportation
25 systems management strategies. For the purposes of this subsection
26 (6), "concurrent with the development" means that improvements or
27 strategies are in place at the time of development, or that a
28 financial commitment is in place to complete the improvements or
29 strategies within six years. If the collection of impact fees is
30 delayed under RCW 82.02.050(3), the six-year period required by this
31 subsection (6)(b) must begin after full payment of all impact fees is
32 due to the county or city.

33 (c) The transportation element described in this subsection (6),
34 the six-year plans required by RCW 35.77.010 for cities, RCW
35 36.81.121 for counties, and RCW 35.58.2795 for public transportation
36 systems, and the ~~((ten-year))~~ 10-year investment program required by
37 RCW 47.05.030 for the state, must be consistent.

38 (7) An economic development element establishing local goals,
39 policies, objectives, and provisions for economic growth and vitality
40 and a high quality of life. A city that has chosen to be a

1 residential community is exempt from the economic development element
2 requirement of this subsection.

3 (8) A park and recreation element that implements, and is
4 consistent with, the capital facilities plan element as it relates to
5 park and recreation facilities. The element shall include: (a)
6 Estimates of park and recreation demand for at least a ~~((ten-year))~~
7 10-year period; (b) an evaluation of facilities and service needs;
8 and (c) an evaluation of intergovernmental coordination opportunities
9 to provide regional approaches for meeting park and recreational
10 demand.

11 (9) It is the intent that new or amended elements required after
12 January 1, 2002, be adopted concurrent with the scheduled update
13 provided in RCW 36.70A.130. Requirements to incorporate any such new
14 or amended elements shall be null and void until funds sufficient to
15 cover applicable local government costs are appropriated and
16 distributed by the state at least two years before local government
17 must update comprehensive plans as required in RCW 36.70A.130.

18 **Sec. 3.** RCW 36.70A.696 and 2021 c 306 s 2 are each amended to
19 read as follows:

20 The definitions in this section apply throughout RCW 36.70A.697
21 and 36.70A.698 unless the context clearly requires otherwise.

22 (1) "Accessory dwelling unit" means a dwelling unit located on
23 the same lot as a single-family housing unit, duplex, triplex,
24 townhome, or other housing unit.

25 (2) "Attached accessory dwelling unit" means an accessory
26 dwelling unit located within or attached to a single-family housing
27 unit, duplex, triplex, townhome, or other housing unit. An attached
28 accessory dwelling unit must have a substantial portion of its
29 footprint within the other housing unit, and must share structural
30 elements with the other unit.

31 (3) "City" means any city, code city, and town located in a
32 county planning under RCW 36.70A.040.

33 (4) "County" means any county planning under RCW 36.70A.040.

34 (5) "Detached accessory dwelling unit" means an accessory
35 dwelling unit that consists partly or entirely of a building that is
36 separate and detached from a single-family housing unit, duplex,
37 triplex, townhome, or other housing unit and is on the same property.

38 (6) "Dwelling unit" means a residential living unit that provides
39 complete independent living facilities for one or more persons and

1 that includes permanent provisions for living, sleeping, eating,
2 cooking, and sanitation.

3 (7) "Major transit stop" means:

4 (a) A stop on a high capacity transportation system funded or
5 expanded under the provisions of chapter 81.104 RCW;

6 (b) Commuter rail stops;

7 (c) Stops on rail or fixed guideway systems, including
8 transitways;

9 (d) Stops on bus rapid transit routes or routes that run on high
10 occupancy vehicle lanes; or

11 (e) Stops for a bus or other transit mode providing actual fixed
12 route service at intervals of ~~((at least fifteen))~~ no greater than 15
13 minutes for at least five hours during the peak hours of operation on
14 weekdays.

15 ~~(8) ("Owner" means any person who has at least 50 percent~~
16 ~~ownership in a property on which an accessory dwelling unit is~~
17 ~~located.~~

18 ~~(9))~~ "Short-term rental" means a lodging use, that is not a
19 hotel or motel or bed and breakfast, in which a dwelling unit, or
20 portion thereof, is offered or provided to a guest by a short-term
21 rental operator for a fee for fewer than 30 consecutive nights.

22 **Sec. 4.** RCW 36.70A.697 and 2020 c 217 s 3 are each amended to
23 read as follows:

24 (1) Cities and counties must adopt or amend by ordinance, and
25 incorporate into their development regulations, zoning regulations,
26 and other official controls the requirements of RCW 36.70A.698 to
27 take effect by the time of the city's or county's next comprehensive
28 plan update after July 1, 2021.

29 (2) Beginning ~~((July 1, 2021))~~ after the deadline in subsection
30 (1) of this section, the requirements of RCW 36.70A.698:

31 (a) Apply and take effect in any city or county that has not
32 adopted or amended ordinances, regulations, or other official
33 controls as required under this section; and

34 (b) Supersede, preempt, and invalidate any local development
35 regulations that conflict with RCW 36.70A.698.

36 **Sec. 5.** RCW 36.70A.698 and 2020 c 217 s 4 are each amended to
37 read as follows:

1 ~~((Except as provided in subsection[s] (2) and (3) of this~~
2 ~~section, through ordinances, development regulations, zoning~~
3 ~~regulations, and other official controls as required under RCW~~
4 ~~36.70A.697, cities))~~ Cities and counties may not ((require)) prohibit
5 the construction of accessory dwelling units on residentially zoned
6 lots within urban growth areas.

