

1951, chapter 311, Laws of 1955, and chapter 121, Laws of 1965, for reimbursable expenditures on cooperative projects authorized by state and/or federal law and for expenditures through federal emergency relief acts \$119,090,200 consisting of \$118,500,200 of federal and local funds and \$590,000 of bond funds.

(2) For reimbursable expenditures for maintenance on city streets, county roads, and other nonstate highways and for expenditures in accordance with RCW 47.56.720 \$919,000 consisting of \$805,000 of local funds and \$114,000 of state funds.

(3) For miscellaneous sales and services to others \$4,360,000 consisting of local funds.

(4) For reimbursable expenditures for the location, design, right of way and construction of the West Seattle Bridge \$100,000,000 consisting of federal funds.

Total assistance to others appropriation \$ 224,369,200 :PROVIDED, That the department of transportation may transfer any portion of the appropriations contained in this section between subprograms of Program R.

NEW SECTION. Sec. 2. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 24, 1979.
Passed the Senate April 27, 1979.
Approved by the Governor May 11, 1979.
Filed in Office of Secretary of State May 11, 1979.

CHAPTER 170
[Substitute House Bill No. 912]
SOLAR EASEMENTS

AN ACT Relating to solar easements; amending section 35.63.060, chapter 7, Laws of 1965 and RCW 35.63.060; amending section 35.63.080, chapter 7, Laws of 1965 and RCW 35.63.080; amending section 35.63.090, chapter 7, Laws of 1965 and RCW 35.63.090; amending section 35A.63.062, chapter 119, Laws of 1967 ex. sess. and RCW 35A.63.062; amending section 35A.63.100, chapter 119, Laws of 1967 ex. sess. and RCW 35A.63.100; amending section 36.70.350, chapter 4, Laws of 1963 and RCW 36.70.350; amending section 36.70.560, chapter 4, Laws of 1963 and RCW 36.70.560; adding a new section to chapter 35.63 RCW; adding a new section to chapter 35A.63 RCW; adding a new section to chapter 36.70 RCW; adding new sections to chapter 64.04 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. The legislature declares that the potential economic and environmental benefits of solar energy use are considered to be in the public interest; therefore, local governments are authorized to encourage and protect access to direct sunlight for solar energy systems. The legislature further declares that solar easements appropriate to assuring continued access to direct sunlight for solar energy systems may be created and may be privately negotiated.

NEW SECTION. Sec. 2. There is added to chapter 35.63 RCW a new section to read as follows:

As used in this chapter, "solar energy system" means any device or combination of devices or elements which rely upon direct sunlight as an energy source, including but not limited to any substance or device which collects sunlight for use in:

- (1) The heating or cooling of a structure or building;
- (2) The heating or pumping of water;
- (3) Industrial, commercial, or agricultural processes; or
- (4) The generation of electricity.

A solar energy system may be used for purposes in addition to the collection of solar energy. These uses include, but are not limited to, serving as a structural member or part of a roof of a building or structure and serving as a window or wall.

Sec. 3. Section 35.63.060, chapter 7, Laws of 1965 and RCW 35.63.060 are each amended to read as follows:

The commission may act as the research and fact finding agency of the municipality. To that end it may make such surveys, analyses, researches and reports as are generally authorized or requested by its council or board, or by the state with the approval of its council or board. The commission, upon such request or authority may also:

(1) Make inquiries, investigations, and surveys concerning the resources of the county, including but not limited to the potential for solar energy development and alternative means to encourage and protect access to direct sunlight for solar energy systems;

(2) Assemble and analyze the data thus obtained and formulate plans for the conservation of such resources and the systematic utilization and development thereof;

(3) Make recommendations from time to time as to the best methods of such conservation, utilization, and development;

(4) Cooperate with other commissions and with other public agencies of the municipality, state and United States in such planning, conservation, and development; and

(5) In particular cooperate with and aid the state within its territorial limits in the preparation of the state master plan provided for in RCW 43-21.190 and in advance planning of public works programs.

