

HOUSE BILL REPORT

E2SHB 1923

As Passed Legislature

Title: An act relating to increasing urban residential building capacity.

Brief Description: Increasing urban residential building capacity.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Fitzgibbon, Macri, Appleton, Doglio, Dolan, Santos and Frame).

Brief History:

Committee Activity:

Environment & Energy: 2/14/19, 2/21/19 [DPS];

Appropriations: 2/26/19, 2/28/19 [DP2S(w/o sub ENVI)].

Floor Activity:

Passed House: 3/13/19, 66-30.

Senate Amended.

Passed Senate: 4/13/19, 33-12.

House Refused to Concur.

Senate Receded.

Senate Amended.

Passed Senate: 4/22/19, 33-16.

House Concurred.

Passed House: 4/24/19, 75-19.

Passed Legislature.

Brief Summary of Engrossed Second Substitute Bill

- Encourages cities that are planning fully under the Growth Management Act (GMA) to take certain actions to increase residential building capacity and housing affordability.
- Authorizes cities that are planning fully under the GMA to adopt a housing action plan.
- Exempts from appeal under the State Environmental Policy Act (SEPA) and the Growth Management Act (GMA) certain nonproject actions taken by a city to implement the residential building capacity elements of the act.
- Authorizes planning grants of up to \$100,000 for certain cities that take certain actions with regard to residential building capacity.

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.

- Exempts certain project actions from appeals under SEPA on the basis of transportation impacts, provided they meet certain criteria.
- Directs the Washington Center for Real Estate Research at the University of Washington to prepare a biennial report on housing supply and affordability.
- Establishes certain requirements related to minimum residential parking requirements in certain cities.
- Creates a document recording fee of \$2.50 for certain documents, to be deposited into the GMA Planning and Environmental Review Fund.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; Doglio, Fey, Mead, Peterson and Shewmake.

Minority Report: Do not pass. Signed by 3 members: Representatives Shea, Ranking Minority Member; Dye, Assistant Ranking Minority Member; Boehnke.

Staff: Robert Hatfield (786-7117).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Environment & Energy. Signed by 21 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Jinkins, Macri, Pettigrew, Ryu, Springer, Stanford, Sullivan, Tharinger and Ybarra.

Minority Report: Do not pass. Signed by 7 members: Representatives Chandler, Dye, Hoff, Kraft, Mosbrucker, Steele and Sutherland.

Minority Report: Without recommendation. Signed by 3 members: Representatives Pollet, Senn and Tarleton.

Staff: Meghan Morris (786-7119).

Background:

Growth Management Act.

The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities. The GMA also establishes a significantly wider array of

planning duties for 29 counties, and the cities within those counties, that are obligated to satisfy all planning requirements of the GMA. These jurisdictions are sometimes said to be "fully planning" under the GMA.

The GMA directs fully planning jurisdictions to adopt internally consistent comprehensive land use plans. Comprehensive plans are implemented through locally adopted development regulations, and both the plans and the local regulations are subject to review and revision requirements prescribed in the GMA. In developing their comprehensive plans, counties and cities must consider various goals set forth in statute. These goals include:

- *Urban Growth.* Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
- *Housing.* Encourage the availability of affordable housing to all economic segments of the population of Washington State, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.
- *Public Facilities and Services.* Ensure that those public facilities and services necessary to support development are adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

Counties that fully plan under the GMA must include a plan, scheme, or design for different types of land use areas, including 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.

State Environmental Policy Act.

The 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. The SEPA environmental review process involves a project proponent or the lead agency completing an environmental checklist to identify and evaluate probable environmental impacts. Government decisions that the SEPA-checklist process identifies as having significant adverse environmental impacts must then undergo a more comprehensive environmental analysis in the form of an Environmental Impact Statement (EIS).

Projects which undergo a SEPA review may be required to mitigate significant adverse environmental impacts in order to receive approval from the government entity performing the SEPA analysis. Project proponents may also choose to mitigate environmental impacts identified in the environmental checklist in order to receive a determination that the project does not have significant environmental impacts, and therefore can avoid the process of completing an EIS for the project.

State Environmental Policy Act—Subarea Plans.

A city with a population greater than 5,000 may adopt optional elements of its comprehensive plans and optional development regulations that apply within specified

subareas of the cities that are either: areas designated as mixed-use or urban centers in a land use or transportation plan adopted by a regional transportation planning organization; or areas within 0.5 miles of a major transit stop that are zoned to have an average minimum density of 15 dwelling units or more per gross acre.