7 (2) When regulating accessory dwelling units, cities and counties
8 may not:

9 (a) Impose a limit on accessory dwelling units of fewer than one
10 attached and one detached accessory dwelling unit on a lot zoned for
11 residential use with a total square footage of more than 4,500 square
12 feet, unless the lot is otherwise zoned to allow:

13 (i) At least two dwelling units, in which case at least one
14 additional attached or detached accessory dwelling unit must be
15 allowed;

16 (ii) At least three dwelling units;

17 (b) Impose a limit on accessory dwelling units of fewer than one
18 attached or one detached accessory dwelling unit on a lot zoned for
19 residential use with a total square footage of less than 4,500 square
20 feet, unless the lot is otherwise zoned to allow at least two
21 dwelling units;

22 (c) Impose any prohibition of the sale or other conveyance of a
23 condominium unit independently of a principal unit that is based
24 solely on the grounds that the condominium unit was originally built
25 as an accessory dwelling unit, provided that the condominium unit is
26 served by utilities that are independent of the principal unit;

27 (d) Impose any owner occupancy requirements on any housing or
28 dwelling unit on a lot containing an accessory dwelling unit. A city
29 or county may retain an owner occupancy requirement if:

30 (i) An accessory dwelling unit on the lot is offered or used for
31 short-term rental as defined in RCW 36.70A.696; or

32 (ii) The city or county administers a general program, begun
33 prior to December 31, 2022, offering the waiver or reduction of
34 impact fees and costs associated with accessory dwelling unit
35 construction, if the units are offered at or below 80 percent of the
36 area median income;

37 (e) Require the provision of off-street parking for accessory
38 dwelling units within one-quarter mile of a major transit stop,
39 except that a city or county may require the provision of off-street
40 parking for such an accessory dwelling unit if the city or county

1 makes a determination, supported by evidence, that the accessory
2 dwelling unit is in an area that would make on-street parking
3 infeasible or unsafe for the accessory dwelling unit; or

4 (f) Apply other development regulations to the construction of
5 accessory dwelling units that are more restrictive than regulations
6 on single-family or other residential developments.

7 ~~((2) A city may require the provision of off-street parking for~~
8 ~~an accessory dwelling unit located within one-quarter mile of a major~~
9 ~~transit stop if the city has determined that the accessory dwelling~~
10 ~~unit is in an area with a lack of access to street parking capacity,~~
11 ~~physical space impediments, or other reasons supported by evidence~~
12 ~~that would make on-street parking infeasible for the accessory~~
13 ~~dwelling unit.~~

14 ~~(3) A city that has adopted or substantively amended accessory~~
15 ~~dwelling unit regulations within the four years previous to June 11,~~
16 ~~2020, is not subject to the requirements of this section.))~~

17 (3) Regulations that may be applied to accessory dwelling units
18 by cities and counties include:

19 (a) Generally applicable development regulations;

20 (b) Public health, safety, building code, and environmental
21 permitting requirements, including regulations to protect ground and
22 surface waters from on-site wastewater, that would be applicable to a
23 principal unit;

24 (c) A prohibition on the construction of accessory dwelling units
25 on lots that are not connected to or served by public sewers;

26 (d) A prohibition or restriction on the construction of accessory
27 dwelling units in residential zones with a density of one dwelling
28 unit per acre or less that are within areas designated as wetlands,
29 fish and wildlife habitats, floodplains, or geologically hazardous
30 areas.

31 (4) This section and section 4 of this act apply only within
32 urban growth areas required by this chapter.

33 NEW SECTION. Sec. 6. A new section is added to chapter 36.70A
34 RCW to read as follows:

35 To encourage the use of accessory dwelling units for long-term
36 housing, cities and counties may adopt ordinances, development
37 regulations, and other official controls which waive or defer fees,
38 including impact fees; defer the payment of taxes; or waive specific
39 regulations. Cities and counties may only offer such reduced or

1 deferred fees, deferred taxes, waivers, or other incentives for the
2 development or construction of accessory dwelling units if such units
3 are subject to effective binding commitments or covenants that the
4 units will not be regularly offered for short-term rental.

5 NEW SECTION. **Sec. 7.** A new section is added to chapter 36.70A
6 RCW to read as follows:

7 (1) No restrictive covenant or deed restriction created after the
8 effective date of this section and applicable to a property located
9 within an urban growth area may impose any restriction or prohibition
10 on the construction, development, or use on a lot of an accessory
11 dwelling unit that the city or county in which the urban growth area
12 is located would be prohibited from imposing under RCW 36.70A.698.

13 (2) A city or county issuing a permit for the construction of an
14 accessory dwelling unit may not be held civilly liable on the basis
15 that the construction of the accessory dwelling unit would violate a
16 restrictive covenant or deed restriction that was created after the
17 effective date of this section and that is contrary to subsection (1)
18 of this section.

--- END ---

SUBSTITUTE SENATE BILL 5466

State of Washington

68th Legislature

2023 Regular Session

By Senate Transportation (originally sponsored by Senators Lias, Gildon, Kuderer, Lovelett, MacEwen, Mullet, Braun, Billig, Dhingra, Frame, Hunt, Kauffman, Nguyen, Nobles, Pedersen, Saldaña, Salomon, Shewmake, Stanford, Valdez, Van De Wege, and C. Wilson; by request of Office of the Governor)

READ FIRST TIME 02/24/23.

1 AN ACT Relating to promoting transit-oriented development;
2 amending RCW 36.70A.030, 36.70A.500, 36.70A.620, and 43.21C.229;
3 adding new sections to chapter 47.01 RCW; adding a new section to
4 chapter 36.70A RCW; adding a new section to chapter 64.38 RCW; adding
5 a new section to chapter 64.90 RCW; adding a new section to chapter
6 64.34 RCW; adding a new section to chapter 64.32 RCW; and creating a
7 new section.

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

9 NEW SECTION. **Sec. 1.** The legislature finds that the state has
10 made groundbreaking investments in state-of-the-art mass transit and
11 intermodal infrastructure. The legislature finds that to maximize the
12 state's return on these investments, land use policies and practices
13 must keep pace with progress being implemented in transportation
14 infrastructure development.

