

HOUSE BILL REPORT

ESSB 5812

As Reported by House Committee On: Local Government

Title: An act relating to local governments planning and zoning for accessory dwelling units.

Brief Description: Concerning local governments planning and zoning for accessory dwelling units.

Sponsors: Senate Committee on Housing Stability & Affordability (originally sponsored by Senators Palumbo, Liias and Nguyen).

Brief History:

Committee Activity:

Local Government: 3/27/19, 4/2/19 [DPA].

Brief Summary of Engrossed Substitute Bill (As Amended by Committee)

- Requires cities and counties to adopt ordinances that authorize accessory dwelling units (ADUs) within designated urban growth areas by June 1, 2021, and establishes certain regulatory requirements that must be included.
- Exempts cities that have adopted ADU regulations on or before the effective date of the Growth Management Act (GMA) from the ADU regulation requirements, but encourages them to adopt similar policies before their next comprehensive review is due under the GMA.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass as amended. Signed by 4 members: Representatives Pollet, Chair; Peterson, Vice Chair; Appleton and Senn.

Minority Report: Do not pass. Signed by 2 members: Representatives Kraft, Ranking Minority Member; Goehner.

Minority Report: Without recommendation. Signed by 1 member: Representative Griffey, Assistant Ranking Minority Member.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Robbi Kesler (786-7153).

Background:

Local Planning for Accessory Apartments.

Local governments must have accessory apartment—commonly referred to as accessory dwelling unit (ADU)—provisions incorporated in their development regulations, zoning regulations, or official controls. These provisions must be consistent with a 1993 report by the Department of Community, Trade, and Economic Development (CTED) providing recommendations to the Legislature designed to encourage developing and placing ADUs in areas zoned for single-family residential use. The CTED recommendations include standards and criteria regarding size, parking, design, and quantity of ADUs.

"Local government" means a county that is planning under the Growth Management Act (GMA), a city with a population of over 20,000, and a county with a population of over 125,000.

Urban Growth Areas.

Counties that fully plan under the GMA must designate Urban Growth Areas (UGAs)—areas within which urban growth must be encouraged and outside of which growth can 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.

Summary of Amended Bill:

By June 1, 2021, cities with a population of 10,000 or more and counties with a population of 15,000 or more must adopt an ordinance authorizing ADUs within designated UGAs.

Actions taken by a county or city to comply with the requirements within the UGA may not be subjected to a legal challenge under the GMA. Accessory dwelling units may not be counted towards the overall underlying density within the UGA boundary of a county for purposes of the GMA.

A local jurisdiction adopting an ADU ordinance must provide notice to neighbors and allow for a minimum 30-day period for public comments. Local jurisdictions may provide notice by posting signs on the respective property and within 200 feet of the property, mailing, and providing notice to community organizations for the neighborhood recognized by the local governmental entity.

The ordinances may:

- be subject to such regulations, conditions, procedures, and limitations as determined by the local legislative authority, to allow local flexibility, and recognize local authority;
- exempt designated historical districts;
- establish design guidelines consistent with the neighborhood;
- include owner occupancy and/or short-term rental restrictions;
- establish regulations consistent with tree, solar access, shading, and stormwater runoff capture ordinances; and
- require the acceptance of low-income housing vouchers or other non-cash housing program payments and other rules to create affordable housing.

The ADU ordinance must require an ADU to be accessible to fire department apparatus by way of a public street or approved fire apparatus access.

Setbacks, heights, and design elements contained in the ADU ordinance must be developed based on lot size, lot conditions, street block setbacks, and slope, provide for pedestrian friendly streets and alleys, and other appropriate local considerations.

Cities and counties that have not adopted ADU regulations as of June 1, 2021, that have resulted in an increase in permitted ADUs utilized for permanent rental housing or permanent housing, or have not updated an ADU ordinance since 2012, must adopt an ordinance that includes at least four of the following provisions:

- allow for an attached ADU to be permitted for permanent rental housing or permanent housing, provided that the location of the ADU is compliant with all applicable state and federal laws, critical area ordinances, or other local ordinances regarding significant trees, lot setback, solar access, and health or safety considerations on lots exceeding 3,200 square feet and less than 4,356 square feet with a single-family housing unit. Compliance with such other laws and development regulations may limit approval to an attached ADU within the existing permitted footprint of the main dwelling unit;
- allow for an attached or detached ADU to be permitted for permanent rental housing or permanent housing, provided that the location of the ADU is compliant with all applicable state and federal laws, critical area ordinances, or other local ordinances regarding significant trees, lot setback, solar access, and health or safety considerations on lots of 4,356 square feet or greater on which there is a single-family housing unit. Compliance with such other laws and development regulations may limit approval to an attached ADU within the existing permitted footprint of the main dwelling unit or may bar siting of a detached ADU;
- for lots of 3,200 square feet or less on which there is a single-family housing unit, allow at least one attached ADU used for permanent rental housing or permanent housing located within the existing permitted dwelling structure;
- attached or detached ADUs are not considered as contributing to the overall underlying density within the UGA boundary of a city for purposes of compliance with the GMA;
- any connection fees or capacity charges for attached or detached ADUs must not exceed the proportionate burden upon the water or sewer system that is typical of structures with similar characteristics as the proposed ADU;

- does not count residents of ADUs against any limits on the number of unrelated residents on a single-family lot;
- does not count the gross floor area of an ADU against any floor area ratio limitations that apply to single-family housing units;
- does not establish a maximum gross floor area for ADUs that is less than 500 square feet and 15 percent of total lot size for lots over 5,000 square feet but less than 6,670 square feet;
- does not establish a minimum gross floor area for ADUs that is greater than 200 square feet; or
- provides for a waiver or reduction in on-site parking requirements based on location such as for ADUs within 0.5 mile of a transit stop for fixed rail or for bus service that is scheduled at least every 15 minutes for no less than 10 hours per day that is greater than 50 percent of the amount set for single-family residences.