Sec. 4. Section 35.63.080, chapter 7, Laws of 1965 and RCW 35.63.080 are each amended to read as follows:

The council or board may provide for the preparation by its commission and the adoption and enforcement of coordinated plans for the physical development of the municipality. For this purpose the council or board, in such measure as is deemed reasonably necessary or requisite in the interest of health, safety, morals and the general welfare, upon recommendation by its commission, by general ordinances of the city or general resolution of the board, may regulate and restrict the location and the use of buildings, structures and land for residence, trade, industrial and other purposes; the height, number of stories, size, construction and design of buildings and other structures; the size of yards, courts and other open spaces on the lot or tract; the density of population; the set-back of buildings along highways, parks or public water frontages; and the subdivision and development of land; and may encourage and protect access to direct sunlight for solar energy systems. A council where such ordinances are in effect, may, on the recommendation of its commission provide for the appointment of a board of adjustment, to make, in appropriate cases and subject to appropriate conditions and safeguards established by ordinance, special exceptions in harmony with the general purposes and intent and in accordance with general or specific rules therein contained.

Sec. 5. Section 35.63.090, chapter 7, Laws of 1965 and RCW 35.63.090 are each amended to read as follows:

All regulations shall be worked out as parts of a comprehensive plan which each commission shall prepare for the physical and other generally advantageous development of the municipality and shall be designed, among other things, to encourage the most appropriate use of land throughout the municipality; to lessen traffic congestion and accidents; to secure safety from fire; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to promote a coordinated development of the unbuilt areas; to encourage the formation of neighborhood or community units; to secure an appropriate allotment of land area in new developments for all the requirements of community life; to conserve and restore natural beauty and other natural resources; to encourage and protect access to direct sunlight for solar energy systems; and to facilitate the adequate provision of transportation, water, sewerage and other public uses and requirements.

NEW SECTION. Sec. 6. There is added to chapter 35A.63 RCW a new section to read as follows:

As used in this chapter, "solar energy system" means any device or combination of devices or elements which rely upon direct sunlight as an energy source, including but not limited to any substance or device which collects sunlight for use in:

- (1) The heating or cooling of a structure or building;
- (2) The heating or pumping of water;
- (3) Industrial, commercial, or agricultural processes; or
- (4) The generation of electricity.

A solar energy system may be used for purposes in addition to the collection of solar energy. These uses include, but are not limited to, serving as a structural member or part of a roof of a building or structure and serving as a window or wall.

Sec. 7. Section 35A.63.062, chapter 119, Laws of 1967 ex. sess. and RCW 35A.63.062 are each amended to read as follows:

The comprehensive plan may include also any or all of the following optional elements:

- (1) A conservation element for the conservation, development, and utilization of natural resources.
- (2) An open space, park, and recreation element.
- (3) A transportation element showing a comprehensive system of surface, air, and water transportation routes and facilities.
- (4) A public-use element showing general locations, designs, and arrangements of public buildings and uses.
- (5) A public utilities element showing general plans for public and franchised services and facilities.
- (6) A redevelopment or renewal element showing plans for the redevelopment or renewal of slum and blighted areas.
- (7) An urban design element for general organization of the physical parts of the urban landscape.
- (8) Other elements dealing with subjects that, in the opinion of the legislative body, relate to the development of the municipality, or are essential or desirable to coordinate public services and programs with such development.
- (9) A solar energy element for encouragement and protection of access to direct sunlight for solar energy systems.

Sec. 8. Section 35A.63.100, chapter 119, Laws of 1967 ex. sess. and RCW 35A.63.100 are each amended to read as follows:

After approval of the comprehensive plan, as set forth above, the legislative body, in developing the municipality and in regulating the use of land, may implement or give effect to the comprehensive plan or parts thereof by ordinance or other action to such extent as the legislative body deems necessary or appropriate. Such ordinances or other action may provide for:

- (1) Adoption of an official map and regulations relating thereto designating locations and requirements for one or more of the following: Streets,

parks, public buildings, and other public facilities, and protecting such sites against encroachment by buildings and other physical structures.