15 The legislature recognizes that cities planning under chapter
16 36.70A RCW require direction and technical assistance to ensure the
17 benefits of state transportation investments are maximized and shared
18 equitably while avoiding unnecessary programmatic and cost burdens to
19 local governments in their comprehensive planning, code enactment,
20 and permit processing workloads. The legislature further recognizes

1 that regulatory flexibility and local control are also important
2 features of optimal planning outcomes.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 47.01
4 RCW to read as follows:

5 (1) The department must create a new division within its agency
6 or expand an existing division within its agency to do the following:

7 (a) Provide technical assistance and award planning grants to
8 cities to implement the requirements under section 6 of this act;

9 (b) Provide compliance review of any transit-oriented development
10 regulations adopted consistent with section 6 of this act; and

11 (c) Mediate or help resolve disputes between the department,
12 local governments, and project proponents regarding land use
13 decisions and processing development permit applications.

14 (2) The department must adopt any rules necessary to implement
15 this section.

16 NEW SECTION. **Sec. 3.** A new section is added to chapter 47.01
17 RCW to read as follows:

18 (1) The department, in consultation with the department of
19 commerce, must establish and administer a competitive grant program
20 to assist in the financing of housing projects within rapid transit
21 corridors.

22 (2) Entities eligible to receive grant awards are state agencies,
23 local governments, and nonprofit or for-profit housing developers.
24 Eligible uses of grant awards include project capital costs and
25 infrastructure costs and addressing gaps in project financing that
26 would prevent ongoing or complete project construction.

27 (3)(a) Except as provided in (b) of this subsection, eligible
28 housing projects must meet the following requirements:

29 (i) Be within one-quarter mile of a rapid transit corridor. For
30 purposes of this section, "rapid transit corridor" includes light
31 rail, commuter rail, bus rapid transit, and bus stops that meet
32 certain high-use thresholds as defined in rule;

33 (ii) Comply with floor area ratio or net density minimums as
34 defined in rule;

35 (iii) Produce at least 100 units of housing; and

36 (iv) Include a covenant on the property requiring at least 20
37 percent of units remain affordable for households with incomes at or
38 below 80 percent of area median income for at least 99 years.

(b) No more than five percent of grant funds may be awarded to housing projects within rapid transit corridors that meet the requirements under (a) of this subsection, except for requirements under (a)(i) or (iii) of this subsection.

(4) The department must prioritize eligible projects by occupancy date, with a target occupancy date of December 31, 2025. The department must also consider the following criteria when prioritizing projects:

- (a) Are comprised of the largest percentage of affordable units;
- (b) Have a high concentration of units affordable to households with incomes at or below 50 percent area median income;
- (c) Do not include costs related to land acquisition;
- (d) Include land acquired at a reduced price or without cost;
- (e) Abide by antidisplacement measures, if appropriate;
- (f) Submitted by community-based housing developers;
- (g) Include units with additional bedrooms or intended for occupancy by families with multiple dependents; or
- (h) Have acquired all necessary permits.

(5) The department may adopt any necessary rules to implement the competitive grant program under this section, including any additional project eligibility criteria and prioritization criteria.

NEW SECTION. **Sec. 4.** A new section is added to chapter 47.01 RCW to read as follows:

(1) The transit-oriented development housing partnership account is created in the custody of the state treasurer.

(2) Revenues to the account must consist of appropriations by the legislature and any gifts, grants, donations, or other private contribution received by the secretary for the purposes set forth in subsection (3) of this section.

(3) Expenditures from the account may be used only for the following:

(a) Administration of the competitive grant program under section 3 of this act, including any technical assistance provided by the department to eligible entities; and

(b) Costs related to technical assistance, awarding planning grants, compliance review, and resolution services provided by the department under section 2 of this act.

(4) Only the secretary or the secretary's designee may authorize expenditures from the account. The account is subject to allotment

procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

Sec. 5. RCW 36.70A.030 and 2021 c 254 s 6 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

(2) "Affordable housing" means, unless the context clearly indicates otherwise, residential housing whose monthly costs, including utilities other than telephone, do not exceed thirty percent of the monthly income of a household whose income is:

(a) For rental housing, sixty percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development; or

(b) For owner-occupied housing, ~~((eighty))~~ 80 percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

(3) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

(4) "City" means any city or town, including a code city.

(5) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

(6) "Critical areas" include the following areas and ecosystems:

(a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas. "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery

1 systems, irrigation infrastructure, irrigation canals, or drainage
2 ditches that lie within the boundaries of and are maintained by a
3 port district or an irrigation district or company.

4 (7) "Department" means the department of commerce.

5 (8) "Development regulations" or "regulation" means the controls
6 placed on development or land use activities by a county or city,
7 including, but not limited to, zoning ordinances, critical areas
8 ordinances, shoreline master programs, official controls, planned
9 unit development ordinances, subdivision ordinances, and binding site
10 plan ordinances together with any amendments thereto. A development
11 regulation does not include a decision to approve a project permit
12 application, as defined in RCW 36.70B.020, even though the decision
13 may be expressed in a resolution or ordinance of the legislative body
14 of the county or city.

15 (9) "Emergency housing" means temporary indoor accommodations for
16 individuals or families who are homeless or at imminent risk of
17 becoming homeless that is intended to address the basic health, food,
18 clothing, and personal hygiene needs of individuals or families.
19 Emergency housing may or may not require occupants to enter into a
20 lease or an occupancy agreement.

21 (10) "Emergency shelter" means a facility that provides a
22 temporary shelter for individuals or families who are currently
23 homeless. Emergency shelter may not require occupants to enter into a
24 lease or an occupancy agreement. Emergency shelter facilities may
25 include day and warming centers that do not provide overnight
26 accommodations.

