

# SENATE BILL REPORT

## SB 5390

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As of February 9, 2021

**Title:** An act relating to increasing housing supply through the growth management act and housing density tax incentives for local governments.

**Brief Description:** Increasing housing supply through the growth management act and housing density tax incentives for local governments.

**Sponsors:** Senators Liias, Gildon, Nguyen and Saldaña.

**Brief History:**

**Committee Activity:** Housing & Local Government: 2/09/21.

**Brief Summary of Bill**

- Amends the elements of a comprehensive plan to ensure consideration of multifamily housing units and housing targets.
- Increases urban densities within urban growth areas (UGAs) in buildable land areas to six net dwelling units per acre.
- Creates real estate excise tax density incentive zones within UGAs in buildable lands areas.

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### SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

**Staff:** Bonnie Kim (786-7316)

**Background:** Growth Management Act. The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. The GMA sets forth three broad planning obligations for those counties and cities who plan fully under the GMA: the county legislative authority must adopt a countywide planning policy; the county, and the cities within the county, must adopt comprehensive plans and designate critical areas, agricultural lands, forestlands, and mineral resource lands, and adopt

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development regulations accordingly; and the county must designate and take other actions related to urban growth areas (UGAs).

Urban Growth Areas. Counties that fully plan under the GMA must designate UGAs, areas within which urban growth must be encouraged and outside of which growth may occur only if it is not urban in nature. Planning jurisdictions must include within their UGAs sufficient areas and densities to accommodate projected urban growth for the succeeding 20-year period. In addition, cities must include sufficient areas to accommodate the broad range of needs and uses that will accompany the projected urban growth, including, as appropriate, medical, governmental, institutional, commercial, service, retail, and other nonresidential uses.

Real Estate Excise Tax. The sale of real property is subject to the real estate excise tax (REET). The tax base is the selling price of the real property, without any deduction for mortgages, liens, or other debts. The tax is typically paid by the seller. A transfer of controlling interests in entities that own property in Washington is also subject to the REET.

The state REET rate is a flat 1.28 percent. The state revenue is distributed, through June 30, 2019, as follows: 98 percent to the state General Fund, 2 percent to the Public Works Assistance Account, 4.1 percent to the Education Legacy Trust Account, and 1.6 percent to the City/County Assistance Fund.

Local governments are also authorized to impose a REET. Cities and counties are authorized to impose a 0.25 percent REET to finance capital improvements or capital projects specified in a comprehensive plan. A city or county may also impose a 0.5 percent REET for general purposes, so long as the city or county does not impose the optional 0.5 percent retail sales tax. In addition, a county may impose a 1 percent REET to finance the acquisition and maintenance of conservation areas, and 0.5 percent to finance the acquisition, construction, and operation of affordable housing for low to moderate income persons, or persons with special needs.

**Summary of Bill:** Comprehensive Plans-Elements. The land use element of a comprehensive plan must ensure that provisions for housing are properly planned for and housing targets are implemented when required.

The housing element of a comprehensive plan must include, consideration of duplexes, triplexes, fourplexes, townhomes, accessory dwelling units, and courtyard apartments and housing locations in relation to employment locations.

Urban Growth Areas-Buildable Lands. For counties and cities within those counties subject to review and evaluation under RCW 36.70A.215, urban densities of at least six net dwelling units per acre is required. A jurisdiction may opt-out of this requirement if one or more of the following standards are met:

- the presence of critical areas would prevent the area or areas from being developed at

- six net dwelling units per acre;
- the area is more than 0.5 miles from a major transit stop;
- the area is within a national historic reserve;
- the county or city demonstrates the area or areas are not necessary to meet certain housing requirements; or
- the county or city documents a specific infrastructure or physical constraint that would make this requirement infeasible for a particular area, and efforts are being taken to remedy such deficiency.

Countywide Planning Policies-Buildable Lands. For counties and cities subject to review and evaluation under RCW 36.70A.215, housing targets for single-family detached dwellings, duplexes, triplexes, fourplexes, townhomes, accessory dwelling units, and courtyard apartments must be adopted to demonstrate that a county, and cities within that county, are collectively planning for the existing and projected housing needs of all economic segments of the community. Policies must seek to balance housing supply with employment in the jurisdiction, giving special consideration to workforce housing and creating opportunities for first-time homeownership. For counties and cities within those counties subject to housing target requirements, this provision does not become effective until January 1, 2025.

