SENATE BILL REPORT
SB 5254

As of January 26, 2017

Title: An act relating to ensuring adequacy of buildable lands and zoning in urban growth areas and providing funding for low-income housing and homelessness programs.

Brief Description: Ensuring adequacy of buildable lands and zoning in urban growth areas and providing funding for low-income housing and homelessness programs.

Sponsors: Senators Fain, Palumbo, Zeiger, Angel, Hobbs and Mullet.

Brief History:
Committee Activity: Local Government: 1/26/17.

Brief Summary of Bill

- Adds factors to the land capacity analysis and a housing supply and affordability review to the Growth Management Act.
- Creates a property tax exemption program for cities and counties—unincorporated areas only—to preserve affordable housing for low-income households.
- Requires updates to the state and local homeless housing plans.

SENATE COMMITTEE ON LOCAL GOVERNMENT

Staff: Bonnie Kim (786-7316)

Background: Growth Management Act (GMA). The 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 designate critical areas, agricultural lands, forestlands, and mineral resource lands, and adopt development regulations accordingly; and the county must designate and take other actions related to Urban Growth Areas (UGAs).

UGAs. 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

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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.

Countywide Planning Policy. A countywide planning policy is a written policy statement used solely for establishing a countywide framework from which county and city comprehensive plans are developed and adopted. The policy must address certain issues, including policies for promoting orderly development and provision of urban services, for siting public capital facilities, and for joint county and city planning within UGAs. Cities and the Governor may appeal an adopted policy to the Growth Management Hearings Board (GMHB) within 60 days of adoption.

Population. The Office of Financial Management (OFM) determines the population of each county as of April 1st of each year. At least once every five years or on availability of census data, which is later, OFM must prepare 20-year growth management planning population projects for each county that adopts a comprehensive plan.

Affordable Housing For All Surcharge. The county auditor may charge a $10 surcharge per document recorded. Of the $10, the county may retain up to 5 percent for administrative costs; 40 percent is deposited into the Affordable Housing for All Account; and remaining funds may be retained by the county for eligible housing activities. The Department of Commerce (Department) must use these funds to provide housing and shelter for extremely low-income households.

Surcharge for Local Homeless Housing and Assistance. From September 1, 2012, to June 30, 2019, the county auditor may charge an additional $40 surcharge to administer the requirements of the Homeless Housing and Assistance Act. After June 30, 2019, the fee is reduced to $10. Of the total fee, 2 percent is retained by the auditor to cover collection costs; 60 percent goes to the county to administer a local homeless housing program; 6 percent may be used by the county to cover related administrative costs; and 32 percent goes to programs directly related to accomplishing the goals of the county's local homeless housing plan. Certain documents are exempt from this surcharge.

Capital Project Maintenance - Use of Additional Tax Funds. If the following conditions are met, a city or county may use the greater of $100,000 or 25 percent of available funds up to $1 million for the maintenance of capital projects:

- the city or county prepares a written report demonstrating that it has or will have adequate funding from all sources of public funding to pay for all capital projects identified in its capital facilities plan for the succeeding two-year period; and
- the city or county has not enacted, after June 9, 2016, any requirement on the listing or sale of real property; or any requirement on landlords, at the time of executing a lease, to perform or provide physical improvements or modifications to real property or fixtures, except if necessary to address an immediate threat to health or safety.

WA Homeless Census. The Department conducts an annual Washington homeless census. The census attempts to count all homeless individuals living outdoors, in shelters, and in

transitional housing, coordinated with the existing homeless census. Generally, the Department coordinates with local governments to determine the data to be collected.

State Environmental Policy Act (SEPA). SEPA establishes a review process for state and local governments to identify environmental impacts that may result from governmental decisions, such as the issuance of permits or the adoption of land use plans. Except for exempt projects, the SEPA generally requires a project applicant to submit an environmental checklist that includes answers to questions about the potential impacts of the project on the built and natural environments. The information collected through the SEPA review process may be used to condition a proposal to mitigate environmental impacts or to deny a proposal when significant adverse environmental impacts are identified.

Summary of Bill: GMA Review and Evaluation Program - Land Capacity Analysis. The evaluation component of the program must determine whether there is sufficient suitable land to accommodate countywide population projections according to the following factors:

- Utilize a reasonable land market supply factor that reduces the amount of land suitable to accommodate new development.
- When determining a redevelopment threshold, such as a ratio of existing improvement value to land value, recognize:
    - that even with an identical redevelopment threshold ratio, smaller lots and lots in less expensive areas are less likely to redevelop than larger lots and lots in more expensive areas; and
    - a percentage of land available for redevelopment will be redeveloped in its entirety, whereas another percentage will retain an existing improvement, with additional development added to only a portion of the site.
- Utilize adjustments:
    - that incorporate the likelihood that redevelopment will not occur if the costs to redevelop will exceed the likely profit to be made;
    - that evaluate the adequacy of infrastructure currently available to serve property;
    - for the types of housing and commercial development that may drive development patterns that are different than the initial analysis concludes; and
    - that address physical factors of certain properties which, while not protected critical areas, still limit desirability or the profitability of land for development or redevelopment.