27 (11) "Extremely low-income household" means a single person,
28 family, or unrelated persons living together whose adjusted income is
29 at or below (~~(thirty))~~ 30 percent of the median household income
30 adjusted for household size, for the county where the household is
31 located, as reported by the United States department of housing and
32 urban development.

33 (12) "Floor area ratio" means a measure of development intensity
34 equal to building square footage divided by property square footage.

35 (13) "Forestland" means land primarily devoted to growing trees
36 for long-term commercial timber production on land that can be
37 economically and practically managed for such production, including
38 Christmas trees subject to the excise tax imposed under RCW 84.33.100
39 through 84.33.140, and that has long-term commercial significance. In
40 determining whether forestland is primarily devoted to growing trees

1 for long-term commercial timber production on land that can be
2 economically and practically managed for such production, the
3 following factors shall be considered: (a) The proximity of the land
4 to urban, suburban, and rural settlements; (b) surrounding parcel
5 size and the compatibility and intensity of adjacent and nearby land
6 uses; (c) long-term local economic conditions that affect the ability
7 to manage for timber production; and (d) the availability of public
8 facilities and services conducive to conversion of forestland to
9 other uses.

10 ~~((13))~~ (14) "Freight rail dependent uses" means buildings and
11 other infrastructure that are used in the fabrication, processing,
12 storage, and transport of goods where the use is dependent on and
13 makes use of an adjacent short line railroad. Such facilities are
14 both urban and rural development for purposes of this chapter.
15 "Freight rail dependent uses" does not include buildings and other
16 infrastructure that are used in the fabrication, processing, storage,
17 and transport of coal, liquefied natural gas, or "crude oil" as
18 defined in RCW 90.56.010.

19 ~~((14))~~ (15) "Geologically hazardous areas" means areas that
20 because of their susceptibility to erosion, sliding, earthquake, or
21 other geological events, are not suited to the siting of commercial,
22 residential, or industrial development consistent with public health
23 or safety concerns.

24 ~~((15))~~ (16) "Long-term commercial significance" includes the
25 growing capacity, productivity, and soil composition of the land for
26 long-term commercial production, in consideration with the land's
27 proximity to population areas, and the possibility of more intense
28 uses of the land.

29 ~~((16))~~ (17) "Low-income household" means a single person,
30 family, or unrelated persons living together whose adjusted income is
31 at or below ~~((eighty))~~ 80 percent of the median household income
32 adjusted for household size, for the county where the household is
33 located, as reported by the United States department of housing and
34 urban development.

35 ~~((17))~~ (18) "Major transit station" means a site within an
36 urban growth area that is, or has been funded for development as:

37 (a) A stop on a high capacity transportation system funded or
38 expanded under chapter 81.104 RCW;

39 (b) A commuter rail stop; or

1 (c) A stop on rail or fixed guideway systems, including
2 transitways.

3 (19) "Major transit stop" means a site within an urban growth
4 area that is, or has been funded for development as:

5 (a) A major transit station characterized by fostering the
6 interconnection of multiple transit routes, including at least one of
7 the following modes: High capacity transit, light rail, or commuter
8 rail;

9 (b) A stop on a high capacity transit route or a route that runs
10 on high occupancy vehicle lanes; or

11 (c) A fixed route transit stop providing frequent transit service
12 that operates seven days per week with a minimum of three buses per
13 hour for a span of at least 10 hours a day during weekdays.

14 (20) "Minerals" include gravel, sand, and valuable metallic
15 substances.

16 ~~((+18+))~~ (21) "Moderate-income household" means a single person,
17 family, or unrelated persons living together whose adjusted income is
18 at or below 120 percent of the median household income adjusted for
19 household size, for the county where the household is located, as
20 reported by the United States department of housing and urban
21 development.

22 ~~((+19+))~~ (22) "Permanent supportive housing" is subsidized,
23 leased housing with no limit on length of stay that prioritizes
24 people who need comprehensive support services to retain tenancy and
25 utilizes admissions practices designed to use lower barriers to entry
26 than would be typical for other subsidized or unsubsidized rental
27 housing, especially related to rental history, criminal history, and
28 personal behaviors. Permanent supportive housing is paired with on-
29 site or off-site voluntary services designed to support a person
30 living with a complex and disabling behavioral health or physical
31 health condition who was experiencing homelessness or was at imminent
32 risk of homelessness prior to moving into housing to retain their
33 housing and be a successful tenant in a housing arrangement, improve
34 the resident's health status, and connect the resident of the housing
35 with community-based health care, treatment, or employment services.
36 Permanent supportive housing is subject to all of the rights and
37 responsibilities defined in chapter 59.18 RCW.

38 ~~((+20+))~~ (23) "Public facilities" include streets, roads,
39 highways, sidewalks, street and road lighting systems, traffic

1 signals, domestic water systems, storm and sanitary sewer systems,
2 parks and recreational facilities, and schools.

3 ~~((21))~~ (24) "Public services" include fire protection and
4 suppression, law enforcement, public health, education, recreation,
5 environmental protection, and other governmental services.

6 ~~((22))~~ (25) "Recreational land" means land so designated under
7 RCW 36.70A.1701 and that, immediately prior to this designation, was
8 designated as agricultural land of long-term commercial significance
9 under RCW 36.70A.170. Recreational land must have playing fields and
10 supporting facilities existing before July 1, 2004, for sports played
11 on grass playing fields.