(2) Dividing the municipality, or portions thereof, into appropriate zones within which specific standards, requirements, and conditions may be provided for regulating the use of public and private land, buildings, and structures, and the location, height, bulk, number of stories, and size of buildings and structures, size of yards, courts, open spaces, density of population, ratio of land area to the area of buildings and structures, setbacks, area required for off-street parking, protection of access to direct sunlight for solar energy systems, and such other standards, requirements, regulations, and procedures as are appropriately related thereto. The ordinance encompassing the matters of this subsection is hereinafter called the "zoning ordinance". No zoning ordinance, or amendment thereto, shall be enacted by the legislative body without at least one public hearing, notice of which shall be given as set forth in RCW 35A.63.070. Such hearing may be held before the planning agency or the board of adjustment or such other body as the legislative body shall designate.

(3) Adoption of design standards, requirements, regulations, and procedures for the subdivision of land into two or more parcels, including, but not limited to, the approval of plats, dedications, acquisitions, improvements, and reservation of sites for public use.

(4) Scheduling public improvements on the basis of recommended priorities over a period of years, subject to periodic review.

(5) Such other matters as may be otherwise authorized by law or as the legislative body deems necessary or appropriate to effectuate the goals and objectives of the comprehensive plan or parts thereof and the purposes of this chapter.

NEW SECTION. Sec. 9. There is added to chapter 36.70 RCW a new section to read as follows:

As used in this chapter, "solar energy system" means any device or combination of devices or elements which rely upon direct sunlight as an energy source, including but not limited to any substance or device which collects sunlight for use in:

- (1) The heating or cooling of a structure or building;
- (2) The heating or pumping of water;
- (3) Industrial, commercial, or agricultural processes; or
- (4) The generation of electricity.

A solar energy system may be used for purposes in addition to the collection of solar energy. These uses include, but are not limited to, serving as a structural member or part of a roof of a building or structure and serving as a window or wall.

Sec. 10. Section 36.70.350, chapter 4, Laws of 1963 and RCW 36.70-.350 are each amended to read as follows:

A comprehensive plan may include——

(1) a conservation element for the conservation, development and utilization of natural resources, including water and its hydraulic force, forests, water sheds, soils, rivers and other waters, harbors, fisheries, wild life, minerals and other natural resources,

(2) a solar energy element for encouragement and protection of access to direct sunlight for solar energy systems,

(3) a recreation element showing a comprehensive system of areas and public sites for recreation, natural reservations, parks, parkways, beaches, playgrounds and other recreational areas, including their locations and proposed development,

~~((3))~~ (4) a transportation element showing a comprehensive system of transportation, including general locations of rights of way, terminals, viaducts and grade separations. This element of the plan may also include port, harbor, aviation and related facilities,

~~((4))~~ (5) a transit element as a special phase of transportation, showing proposed systems of rail transit lines, including rapid transit in any form, and related facilities,

~~((5))~~ (6) a public services and facilities element showing general plans for sewerage, refuse disposal, drainage and local utilities, and rights of way, easements and facilities for such services,

~~((6))~~ (7) a public buildings element, showing general locations, design and arrangements of civic and community centers, and showing locations of public schools, libraries, police and fire stations and all other public buildings,

~~((7))~~ (8) a housing element, consisting of surveys and reports upon housing conditions and needs as a means of establishing housing standards to be used as a guide in dealings with official controls related to land subdivision, zoning, traffic, and other related matters,

~~((8))~~ (9) a renewal and/or redevelopment element comprising surveys, locations, and reports for the elimination of slums and other blighted areas and for community renewal and/or redevelopment, including housing sites, business and industrial sites, public building sites and for other purposes authorized by law,

~~((9))~~ (10) a plan for financing a capital improvement program,

~~((10))~~ (11) as a part of a comprehensive plan the commission may prepare, receive and approve additional elements and studies dealing with other subjects which, in its judgment, relate to the physical development of the county.