Counties and cities required to complete the review and evaluation must, at the request of school or port districts, also complete an evaluation to determine the adequacy of land within UGAs suitable for new or expanded public schools or industrial uses by port districts.

In addition to jurisdictions already subject to the review and evaluation process, counties and cities located east of the crest of the Cascade mountain range that were greater than 175,000 in population in 2015 must complete the review by June 30, 2018. The Department, through a contract with the Urban Land Institute, must complete guidance materials on the evaluation program by December 1, 2017.

Housing Supply and Affordability Review. After July 1, 2019, counties and cities must conduct a housing supply and affordability review and amend comprehensive plans and

development regulations to encourage increased supply of residential housing whenever the following population and housing market conditions occur:

- OFM's annual forecast shows that actual population within that county is higher than OFM's 20-year population forecast used by the county and cities in its current comprehensive plan; or
- the housing affordability index for that county is less than 100; and
- less than four months of residential inventory is available within that county for two out of the last six quarters.

The housing supply and affordability review must, at a minimum, either increase the capacity for residential development to accommodate OFM's high population estimate or provide an analysis demonstrating how that jurisdiction's inventory, affordability, or excess growth can be addressed through other strategies. Counties and cities must initiate adoption of a housing supply and affordability review within three months of meeting the the above conditions and complete adoption within six months. No local government is required to implement this process more than twice during the eight-year period between the mandatory comprehensive plan update deadlines.

Regional Transportation Planning Organization (RTPO). No transportation or growth strategy may include or adopt a maximum population, household, employment and/or job growth target applicable to an RTPO's member county, city, or town comprehensive plan. RTPOs have no authority to reject, disapprove, or otherwise limit its approval of a local government growth management comprehensive plan or element based on the local government's planning growth levels within a designated UGA in excess of the targets allocated to the local government. RTPOs also do not have the authority to adopt or determine maximum growth targets applicable to the RTPO's member counties', cities', or towns' comprehensive plans.

Countywide Planning Policy. A countywide planning policy must include a process and schedule providing for annual consideration of updates, amendments, or revisions of the policy proposed by the county or any city or town within the county. Cities and the Governor may appeal the denial of a proposed update, revision, or amendment to the GMHB. No countywide or multicounty planning policy may adopt or include maximum population, household, job, or employment targets applicable to city or town growth management comprehensive plans, or otherwise prevent cities or towns from planning for growth levels within a designated UGA in excess of the growth targets allocated to the local government.

OFM Population Projections. Rather than every five years or on the availability of census data, OFM must prepare the 20-year growth management planning population projections in the year prior to the year during which counties and cities are required to review and/or revise comprehensive plans. In its annual population trends report, OFM must include information for each county and city relating to: actual population growth; a comparison of job growth and housing growth; whether the population growth is more or less than the population estimate used by the county in its most recent comprehensive plan; data on housing supply; the housing affordability index; and the residential housing inventory.

UGAs. Each city and county for which actual population growth exceeded planned growth during the prior year must include additional areas or densities capable of accommodating the amount of actual residential growth that exceeded planned growth in the prior year.

Affordable Housing For All Surcharge. Counties may retain up to 6 percent of funds to cover administrative costs related to its homeless housing plan.

Surcharge for Local Homeless Housing and Assistance. The $40 surcharge may be charged until June 30, 2027. The county auditor may no longer retain 2 percent for collection of the fee. Documents recording a birth, marriage, divorce, or death are no longer exempt from this surcharge.

Capital Project Maintenance - Use of Additional Tax Funds. From July 1, 2017, to June 30, 2019, the acquisition, construction, improvement, or rehabilitation of facilities to provide housing for the homeless is an allowable use of funds for cities or counties that are able to use additional tax funds for the maintenance and/or acquisition of capital projects. The effective date of this provision is 90 days after the effective date of the bill.

Tax Exemption Program To Preserve Affordable Housing. Effective 2018, cities and counties—for unincorporated areas—may adopt a property tax exemption program to preserve affordable housing that meets health and quality standards for very low-income households at risk of displacement or that cannot afford market-rate housing.

Affordable housing units must be below market rent levels and affordable to households with an income of 50 percent or less of the county median family income, adjusted for family size. Rent levels for affordable housing units may not exceed 30 percent of the income limit for the low-income housing unit and must include tenant-paid utilities other than telephone and any mandatory fees.