12 ~~((23))~~ (26) "Rural character" refers to the patterns of land
13 use and development established by a county in the rural element of
14 its comprehensive plan:

15 (a) In which open space, the natural landscape, and vegetation
16 predominate over the built environment;

17 (b) That foster traditional rural lifestyles, rural-based
18 economies, and opportunities to both live and work in rural areas;

19 (c) That provide visual landscapes that are traditionally found
20 in rural areas and communities;

21 (d) That are compatible with the use of the land by wildlife and
22 for fish and wildlife habitat;

23 (e) That reduce the inappropriate conversion of undeveloped land
24 into sprawling, low-density development;

25 (f) That generally do not require the extension of urban
26 governmental services; and

27 (g) That are consistent with the protection of natural surface
28 water flows and groundwater and surface water recharge and discharge
29 areas.

30 ~~((24))~~ (27) "Rural development" refers to development outside
31 the urban growth area and outside agricultural, forest, and mineral
32 resource lands designated pursuant to RCW 36.70A.170. Rural
33 development can consist of a variety of uses and residential
34 densities, including clustered residential development, at levels
35 that are consistent with the preservation of rural character and the
36 requirements of the rural element. Rural development does not refer
37 to agriculture or forestry activities that may be conducted in rural
38 areas.

39 ~~((25))~~ (28) "Rural governmental services" or "rural services"
40 include those public services and public facilities historically and

1 typically delivered at an intensity usually found in rural areas, and
2 may include domestic water systems, fire and police protection
3 services, transportation and public transit services, and other
4 public utilities associated with rural development and normally not
5 associated with urban areas. Rural services do not include storm or
6 sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

7 ~~((+26+))~~ (29) "Short line railroad" means those railroad lines
8 designated class II or class III by the United States surface
9 transportation board.

10 ~~((+27+))~~ (30) "Station area" means all parcels that are (a) fully
11 within an urban growth area and (b) fully or partially within a
12 three-quarter mile walking distance of a major transit stop. A city
13 planning under RCW 36.70A.040 may adopt a station area variance, but
14 only after consultation with and approval by the department of
15 transportation.

16 (31) "Station hub" means all parcels that are (a) fully within an
17 urban growth area and (b) fully or partially within a one-quarter
18 mile walking distance of a major transit station. A city planning
19 under RCW 36.70A.040 may adopt a station hub variance, but only after
20 consultation with and approval by the department of transportation.

21 (32) "Transit-oriented density" means a floor area ratio of at
22 least 4.0 for all uses that are permitted in the station area, and a
23 floor area of at least 6.0 for all uses that are permitted in the
24 station hub.

25 (33) "Urban governmental services" or "urban services" include
26 those public services and public facilities at an intensity
27 historically and typically provided in cities, specifically including
28 storm and sanitary sewer systems, domestic water systems, street
29 cleaning services, fire and police protection services, public
30 transit services, and other public utilities associated with urban
31 areas and normally not associated with rural areas.

32 ~~((+28+))~~ (34) "Urban growth" refers to growth that makes
33 intensive use of land for the location of buildings, structures, and
34 impermeable surfaces to such a degree as to be incompatible with the
35 primary use of land for the production of food, other agricultural
36 products, or fiber, or the extraction of mineral resources, rural
37 uses, rural development, and natural resource lands designated
38 pursuant to RCW 36.70A.170. A pattern of more intensive rural
39 development, as provided in RCW 36.70A.070(5)(d), is not urban
40 growth. When allowed to spread over wide areas, urban growth

1 typically requires urban governmental services. "Characterized by
2 urban growth" refers to land having urban growth located on it, or to
3 land located in relationship to an area with urban growth on it as to
4 be appropriate for urban growth.

5 ~~((+29+))~~ (35) "Urban growth areas" means those areas designated
6 by a county pursuant to RCW 36.70A.110.

7 ~~((+30+))~~ (36) "Very low-income household" means a single person,
8 family, or unrelated persons living together whose adjusted income is
9 at or below ~~((fifty))~~ 50 percent of the median household income
10 adjusted for household size, for the county where the household is
11 located, as reported by the United States department of housing and
12 urban development.

13 ~~((+31+))~~ (37) "Wetland" or "wetlands" means areas that are
14 inundated or saturated by surface water or groundwater at a frequency
15 and duration sufficient to support, and that under normal
16 circumstances do support, a prevalence of vegetation typically
17 adapted for life in saturated soil conditions. Wetlands generally
18 include swamps, marshes, bogs, and similar areas. Wetlands do not
19 include those artificial wetlands intentionally created from
20 nonwetland sites, including, but not limited to, irrigation and
21 drainage ditches, grass-lined swales, canals, detention facilities,
22 wastewater treatment facilities, farm ponds, and landscape amenities,
23 or those wetlands created after July 1, 1990, that were
24 unintentionally created as a result of the construction of a road,
25 street, or highway. Wetlands may include those artificial wetlands
26 intentionally created from nonwetland areas created to mitigate
27 conversion of wetlands.

28 NEW SECTION. **Sec. 6.** A new section is added to chapter 36.70A
29 RCW to read as follows:

30 (1) Cities planning under RCW 36.70A.040 may not enact or enforce
31 any development regulation within a station area that would prohibit
32 the siting of multifamily residential housing on parcels where any
33 other residential use is permissible.

34 (2) Within any station area or station hub, any maximum floor
35 area ratio otherwise enacted or enforceable under this section must
36 include an increased density bonus of 50 percent for affordable
37 housing for households with incomes at or below 60 percent area
38 median income, for permanent supportive housing, or for long-term
39 inpatient care as defined in RCW 71.24.025. Any floor area within a

1 station area that is reserved for use by (a) a child care facility as
2 defined in RCW 35.63.170 or (b) a small business as defined in RCW
3 19.85.020, and residential units in multifamily housing that includes
4 at least three bedrooms, must not be counted toward applicable floor
5 area ratio limits.