Real Estate Excise Tax Density Incentive Zones. Counties and cities subject to review and evaluation under RCW 36.70A.215 may establish one or more REET density incentive zones. A REET density incentive zone is an area within a UGA where the city or county adopts zoning and development regulations to increase housing supply by allowing construction of additional housing types as outright permitted uses. Creation of a REET density incentive zone enables the local government to receive a portion of the tax for sales of qualified residential dwelling units within the zone.

A REET density incentive zone may only be located within a designated UGA, and must allow the following housing types: single-family detached dwellings at a net density of at least six dwelling units per acre, duplexes, triplexes, fourplexes, townhomes, accessory dwelling units, and courtyard apartments. A REET density incentive zone may also allow, as outright permitted uses, housing types and densities that exceed the minimum requirements.

A "qualified residential dwelling" is either, an individual residential dwelling unit, or a residential building of two or more dwelling units constructed within a REET density incentive zone that achieves a net increase in the total number of residential dwelling units compared to the maximum number of residential dwelling units that could have been built prior to the adoption of zoning and development regulations creating the zone. If the qualified residential dwelling has two or more dwelling units, the amount distributed to the local government must be reduced by the percent attributable to the number of new dwelling units within the building that could have been built under the zoning and development regulations that existed prior to the creation of the local REET density

incentive zone.

A sale that does not involve a net increase above the maximum number of residential dwelling units that could have been constructed as an outright permitted use, prior to the creation of the REET density incentive zone, is not a sale of a qualified residential dwelling unit.

A REET density incentive zone may be established for areas where a city or county previously enacted zoning and development regulations meeting the minimum requirements in this section, but not prior to January 1, 2017. A REET density incentive zone may not be established later than one year after the date by which a city or county is required to update its growth management comprehensive plan. Once a REET density incentive zone is established, a qualified residential dwelling unit may be constructed at any time.

Real Estate Excise Tax Distribution. Beginning July 1, 2023, the amounts collected on the sale of a qualified residential dwelling constructed within a REET density incentive zone must be distributed to a city or county as follows:

- for a qualified residential dwelling unit located more than 0.5 miles from a mass transit stop, 50 percent of the amounts collected to the city or county where the dwelling is located; or
- for a qualified residential dwelling unit located less than or equal to 0.5 miles from a mass transit stop, 25 percent of the amounts collected to the city or county where the dwelling is located.

The distribution to a city or county applies to both the initial and all subsequent sales of a qualified residential dwelling unit. The amounts distributed to a city and county may be used solely for costs associated with adoption or amendment of plans under the GMA; preparation of the review and evaluation report pursuant to RCW 36.70A.215; long-term planning; code and development regulation amendments for the purpose of increasing housing supply; or code and development regulation amendments that decrease the amount of time necessary to obtain permits for housing.

**Appropriation:** None.

**Fiscal Note:** Requested on February 7, 2021.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Staff Summary of Public Testimony:** PRO: This bill provides incentives to provide missing middle housing. This bill would create and fill in spaces within communities and provide more options for housing. In more and more communities, middle class families cannot afford single family homes. This bill recognizes zoning changes can be difficult and

gives jurisdictions incentives to legalize new housing types. This bill maintains local control and fights the inertia of decades of exclusionary planning. This bill strikes the right balance between the urgency of the housing crisis and allowing for opting out of higher density requirements.

OTHER: This bill reads as a mandate not achievable by many rural areas because infrastructure will not support these types of housing densities. We would like to see the REET density incentive zone expanded to all counties. In section 1, we would like to see a restriction within urban growth boundaries. In section 2, six units per acre is not high enough. High urban areas should have higher densities. In section 3, we need a definition for workforce housing. In section 5, there should be language for anti-displacement policies.

**Persons Testifying:** PRO: Senator Marko Liias, Prime Sponsor; Dan Bertolet, Sightline Institute; Kyler Parris; Alex Hur, Master Builders Association of King and Snohomish Counties.

OTHER: Bryce Yadon, Futurewise; Paul Jewell, Washington State Association of Counties.

**Persons Signed In To Testify But Not Testifying:** No one.