Under the program, qualifying residential real property is exempt from ad valorem property taxation, except for taxes levied by the state, for 15 successive years. The exemption may be for 18 years for properties meeting energy and water efficiency standards. Unless adopted by resolution, the exemption does not apply to county property tax.

To be eligible, the property must satisfy the following requirements for the entire exemption period:

- a minimum of 25 percent of units in a multiple-unit property subject to tax exemption must be affordable;
- at least 90 percent of the units of multiple-unit property must be occupied by tenants at the time of application;
- the property must be part of a residential or mixed-use project;
- the property must provide for a minimum of 50 percent of the space for permanent residential occupancy;
- the property must meet guidelines as adopted by the governing authority that may include height, density, income limits for occupancy, limits on rents, and health and quality standards;
- the property owner must enter into a contract with the city or county; and

- the property must comply with all applicable land use regulations, zoning requirements, and building and housing code requirements.

The governing authority may waive certain health and quality standards for properties undergoing rehabilitation improvements pursuant to a rehabilitation plan. The governing authority must establish minimum health and quality standards to qualify properties for the waiver. Properties must be inspected at the time of application and every three years thereafter to ensure compliance. Eligibility may be denied or revoked for failure to comply with health and quality standards.

The governing authority may establish additional requirements for eligibility, including a limit on the total number of affordable housing units subject to exemption and a designation of targeted residential areas for property to align with community needs, including to prevent displacement, preserve cultural communities, and provide affordable housing options near community infrastructure such as transportation or public schools.

The governing authority must adopt and implement standards and guidelines to implement the program, including application and inspection procedures. Applications are due by August 1st of the year before the first calendar year in which the taxes are to be considered for exemption. Cities and counties may designate an administrative official or commission to review applications; approval or denial must occur within six months of receipt of an application.

If approved, the governing authority must issue a certificate of tax exemption and file the certificate with the county assessor by December 1st. Certificates filed after December 1st but before January 1st are deemed filed in the next calendar year. The governing authority may issue a conditional certificate of acceptance of tax exemption for properties undergoing rehabilitation improvements. Rehabilitation must be completed within two years of the application date.

If denied, the governing authority must notify the applicant of the reasons within ten days of the denial. An applicant may appeal a denial to the governing authority but bears the burden of proof to show there was no substantial evidence to support the decision. The approval or denial decision of the governing authority is otherwise final.

The governing authority may impose an application fee. The city or county may retain administrative costs from the fees collected and then must either transfer the remaining balance to the county assessor for deposit into the county current expense fund, if the application is approved, or refund the balance to the applicant, if denied.

A participating property owner must obtain annual certifications of family size and income from tenants and report that information to the governing authority. The annual report must also include information regarding occupancy, rents charged, and a certification that the property has not changed use. The governing authority must report annually to the Department on the number of tax exemptions granted; number and type of participating units; rents charged versus market-rate units; and value of tax exemptions granted.

After approval, the governing authority must revoke or cancel a tax exemption if the owner: intends to convert the property to another use that is not residential or the owner intends to discontinue compliance with affordable housing requirements; fails to file annual reports; fails to maintain the property in substantial compliance with all applicable local building, safety, and health code requirements; or fails to complete rehabilitation improvements as outlined in the rehabilitation plan.

Notice must be sent within 30 days of the cancellation. The owner has 30 days from the date of the notice to file an appeal with the governing authority and must specify the factual and legal basis on which the determination is alleged to be erroneous. Following a hearing, the aggrieved party may appeal further as provided in the Administrative Procedures Act.

Upon notice, additional real property tax must be imposed on the value of improvements and land that no longer qualifies for the exemption in the amount that would have been imposed absent the exemption, plus a 20 percent penalty, calculated from January 1st of the year the certification first became effective. The county treasurer must collect the additional tax. The county auditor may not accept an instrument of conveyance unless and until the additional tax is paid.

A certificate of exemption may continue for the remainder of the exemption period on sale or transfer of the exempt property if the new owner signs a notice of exemption continuance. If the new owner does not sign, then all additional tax, penalty, and interest become due at the time of sale.

WA Homeless Census. Data on subpopulations and other characteristics of the homeless must, at a minimum, be consistent with United States Department of Housing and Urban Development requirements and include the following: chronically homeless individuals; chronically homeless families; unaccompanied homeless youth; male veterans; female veterans; adults with severe mental illness; adults with chronic substance abuse issues; adults with HIV/AIDS; senior citizens; and victims of domestic violence.

Statewide Homeless Study. Subject to the availability of appropriated funds, the Department, in collaboration with the Washington State Institute for Public Policy (WSIPP), must conduct a statewide homeless study every ten years. The purpose of the study is to: supplement the current point-in-time census and homeless client management information system; review the efficacy of current programs and services; and provide recommendations on the type and timing of health and human service interventions needed for these populations to gain housing stability. The Department and WSIPP must develop a study proposal defining the study scope, methodology, and costs by January 1, 2019.