6 (3)(a) Except as provided in (c) of this subsection, cities
7 planning under RCW 36.70A.040 may not enact any new development
8 regulation that imposes a maximum floor area ratio of less than the
9 applicable transit-oriented density for any use otherwise permitted
10 within a station area or station hub.

11 (b) Cities planning under RCW 36.70A.040 may not enact any new
12 development regulation that imposes a maximum residential density,
13 measured in residential units per acre or other metric of land area
14 within a station area or station hub.

15 (c) As an alternative to (a) of this subsection, cities planning
16 under RCW 36.70A.040 may by ordinance designate parts of a station
17 area or station hub in which to enact or enforce floor area ratios
18 that are more or less than the applicable transit-oriented density,
19 if:

20 (i) The average maximum floor area ratio of all buildable land
21 within a station area or station hub is no less than the applicable
22 transit-oriented density; and

23 (ii) No part of a station hub is subject to a maximum floor area
24 ratio that is less than 1.0, and no part of a station area is subject
25 to a maximum floor area ratio that is less than 0.5.

26 (4) Any city planning under RCW 36.70A.040 that has, as of the
27 effective date of this section, enacted any development regulation
28 that imposes within any station area or station hub (a) a maximum
29 floor area ratio of less than the applicable transit-oriented density
30 or (b) a maximum residential density measured in residential units
31 per acre or other metric of land area, the city must enforce and
32 apply such development regulation consistent with the requirements of
33 this section.

34 (5)(a) Except as provided in (b) of this subsection, cities
35 planning under RCW 36.70A.040 may not enforce upon any parcel in a
36 station area any development standard that renders it impracticable
37 on that parcel to build a usable structure for the permitted uses at
38 the (i) applicable transit-oriented density or (ii) applicable floor
39 area ratio imposed under subsection (3)(c) of this section.

1 (b) This subsection (5) does not apply to development standards
2 contained in a shoreline master program or critical area ordinance,
3 or to any parcel that:

4 (i) Is nonconforming, legally or otherwise, with applicable local
5 subdivision standards including, but not limited to, standards
6 related to lot width, area, geometry, or street access; or

7 (ii) Is listed in the Washington heritage register described in
8 RCW 27.34.220 or the national register of historic places.

9 (6) Any city subject to the requirements of this section may
10 apply to the department of transportation for planning grants and
11 consult with the department of transportation for purposes of
12 obtaining technical assistance and compliance review with development
13 regulation adoption, pursuant to section 2 of this act.

14 (7) Nothing in this section requires alteration, displacement, or
15 limitation of industrial uses or industrial areas within the urban
16 growth area.

17 (8)(a) This section does not limit the amount of affordable
18 housing that a city may require to be provided, either on-site or
19 through an in-lieu payment, pursuant to a program enacted or expanded
20 under RCW 36.70A.540.

21 (b) This section does not modify, limit, or supersede
22 requirements under chapter 64.55 RCW.

23 (9) A city planning under RCW 36.70A.040 must comply with the
24 requirements of this section, and collaborate with federally
25 recognized tribes in accordance with RCW 36.70A.040(8) regarding such
26 requirements, by the time of its next periodic comprehensive plan
27 update required under RCW 36.70A.130.

28 **Sec. 7.** RCW 36.70A.500 and 2012 1st sp.s. c 1 s 310 are each
29 amended to read as follows:

30 (1) The department of commerce shall provide management services
31 for the growth management planning and environmental review fund
32 created by RCW 36.70A.490. The department shall establish procedures
33 for fund management. The department shall encourage participation in
34 the grant or loan program by other public agencies. The department
35 shall develop the grant or loan criteria, monitor the grant or loan
36 program, and select grant or loan recipients in consultation with
37 state agencies participating in the grant or loan program through the
38 provision of grant or loan funds or technical assistance.

1 (2) A grant or loan may be awarded to a county or city that is
2 required to or has chosen to plan under RCW 36.70A.040 and that is
3 qualified pursuant to this section. The grant or loan shall be
4 provided to assist a county or city in paying for the cost of
5 preparing an environmental analysis under chapter 43.21C RCW, that is
6 integrated with a comprehensive plan, subarea plan, plan element,
7 countywide planning policy, development regulation, monitoring
8 program, or other planning activity adopted under or implementing
9 this chapter that:

10 (a) Improves the process for project permit review while
11 maintaining environmental quality; or

12 (b) Encourages use of plans and information developed for
13 purposes of complying with this chapter to satisfy requirements of
14 other state programs.

15 (3) In order to qualify for a grant or loan, a county or city
16 shall:

17 (a) Demonstrate that it will prepare an environmental analysis
18 pursuant to chapter 43.21C RCW and subsection (2) of this section
19 that is integrated with a comprehensive plan, subarea plan, plan
20 element, countywide planning policy, development regulations,
21 monitoring program, or other planning activity adopted under or
22 implementing this chapter;

23 (b) Address environmental impacts and consequences, alternatives,
24 and mitigation measures in sufficient detail to allow the analysis to
25 be adopted in whole or in part by applicants for development permits
26 within the geographic area analyzed in the plan;

27 (c) Demonstrate that procedures for review of development permit
28 applications will be based on the integrated plans and environmental
29 analysis;

30 (d) Include mechanisms to monitor the consequences of growth as
31 it occurs in the plan area and to use the resulting data to update
32 the plan, policy, or implementing mechanisms and associated
33 environmental analysis;

34 (e) Demonstrate substantial progress towards compliance with the
35 requirements of this chapter. A county or city that is more than six
36 months out of compliance with a requirement of this chapter is deemed
37 not to be making substantial progress towards compliance; and

38 (f) Provide local funding, which may include financial
39 participation by the private sector.