An ordinance that meets the requirements above may not be challenged in administrative or judicial appeals for noncompliance with the State Environmental Policy Act.

By April 1, 2020, the Building Code Council must adopt rules pertaining to ADUs consistent with the GMA's definitions and development standards.

Cities and counties must review their impact fees to ensure that any impact fees imposed for ADUs are commensurate with the actual impact of the ADU and are less than impact fees for single-family housing units. A local ADU ordinance may provide an exemption from impact fees for ADUs within 0.5 mile of a transit stop for fixed rail or for bus service that is scheduled at least every 15 minutes for no less than 10 hours per day, but may not establish a transportation impact fee that is greater than 50 percent of the amount set for single-family residences amount for ADUs .

RCW 43.63A.215, the accessory apartment section adopted in 1993, is repealed.

Amended Bill Compared to Engrossed Substitute Bill:

The striking amendment:

- adds housing affordability statements to the findings and intent section;
- modifies the definition of "attached accessory dwelling unit" by adding a requirement that such units not violate applicable lot size or lot coverage and setback requirements;
- modifies the definition of "cities" by limiting the definition to all cities, code cities, and towns with a population of 10,000 or more and removing all cities, code cities, and towns with a population of at least 2,500 within the boundaries of a regional transit authority;
- adds definitions for "permanent rental housing" and "short-term rental";
- removes a requirement that a city or county consider permit applications under the requirements of the bill if it does not adopt an ordinance in compliance with the bill;
- removes retroactivity language relating to legal challenges under the GMA;
- requires cities that have not adopted detached ADU regulations resulting in an increase in permitted ADUs, or that have not adopted an updated ADU ordinance since 2012, to adopt an ordinance that includes at least four provisions from a

- specified list and includes in the list an option for providing a waiver or reduction in on-site parking requirements based on location of the ADU;
- requires a local jurisdiction adopting an ordinance pursuant to the bill to provide notice to neighbors and an opportunity to review along with a minimum 30-day period for public comment;
 - allows local ordinances to include owner occupancy restrictions relating to ADUs, restrictions on short-term rental relating to ADUs, or both;
 - removes language prohibiting a requirement for off-street parking for ADUs within 0.5 mile of a transit stop; and
 - removes language prohibiting a city with a population of 100,000 or more from requiring the owner of a lot with an ADU to reside in the ADU or in another housing unit on the same lot.
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Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The bill should apply more broadly so rules will be created that allow ADUs to be built. This bill should be an opportunity for jurisdictions across Washington to implement housing solutions and relieve pressure in the housing market. Millennials believe that smaller, more flexible living arrangements may be the only way they can own a home or provide housing for aging parents. Millennials and baby-boomers express similar preferences for smaller housing and more connected neighborhoods. Housing options need to evolve with the changing times.

Realtors support a heavier hand at the state level to mandate certain types of housing. The pressure locally to increase housing supply has increased, but significant local obstacles require the Legislature to step in. The question about the role of the state is a difficult one. This bill provides another flexible option to address housing affordability and supply and will help homeowners. Accessory dwelling units create additional housing in desirable areas. The reality is that some cannot afford to stay in their neighborhoods and homes. The state should address this reality and respect local control.

Early versions of this bill were objectionable, but many changes have been made. There are still some concerning mandates in the bill, but the bill also includes some safeguards. The exemptions from GMA compliance appeals is important. The protections from appeal are critical to counties. If all ADUs were counted as new density, entire zoning schemes would have to be updated; this would create expense and liability. Rental housing prices have increased greatly over the years. The end result is that individuals cannot find affordable housing in their communities and they have to move further away. Some cities have so many

restrictions on ADUs that they cannot be built. The exemption from the State Environmental Policy Act is also appreciated.

(Opposed) None.

(Other) The water utility language needs some changes. The cities and counties are not the only water providers that need consideration in the bill. There was support for the bill after the grandfather clause was added in the Senate. The striker erodes the grandfather clause significantly. Cities that have gone through a comprehensive and balanced process to adopt ADU regulations should not have their policies changed by the Legislature. Cities are favorable toward ADUs, and over 100 cities already have ADU policies. Accessory dwelling units can be blended into a community under balanced, local regulations. This bill reaches deeply into local land use policies that are normally adopted by local officials.

Persons Testifying: (In support) Madeline Kovacs, Sightline Institute; Bill Clarke, Washington REALTORS; Alex Hur, Master Builders Association of King and Snohomish Counties; Paul Jewell, Washington State Association of Counties; and Jesse Piedfort, Sierra Club Washington.

(Other) Bill Clarke, Regional Water Cooperative of Pierce County and Washington Public Utility District Association; Carl Schroeder, Association of Washington Cities; and Doug Levy, Cities of Renton, Lake Stevens, Fife.

Persons Signed In To Testify But Not Testifying: None.