Homeless Housing Strategic Plan. By July 1, 2018, the Department, in consultation with the Interagency Council on Homelessness and Affordable Housing Advisory Board, must publish a five-year homeless housing strategic plan. The plan must be updated every five years and include performance measures and goals, an analysis of services and programs, new funding or program strategies, and an implementation strategy at the state and local level. The Department must also coordinate with the Homeless Youth Prevention and Protection Programs Advisory Committee.

By December 1, 2018, and every five years thereafter, local governments, under the Department's guidance, must establish local homeless housing plans with an emphasis in reducing youth homelessness. The Department may require changes in local governments' plans to be eligible for state funding for homeless programs.

Annual Report on Homelessness. By February 1st of each year, the Department must provide an update on the state's homeless housing strategic plan, including an assessment of the current condition of homelessness, funding information, shelter and housing information, and expenditure information. Any local government receiving state funds for homelessness programs must also report similar information.

SEPA. When a planned action in an area that contains or will contain a major transit stop is carried out in conjunction with a comprehensive plan or other community plan, significant environmental impacts must be adequately addressed in a threshold determination or in an environmental impact statement. If an infill development area contains or will contain a major transit stop, an environmental impact statement is not the required form of environmental analysis.

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: PRO: This bill addresses the issue of the lack of supply of buildable lands and housing. AWC voted to support the bill. The purpose of the buildable lands section is to have the reports reflect the reality on the ground and be realistic. The issue with Puget Sound Regional Council needs to be clarified in terms of authority to approve or reject comprehensive plans. Homelessness is a huge problem statewide; it's not just an urban problem anymore. BIAW has been frustrated with the availability of buildable lands for affordable housing. We think it is time for the Legislature to step in and address the buildable lands issue. When first implemented, measures were taken under the GMA to address transportation service. One of the reasons for the GMA was to help local governments prioritize expenditures to meet growth. Regarding the buildable lands studies, because of the lack of county resources and the complexity of the studies, counties have relied on measures like zone capacity. These studies are beyond the expertise of the counties. Washington has record vacancy rates across the state and we appreciate this effort to address the problem.

CON: Futurewise has concerns with respect to the buildable lands provisions and the regional planning processes. The requirement to update the buildable lands report every year seems very costly. The default market factor of 50 percent may be too high. Pierce County sees the buildable lands sections as decreasing local control by creating a one-size-fits-all solution. Counties need flexibility to address local concerns. The market factors required are often unknowable and are only five-year projections. The timeline in the buildable lands section is impossible to meet. The document recording fee is a negative for counties because

it removes certain documents to which the fee currently applies and also removes the two percent retained by the auditor for administrative purposes. WACO appreciates the extension of the recording fee but has concerns about the buildable lands sections. WACO is cautious about imposing reviews on flat growth counties that have never been required to conduct them before. The new market factors are ambiguous. Maybe there is a different entity, such as a public-private partnership, that can collect market factor data better than the counties. Ecology has concerns about the sections regarding SEPA because they allow for broad exemptions with respect to environmental impact statements.

OTHER: We appreciate that this bill starts the process to address the growing homelessness problem in the state. We need more money in the system to meet unmet needs. Regarding the buildable lands sections, the question is to what extent the state should step into a regional dispute. Section 2 deals with ports and the use of industrial lands but ports are more concerned with the preservation of industrial lands. Commerce supports the extension of the document fee but would like to see it made permanent. Commerce has concerns about the following language: "sufficient capacity of land suitable for development" because this may allow cities and counties to expand UGAs even when there is no evidence to support such expansions. We would like to eliminate the sunset date on the document fee to provide a permanent funding source for homeless housing projects. We acknowledge there has been a history of controversy over funding sources for homeless housing and services. The document recording fee pays for 62 percent of homelessness programs. We need an opportunity to examine our current plans and programs to identify keys for success. Cities need local sources for affordable housing.

Persons Testifying: PRO: Bill Clarke, WA Realtors; Steve Gano, Building Industry Assoc. of WA; Ron Main, Master Builders of King and Snohomish Counties; Bill Hinkle, RHA.

CON: Bryce Yadon, Futurewise; Dan Cardwell, Pierce County; Laura Berg, WA State Assoc. of Counties; Gordon White, Department of Ecology.

OTHER: Carl Schroeder, Assoc. of WA Cities; Sean Eagan, The Northwest Seaport Alliance; Dave Andersen, WA Department of Commerce; Nick Federici, WA Low Income Housing Alliance; Brian Enslow, Sidewalk; Penny Sweet, Kirkland City Council.

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