1 (4) In awarding grants or loans, the department shall give
2 preference to proposals that include one or more of the following
3 elements:

4 (a) Financial participation by the private sector, or a public/
5 private partnering approach;

6 (b) Identification and monitoring of system capacities for
7 elements of the built environment, and to the extent appropriate, of
8 the natural environment;

9 (c) Coordination with state, federal, and tribal governments in
10 project review;

11 (d) Furtherance of important state objectives related to economic
12 development, protection of areas of statewide significance, and
13 siting of essential public facilities;

14 (e) Programs to improve the efficiency and effectiveness of the
15 permitting process by greater reliance on integrated plans and
16 prospective environmental analysis;

17 (f) Programs for effective citizen and neighborhood involvement
18 that contribute to greater likelihood that planning decisions can be
19 implemented with community support;

20 (g) Programs to identify environmental impacts and establish
21 mitigation measures that provide effective means to satisfy
22 concurrency requirements and establish project consistency with the
23 plans; or

24 (h) Environmental review that addresses the impacts of increased
25 density or intensity of comprehensive plans, subarea plans, or
26 receiving areas designated by a city or town under the regional
27 transfer of development rights program in chapter 43.362 RCW.

28 (5) If the local funding includes funding provided by other state
29 functional planning programs, including open space planning and
30 watershed or basin planning, the functional plan shall be integrated
31 into and be consistent with the comprehensive plan.

32 (6) State agencies shall work with grant or loan recipients to
33 facilitate state and local project review processes that will
34 implement the projects receiving grants or loans under this section.

35 (7)(a) Subject to the availability of funds appropriated to the
36 growth management planning and environmental review fund established
37 in RCW 36.70A.490 in the omnibus transportation appropriations act
38 for the purpose of awarding grants to cities to facilitate transit-
39 oriented development, the department may use such grants to pay for
40 the costs associated with the preparation of state environmental

1 policy act environmental impact statements, planned action
2 ordinances, subarea plans, costs associated with the utilization of
3 other tools under this chapter or the state environmental policy act,
4 and the costs of local code adoption and implementation of such
5 efforts.

6 (b) Grant awards under this subsection (7) may only fund efforts
7 that address environmental impacts and consequences, alternatives,
8 and mitigation measures in sufficient detail to allow the analysis to
9 be adopted in whole or in part by applicants for development permits
10 within the geographic area analyzed in the plan.

11 (8) In consultation with the department of transportation, the
12 department shall prioritize applications for grants to facilitate
13 transit-oriented development under subsection (7) of this section
14 that maximize the following policy objectives in the area covered by
15 a proposal:

16 (a) The total number of housing units authorized for new
17 development in station areas, with specific attention to station
18 hubs;

19 (b) The proximity and quality of transit access in the area;

20 (c) Plans that exceed applicable transit-oriented densities for
21 station areas and station hubs;

22 (d) Plans that authorize, but do not mandate, ground floor retail
23 with housing above;

24 (e) Plans in areas that eliminate on-site parking requirements;

25 (f) Existence or establishment of incentive zoning, inclusionary
26 housing, use of the multifamily tax exemption, or other tools to
27 promote low-income housing in the area;

28 (g) Plans that include dedicated policies to support public or
29 nonprofit funded low-income or workforce housing;

30 (h) Plans designed to maximize and increase the variety of
31 allowable housing types and expected sale or rental rates; and

32 (i) Organization planning and financing of housing benefit
33 districts.

34 (9) For purposes of this section, "transit access" includes
35 walkable access to:

36 (a) Light rail and other fixed guideway rail systems;

37 (b) Bus rapid transit;

38 (c) High frequency bus service; or

39 (d) Park and ride lots.

1 **Sec. 8.** RCW 36.70A.620 and 2020 c 173 s 3 are each amended to
2 read as follows:

3 ~~((In counties and cities planning under RCW 36.70A.040, minimum~~
4 ~~residential parking requirements mandated by municipal zoning~~
5 ~~ordinances for housing units constructed after July 1, 2019, are~~
6 ~~subject to the following requirements:~~

7 ~~(1) For housing units that are affordable to very low-income or~~
8 ~~extremely low-income individuals and that are located within one-~~
9 ~~quarter mile of a transit stop that receives transit service at least~~
10 ~~two times per hour for twelve or more hours per day, minimum~~
11 ~~residential parking requirements may be no greater than one parking~~
12 ~~space per bedroom or .75 space per unit. A city may require a~~
13 ~~developer to record a covenant that prohibits the rental of a unit~~
14 ~~subject to this parking restriction for any purpose other than~~
15 ~~providing for housing for very low-income or extremely low-income~~
16 ~~individuals. The covenant must address price restrictions and~~
17 ~~household income limits and policies if the property is converted to~~
18 ~~a use other than for low-income housing. A city may establish a~~
19 ~~requirement for the provision of more than one parking space per~~
20 ~~bedroom or .75 space per unit if the jurisdiction has determined a~~
21 ~~particular housing unit to be in an area with a lack of access to~~
22 ~~street parking capacity, physical space impediments, or other reasons~~
23 ~~supported by evidence that would make on-street parking infeasible~~
24 ~~for the unit.~~

25 ~~(2) For housing units that are specifically for seniors or people~~
26 ~~with disabilities, that are located within one-quarter mile of a~~
27 ~~transit stop that receives transit service at least four times per~~
28 ~~hour for twelve or more hours per day, a city may not impose minimum~~
29 ~~residential parking requirements for the residents of such housing~~
30 ~~units, subject to the exceptions provided in this subsection. A city~~
31 ~~may establish parking requirements for staff and visitors of such~~
32 ~~housing units. A city may establish a requirement for the provision~~
33 ~~of one or more parking space per bedroom if the jurisdiction has~~
34 ~~determined a particular housing unit to be in an area with a lack of~~
35 ~~access to street parking capacity, physical space impediments, or~~
36 ~~other reasons supported by evidence that would make on-street parking~~
37 ~~infeasible for the unit. A city may require a developer to record a~~
38 ~~covenant that prohibits the rental of a unit subject to this parking~~
39 ~~restriction for any purpose other than providing for housing for~~
40 ~~seniors or people with disabilities.~~

