

# SENATE BILL REPORT

## ESSB 5812

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As Passed Senate, March 11, 2019

**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:** Housing Stability & Affordability: 2/13/19, 2/20/19 [DPS, w/oRec].

**Floor Activity:**

Passed Senate: 3/11/19, 38-10.

**Brief Summary of Engrossed First Substitute Bill**

- Requires certain cities and counties to adopt ordinances and development and zoning regulations that authorize creating accessory dwelling units within designated urban growth areas by June 1, 2021.
- Exempts cities that have adopted accessory dwelling unit regulations on or before the effective date of the act from the accessory dwelling unit regulation requirements, but encourages them to adopt similar policies before their next comprehensive review is due under the Growth Management Act.

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### SENATE COMMITTEE ON HOUSING STABILITY & AFFORDABILITY

**Majority Report:** That Substitute Senate Bill No. 5812 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kuderer, Chair; Das, Vice Chair; Darneille and Saldaña.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Zeiger, Ranking Member; Fortunato and Warnick.

**Staff:** Brandon Popovac (786-7465)

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*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.*

**Background:** Local Planning for Accessory Apartments. Local governments must have accessory apartment—commonly referred to as an 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's (CTED) providing recommendations to the Legislature designed to encourage developing and placing accessory apartments in areas zoned for single-family residential use. The CTED recommendations include standards and criteria regarding size, parking, design, and quantity of accessory apartments. "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). UGAs are 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 Engrossed First Substitute Bill:** By June 1, 2021, any city with a population of 10,000 or more, any city with a population of at least 2500 but less than 10,000 of which any portion of the city lies within the boundaries of a regional transit authority or transit agency, and any county with a population of 15,000 or more must adopt by ordinance and incorporate into its development and zoning regulations an authorization for creating ADUs within designated UGAs. However, any such city that has adopted ADU regulations on or before the effective date of the act are exempt from this requirement, but is encouraged to adopt similar policies by the date the city is required to complete its next comprehensive review under the GMA. Any city or county that does not comply with this requirement by June 1, 2021, must consider any permit application it receives in accordance with the act unless it adopts its own ordinance or regulations in compliance with this requirement within 60 days after receipt of the application.

Any county or city that takes action necessary to meet the requirements of the act within its urban growth area boundary is not subject to any legal challenge brought under the GMA or state environmental policy act on or after January 1, 2018. ADUs may not be considered as contributing to the overall underlying density within the urban growth area of a county for purposes of compliance with the GMA.

Such ordinances and regulations must allow: either one attached ADU or one detached ADU on lots on which there is a single-family housing unit, and at least one attached ADU on lots of 2,500 square feet or less on which there is a single-family housing unit. For such lots of 2,500 square feet or less, such ordinances and regulations may allow at least one detached ADU. To allow flexibility for local governments to implement these requirements, such requirements are subject to regulations, conditions, procedures, and limitations as determined by the local legislative authority. Such ordinances and regulations must also require ADUs to be accessible to fire department apparatus by way of a public street or approved fire apparatus access.

Such ordinances and regulations may not:

- impose minimum lot size requirements for siting ADUs;
- be inconsistent with water availability requirements, water system plans, small water system management plans, or established policies adopted by cities or counties. Any connection fees or capacity charges for ADUs must be proportionate to the burden of the proposed ADU on the water-sewer system.
- count ADU residents towards the number of unrelated residents on a single-family lot;
- establish requirements for ADU off-street parking within 0.5 miles of a transit stop for fixed rail or for regularly scheduled bus service; but for all other areas, one additional off-street parking space per lot in which there is at least one ADU may be required;
- for cities with a population of 100,000 or more, require the lot owner to reside or occupy the ADU or other housing unit on the same lot; or
- count the gross floor area of an ADU against any single-family home floor area ratio limitations.

Such ordinances and regulations may exempt designated historical districts that are recognized as such under local ordinance.

Such ordinances and regulations are encouraged to minimize their impact on the construction costs of an ADU, and without adopted findings, to not:

- limit the roof height of detached ADUs to less than 24 feet or limit their wall height to less than 17 feet;
- limit the maximum gross floor area of an ADU to less than 1,000 square feet or its minimum gross floor area to more than 140 square feet; or
- establish setback regulations for ADUs that are more restrictive than regulations for single-family housing units.