Sec. 11. Section 36.70.560, chapter 4, Laws of 1963 and RCW 36.70-.560 are each amended to read as follows:

Official controls may include:

(1) Maps showing the exact boundaries of zones within each of which separate controls over the type and degree of permissible land uses are defined;

(2) Maps for streets showing the exact alignment, gradients, dimensions and other pertinent features, and including specific controls with reference to protecting such accurately defined future rights of way against encroachment by buildings, other physical structures or facilities;

(3) Maps for other public facilities, such as parks, playgrounds, civic centers, etc., showing exact location, size, boundaries and other related features, including appropriate regulations protecting such future sites against encroachment by buildings and other physical structures or facilities;

(4) Specific regulations and controls pertaining to other subjects incorporated in the comprehensive plan or establishing standards and procedures to be employed in land development including, but not limited to, subdividing of land and the approval of land plats and the preservation of streets and lands for other public purposes requiring future dedication or acquisition and general design of physical improvements, and the encouragement and protection of access to direct sunlight for solar energy systems.

NEW SECTION. Sec. 12. There is added to chapter 64.04 RCW a new section to read as follows:

(1) As used in this chapter:

(a) "Solar energy system" means any device or combination of devices or elements which rely upon direct sunlight as an energy source, including but not limited to any substance or device which collects sunlight for use in:

- (i) The heating or cooling of a structure or building;
- (ii) The heating or pumping of water;
- (iii) Industrial, commercial, or agricultural processes; or
- (iv) The generation of electricity.

A solar energy system may be used for purposes in addition to the collection of solar energy. These uses include, but are not limited to, serving as a structural member or part of a roof of a building or structure and serving as a window or wall; and

(b) "Solar easement" means a right, expressed as an easement, restriction, covenant, or condition contained in any deed, contract, or other written instrument executed by or on behalf of any landowner for the purpose of assuring adequate access to direct sunlight for solar energy systems.

(2) A solar easement is an interest in real property, and shall be created in writing and shall be subject to the same conveyancing and instrument recording requirements as other easements.

(3) A solar easement shall be appurtenant and run with the land or lands benefited and burdened, unless otherwise provided in the easement.

(4) Any instrument creating a solar easement shall include but not be limited to:

(a) A description of the real property subject to the solar easement and a description of the real property benefiting from the solar easement; and

(b) A description of the extent of the solar easement which is sufficiently certain to allow the owner of the real property subject to the easement to

ascertain the extent of the easement. Such description may be made by describing the vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the easement and the points from which those angles are to be measured, or the height over the property above which the solar easement extends, or a prohibited shadow pattern, or any other reasonably certain description.

(5) Any instrument creating a solar easement may include:

(a) The terms or conditions or both under which the solar easement is granted or will be terminated; and

(b) Any provisions for compensation to the owner of property benefiting from the solar easement in the event of interference with the enjoyment of the solar easement, or compensation to the owner of the property subject to the solar easement for maintaining the solar easement.

NEW SECTION. Sec. 13. There is added to chapter 64.04 RCW a new section to read as follows:

In any action for interference with a solar easement, if the instrument creating the easement does not specify any appropriate and applicable remedies, the court may choose one or more remedies including but not limited to the following:

(1) Actual damages as measured by increased charges for supplemental energy, the capital cost of the solar energy system, and/or the cost of additional equipment necessary to supply sufficient energy:

(a) From the time the interference began until the actual or expected cessation of the interference; or

(b) If the interference is not expected to cease, in a lump sum which represents the present value of the damages from the time the interference began until the normally expected end of the useful life of the equipment which was interfered with;

(2) Reasonable and necessary attorney's fees as fixed by the court; and

(3) An injunction against the interference.

NEW SECTION. Sec. 14. There is added to chapter 64.04 RCW a new section to read as follows:

A solar easement created under this chapter may only be created by written agreement. Nothing in this chapter shall be deemed to create or authorize the creation of an implied easement or a prescriptive easement.

NEW SECTION. Sec. 15. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House May 2, 1979.

Passed the Senate April 25, 1979.

Approved by the Governor May 11, 1979.

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