A city that elects to include subarea development elements into its comprehensive plan must prepare a nonproject EIS specifically for the subarea. At least one community meeting must be held before the scoping of the EIS. All property owners within the subarea and within 150 feet of the subarea must be notified of the community meeting. Additional notice provisions are specified. A person may appeal the adoption of the subarea or the implementing regulations if they meet the requirements for standing provided in the GMA.

In a city with over 500,000 residents (large city), community meeting notices must be mailed to all small businesses within the subarea and within 150 feet of the subarea. A large city must also analyze whether the subarea plan will result in the displacement or fragmentation of businesses, existing residents, or cultural groups. The analysis must be discussed at the community meeting and incorporated in the nonproject EIS.

Until July 1, 2018, project-specific developments cannot be appealed as long as they are within the scope of the EIS and the development application is vested within a timeframe established by the city not to exceed 10 years from the adoption of the final EIS. After July 1, 2018, project specific developments cannot be appealed as long as they are within the scope of the EIS, the final EIS is issued by July 1, 2018, and the development application is vested.

State Environmental Policy Act—Categorical Exemptions.

Under SEPA, certain nonproject actions are categorically exempted from the requirements of SEPA. Examples of categorically exempt nonproject actions include certain amendments to development regulations and certain amendments to technical codes.

State Environmental Policy Act—Categorical Exemptions—Infill Development.

Counties and cities planning fully under GMA may establish categorical exemptions from the requirements of SEPA to accommodate infill development. Locally authorized categorical exemptions may differ from the categorical exemptions established by the Department of Ecology by rule. Under the infill development categorical exemption, cities and counties may adopt categorical exemptions to exempt government action related to development that is new residential development, mixed-use development, or commercial development up to 65,000 square feet, proposed to fill in an urban growth area when:

- current density and intensity of the use in the area is lower than called for in the goals and policies of the applicable comprehensive plan;
- the action would not exceed the density or intensity of use called for in the goals and policies of the applicable comprehensive plan;
- the local government considers the specific probable adverse environmental impact of the proposed action and determines that those specific impacts are adequately addressed by other applicable regulations, comprehensive plans, ordinances, or other local, state, and federal laws and rules; and
- the applicable comprehensive plan was previously subjected to environmental analysis through an EIS according to SEPA.

Summary of Engrossed Second Substitute Bill:

Increased Residential Building Capacity and Housing Affordability.

Cities planning fully under the Growth Management Act (GMA) are encouraged to take two or more of the following actions in order to increase residential building capacity:

- authorize development of at least 50 residential units per acre in one or more areas of not fewer than 500 acres that include one or more train stations served by commuter rail or light rail;
- authorize development of an average of at least 25 residential units per acre in one or more areas of not fewer than 500 acres in cities with a population greater than 40,000, or areas of not fewer than 250 acres in cities with a population less than 40,000, that include one or more bus stops served by scheduled bus service of at least four times per hour for 12 or more hours per day;
- authorize at least one duplex, triplex, or courtyard apartment on each parcel in one or more zoning districts that permit single-family residences unless a city documents a specific infrastructure or physical constraint that would make this requirement unfeasible for a particular parcel;
- authorize cluster zoning or lot size averaging in all zoning districts that permit single-family residences;
- authorize accessory dwelling units on all lots located in zoning districts that permit single-family residences, subject to certain restrictions;
- adopt a subarea plan pursuant to the State Environmental Policy Act (SEPA);
- adopt a planned action pursuant to the planned action provisions of SEPA, except that an Environmental Impact Statement (EIS) need not be prepared for such a planned action;
- adopt increases in categorical exemptions pursuant to the infill development provisions of SEPA for single-family and multifamily development;
- adopt a form-based code in one or more zoning districts that permit residential uses;
- authorize a duplex on each corner lot within all zoning districts that permit single-family residences;
- allow for the division or redivision of land into the maximum number of lots through the short subdivision process; and
- authorize a minimum net density of six dwelling units per acres in all residential zones.

Cities planning fully under the GMA may adopt a housing action plan. The goal of the housing plan must be to encourage construction of additional affordable and market rate housing in a greater variety of housing types and at prices that are accessible to a greater variety of incomes. The housing action plan should, among other things, quantify existing and projected housing needs for all income levels and develop strategies to increase the supply of housing, and should consider strategies to minimize displacement of low-income residents resulting from redevelopment and review and evaluate the current housing element.

If taken prior to April 1, 2021, the actions taken by a city to implement the residential building capacity elements are exempt from administrative or judicial appeal under SEPA and the Growth Management Act.