1 ~~(3) For market rate multifamily housing units that are located~~
2 ~~within one-quarter mile of a transit stop that receives transit~~
3 ~~service from at least one route that provides service at least four~~
4 ~~times per hour for twelve or more hours per day, minimum residential~~
5 ~~parking requirements may be no greater than one parking space per~~
6 ~~bedroom or .75 space per unit. A city or county may establish a~~
7 ~~requirement for the provision of more than one parking space per~~
8 ~~bedroom or .75 space per unit if the jurisdiction has determined a~~
9 ~~particular housing unit to be in an area with a lack of access to~~
10 ~~street parking capacity, physical space impediments, or other reasons~~
11 ~~supported by evidence that would make on-street parking infeasible~~
12 ~~for the unit.))~~ To encourage transit-oriented development and transit
13 use and resulting substantial environmental benefits, counties and
14 cities planning under RCW 36.70A.040 may not require off-street
15 parking as a condition of permitting development within a station
16 area, except for off-street parking that is permanently marked for
17 the exclusive use of individuals with disabilities.

18 If a project permit application within a station area, as defined
19 in RCW 36.70B.020, does not provide parking in compliance with this
20 section, the proposed absence of parking may not be treated as a
21 basis for issuance of a determination of significance pursuant to
22 chapter 43.21C RCW.

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

25 ~~(1) ((In order))~~ The purpose of this section is to provide cities
26 and counties with additional flexibility to accommodate infill
27 development, as well as to facilitate the timely and certain
28 deployment of sustainable transit-oriented development, and thereby
29 realize the goals and policies of comprehensive plans adopted
30 according to chapter 36.70A RCW((7-a)).

31 ~~(2) A city or county planning under RCW 36.70A.040 ((is~~
32 ~~authorized by this section to))~~ may establish categorical exemptions
33 from the requirements of this chapter((. An exemption adopted under
34 this section applies even if it differs from the categorical
35 exemptions adopted by rule of the department under RCW
36 43.21C.110(1)(a). An exemption may be adopted by a city or county
37 under this section)) if it meets the following criteria:

38 (a) It categorically exempts government action related to
39 development proposed to fill in an urban growth area, designated

1 according to RCW 36.70A.110, where current density and intensity of
2 use in the area is roughly equal to or lower than called for in the
3 goals and policies of the applicable comprehensive plan and the
4 development is either:

5 (i) Residential development;

6 (ii) Mixed-use development; or

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

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

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

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

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

27 (~~((2) Any))~~ (3) Any project action that meets the following
28 criteria is categorically exempt from the requirements of this
29 chapter:

30 (a) It is related to a proposed development that would fill in a
31 station hub or station area as defined in RCW 36.70A.030;

32 (b) It is related to a proposed:

33 (i) Multifamily residential development;

34 (ii) Mixed-use development; or

35 (iii) Commercial development; and

36 (c) It is not inconsistent with the applicable comprehensive
37 plan, and does not clearly exceed the density or intensity of use
38 called for in the goals and policies of the applicable comprehensive
39 plan.

1 (4) Any categorical exemption under this section applies even if
2 it differs from the categorical exemptions adopted by rule of the
3 department of ecology under RCW 43.21C.110(1)(a). However, any
4 categorical exemption ((adopted by a city or county)) under this
5 section ((shall be)) is subject to the rules of the department
6 adopted according to RCW 43.21C.110(1)(a) that provide exceptions to
7 the use of categorical exemptions adopted by the department.

8 NEW SECTION. Sec. 10. A new section is added to chapter 64.38
9 RCW to read as follows:

10 Governing documents created after the effective date of this
11 section and applicable to associations located fully or partially
12 within a station area as defined in RCW 36.70A.030 may not prohibit
13 the construction or development of multifamily housing or transit-
14 oriented density that must be permitted by cities under section 6 of
15 this act or require off-street parking inconsistent or in conflict
16 with RCW 36.70A.620.

17 NEW SECTION. Sec. 11. A new section is added to chapter 64.90
18 RCW to read as follows:

19 Declarations and governing documents created after the effective
20 date of this section and applicable to a common interest community
21 located fully or partially within a station area as defined in RCW
22 36.70A.030 may not prohibit the construction or development of
23 multifamily housing or transit-oriented density that must be
24 permitted by cities under section 6 of this act or require off-street
25 parking inconsistent or in conflict with RCW 36.70A.620.

26 NEW SECTION. Sec. 12. A new section is added to chapter 64.34
27 RCW to read as follows:

28 A declaration created after the effective date of this section
29 and applicable to an association located fully or partially within a
30 station area as defined in RCW 36.70A.030 may not prohibit the
31 construction or development of multifamily housing or transit-
32 oriented density that must be permitted by cities under section 6 of
33 this act or require off-street parking inconsistent or in conflict
34 with RCW 36.70A.620.

35 NEW SECTION. Sec. 13. A new section is added to chapter 64.32
36 RCW to read as follows:

1 A declaration created after the effective date of this section
2 and applicable to an association of apartment owners located fully or
3 partially within a station area as defined in RCW 36.70A.030 may not
4 prohibit the construction or development of multifamily housing or
5 transit-oriented density that must be permitted by cities under
6 section 6 of this act or require off-street parking inconsistent or
7 in conflict with RCW 36.70A.620.

--- END ---