Such ordinances and regulations do not preempt local jurisdictions from enacting regulations related to short-term rentals, including development standards, lot size provisions, off-street parking requirements, and tree retention requirements. Cities are encouraged to allow detached ADUs to be sited at the lot line of the rear yard if the rear yard is adjacent to an alley.

By April 1, 2020, the Building Code Council must adopt rules pertaining to ADUs consistent with the act'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. Cities and counties may provide an exemption from impact fees for ADUs, but may not establish a transportation impact fee for ADUs that are within 0.5 miles of a transit stop for fixed rail or regularly scheduled bus service that is more than 50 percent of the fee set for single-family residences.

"Dwelling unit" is defined as a residential that provides complete independent living facilities for one or more persons and includes permanent provisions for living, sleeping, eating,

cooking, and sanitation. "Accessory dwelling unit" is defined as a dwelling unit located on the same lot as a single-family housing unit. "Single-family housing unit" is defined as a single-family detached house, and excludes a duplex, triplex, townhome, or other housing unit.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: This represents one more approach to the affordable housing crisis that legislators are trying to fix. More people are moving to Washington State and home construction is not keeping up. ADUs represent a happy medium since it can increase housing density within the framework of the existing neighborhood. The bill represents the lowest hanging fruit to help ease the housing shortage. ADUs do not require a lot of infrastructure either. Any additional housing that local officials can bring into their respective jurisdictions benefits the broader region.

With extremely high Puget Sound real estate prices, the state's younger generation is unlikely to be able to afford a house or save up enough money for a down payment. With more of the younger generation being pushed to the suburbs, more carbon intensive commutes occur. ADUs provide supplemental income to homeowners and the potential for more affordable rents. ADUs can be helpful for senior citizens who are facing a limited income after retirement by generating more income or perhaps feel safer by having somebody live close by. If their home no longer meets their needs, senior citizens can move into an ADU that is universal design and is more accessible for them and then rent out the main property.

Requiring all local governments to authorize ADU development is necessary since it is difficult for an individual local government to develop more housing if surrounding jurisdictions are not going to step up and do the same.

ADUs provide green housing options since they are compact and energy efficient. ADUs can help avoid a climate crisis and bring down overall emissions by not pushing people out of the city. People who are forced to move out of the city either double or quadruple their carbon footprint. ADUs are environmentally responsible building options and only require a few resources to construct while consuming far less energy than larger size homes. ADUs allow more people to live near the places they work and shop, walk to transit, or bike instead of driving a car. ADUs make it easier for multiple generations of the family to occupy the same lot and for young home buyers to offset their high mortgage costs with rental income.

CON: The bill should be an option for cities and counties and not a requirement. Removing the detached ADU portion of the bill and just including the attached ADU would not impact underlying density issues. Requiring ADU regulations might impact the installation of septic systems and other infrastructure requirements. Urban growth areas are very difficult area to

map out and determine which areas the counties can expand to. The growth management hearings board has ruled in a number of occasions that attached ADUs must be considered in overall density considerations for counties. Any changes must be considered when complying with the growth management act, which puts counties in the crosshairs for appeals. Population capacity and population trends must be considered when counties implement their housing element. The bill might lead to the doubling of density in many zones relating to detached ADUs and possibly decrease the amount of available land for development, leading to an unintended price increase on development overall. The bill removes all of the optional tools cities have to implement ADU use. The bill would allow a twenty-four foot high ADU roof line in a single story rambler neighborhood. It would allow people to build a two-story ADU close to property lines.

OTHER: The population threshold for the bill's application is problematic. The bill would apply to smaller cities that do not have reliable transit options, and there is a great need to reduce vehicle miles traveled.

**Persons Testifying:** PRO: Senator Guy Palumbo, Prime Sponsor; Alex Hur, Master Builders Association of King and Snohomish Counties; Joanna Grist, AARP Washington; Margaret Morales, Sightline Institute; Emily Johnston, 350 Seattle; Brittany Bollay, Sierra Club; Shannon Loew, Impact Development; Kate Burke, Council Member, City of Spokane; Austin Bell, Deputy Mayor, Burien; Denise Rodriguez, Washington Homeownership Resource Center.

CON: Carl Schroeder, Association of Washington Cities; Paul Jewell, Washington State Association of Counties; Wes McCart, Stevens County.

OTHER: Bryce Yadon, Futurewise.

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