A city with a population over 20,000 that is planning to take at least two actions to increase residential building capacity by April 1, 2021 is eligible to apply for a grant of up to \$100,000 from the Department of Commerce (Commerce) to support planning and outreach efforts. A city seeking to develop a housing action plan is also eligible to apply for a grant of up to \$100,000 from Commerce. Commerce must establish grant award amounts that take into consideration if the proposed action will create a significant amount of housing capacity or regulatory streamlining.

Growth Management Act—Definitions.

The following terms are added to the definitions within the GMA:

- "affordable housing" means, unless the context clearly indicates otherwise, residential housing whose monthly costs, including utilities other than telephone, do not exceed 30 percent of the monthly income of a household whose income is, for rental housing 60 percent or for owner-occupied housing 80 percent, of the median family income adjusted for family size, for the county where the household is located, as reported by the United States Department of Housing and Urban Development (HUD);
- "extremely low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below 30 percent of the median family income adjusted for family size, for the county where the household is located, as reported by the HUD;
- "low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below 80 percent of the median family income adjusted for family size, for the county where the household is located, as reported by the HUD; and
- "very low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below 50 percent of the median family income adjusted for family size, for the county where the household is located, as reported by the HUD; and
- "permanent supportive housing" means subsidized, leased housing with no limit on length of stay, paired with on-site or off-site voluntary services designed to support a person living with a disability to be a successful tenant in a housing arrangement, improve the resident's health status, and connect residents of the housing with community-based health care, treatment, and employment services.

Housing Supply and Affordability Report.

The University of Washington, through the Washington Center for Real Estate Research, shall produce a report every two years that compiles housing supply and affordability metrics for each city planning under the GMA with a population of 10,000 or more. The report must be a compilation of objective criteria relating to development regulations, zoning, income, housing and rental prices, housing affordability programs, and other metrics relevant to assessing housing supply and affordability for all income segments. The Washington Center for Real Estate Research shall collaborate with the Washington Housing Finance Commission and the Office of Financial Management to develop the metrics compiled in the report. The report must be submitted to the Legislature by October 15 of each even-numbered year beginning in 2020.

Growth Management Act—Minimum Residential Parking Requirements.

For affordable housing units that are affordable to very low-income or extremely low-income individuals and that are located within 0.25 miles of a transit stop that receives transit service at least four times per hour for 12 or more hours per day, minimum residential parking requirements may be no greater than one parking space per bedroom or 0.75 spaces per unit.

For housing units that are specifically for seniors or people with disabilities, that are located within 0.25 miles of a transit stop that receives transit service at least four times per hour for 12 or more hours per day, no minimum residential parking requirement may be imposed, with certain exceptions.

State Environmental Policy Act—Transportation Elements.

A project action evaluated under SEPA by a city, county, or town planning fully under the GMA is exempt from appeals under SEPA on the basis of the evaluation of or impacts to transportation elements of the environment, so long as the project does not present significant adverse impacts to state highways as determined by the Department of Transportation and the project is:

- consistent with a locally adopted transportation plan; or
- consistent with the transportation element of a comprehensive plan, and either a project for which traffic or parking impact fees are imposed pursuant to, or a project for which traffic or parking impacts are expressly mitigated by, an ordinance adopted by the city, town, or county.

State Environmental Policy Act—Subarea Plans.

The requirement that cities with populations greater than 500,000 take certain actions regarding notice of scoping for a nonproject EIS related to subarea plans is eliminated. The requirement that cities with populations greater than 500,000 analyze whether an adopted subarea plan will result in displacement or fragmentation of certain populations is eliminated.

Until July 1, 2029, a proposed development that meets the criteria described below is exempt from appeal under SEPA as long as a complete application for such a development is submitted to the city within a time frame established by the city, not to exceed 19 years from the date of issuance of the final EIS for projects that are consistent with an optional element adopted by a city as of the effective date of this section, or 10 years from the date of issuance of the final EIS for projects that are consistent with an optional element adopted by a city after the effective date of this section.

The criteria that a proposed development must meet in order to qualify for the SEPA appeal exemption are:

- the development must be consistent with the optional comprehensive plan or subarea plan policies and development regulations adopted under the SEPA subarea plan provisions;
- the development must set aside or require the occupancy of at least 10 percent of the dwelling units, or a greater percentage as determined by city development regulations, within the development for low-income households at a sale price or rental amount that is considered affordable by a city's housing program, for projects that are consistent with an optional element of a subarea plan adopted after the effective date of the act; and

- the development must be environmentally reviewed through a nonproject EIS pursuant to the SEPA subarea plan provisions.

Growth Management Planning and Environmental Review Fund.

The scope of permissible uses of the GMA Planning and Environmental Review Fund is expanded to include planning grants, the biennial study prepared by Washington Center for Real Estate Research, and costs associated with the adoption of optional elements of comprehensive plans.

Permanent Supportive Housing.

A city may not prohibit permanent supportive housing in areas where multifamily housing is permitted.

Recording Fee.

A surcharge of \$2.50 must be charged by the county auditor for each document recorded. Each county auditor must remit the collected funds to the Washington State Treasurer. The funds must initially be deposited in the GMA Planning and Environmental Review Fund. Beginning in 2024, sufficient funds must be deposited in the GMA Planning and Environmental Review Fund for the costs associated with the biennial report on housing supply and affordability required by the act, and the remainder of the funds must be deposited into the Home Security Fund Account. The surcharge does not apply to certain documents, including, among others, documents recording a birth, marriage, divorce, or death.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except section 11, relating to the document recording surcharge, which takes effect July 1, 2019.

Staff Summary of Public Testimony (Environment & Energy):

(In support) This bill represents a big step forward. There are multiple proposals before the Legislature on the housing crisis, and this one does a good job of addressing the issue of density in urban areas. There should be a minimum density requirement, at least in most cities, that have the urban services to accommodate growth, such as light rail service.

This bill will help ensure cities do their part to provide enough homes for all of Washington. Rents are rising faster than incomes and the reason is that not enough new homes are being built. One factor holding housing back is restrictive zoning. This bill is not a silver bullet, but silver buckshot. Every city is unique, so the bill allows individual cities flexibility to adopt measures that work for them.

Affordability will never happen without taking additional actions. By passing a suite of complementary bills, Washington has a chance to be a national model for housing affordability.

There should be language in the bill about deep affordability. There should also be anti-displacement language in the bill. It is important to put affordable housing dollars to work faster. This bill deals with unnecessary parking requirements, impediments to permanent supportive housing, and higher impact fees for multi-family housing.

(Opposed) The bill silences citizens because they do not get to appeal when there has been a change in zoning. There is no clear definition of affordable housing. It would be good to look at the profiteering aspect of the bill.

The key to affordability is supply, and the bill makes a good faith effort at syncing up state policies to make that happen. There are concerns with elements of the mandatory affordability requirement.

This bill is the best of the various bills the Legislature is considering this year for housing affordability and building capacity. Zoning is not the major impediment to development in most cities. People simply will not build projects if they do not pencil out. There should be greater protection from appeals if the state is going to tell local governments to adopt these policies.

(Other) The outline of the legislation is fantastic. There are concerns about the safe harbor with regard to appeals under the State Environmental Policy Act (SEPA). Deeper affordability and displacement are important to look at. There may be value in looking at a sliding scale of cities that are subject to the requirements, rather than a flat number of 10,000. The housing element in section 2 of the bill should be better linked to section 1 in terms of requirements.

It is good to have a greater variety of housing options. It is important not to lose sight of the fiscal impact of the housing element update requirements. The state is not really funding periodic updates to comprehensive plans now; for cities to get that work done, they will need some help. The relationship is unclear between the appeal process and the role of the Department of Commerce.

Increasing housing near transit is a fundamental principle of good planning. There are some technical issues in the bill that should be addressed; for example, the bill amends the Growth Management Act to remove the requirements for an Environmental Impact Statement (EIS), but it also amends SEPA in a way that contemplates that an EIS would be prepared.

It is good to recognize the power of transit-oriented development. Increasing urban housing density in the vicinity of transit is much more efficient. There should be a role for the Department of Transportation to determine whether a project poses a significant impact to the state transportation system.

The bill will go a long way to helping to get more housing supply on the ground for all income levels.

Staff Summary of Public Testimony (Appropriations):

(In support) The legislation will increase housing near jobs that are critical to working families. The creation of additional construction jobs will stimulate the economy. This bill is a work in progress to find the right balance of density, affordability, and housing options that reflect the needs of the community.

(Opposed) Market rate is determined by negotiations between buyers and sellers; government should not attempt to control the residential real estate market. Lowering construction costs does not necessarily lead to residential projects, unless those units can be sold or rented. The attempt to balance density and redevelopment challenges faced by cities is an important one. However, cities with extensive zoning and streamlined permitting are still not seeing increased development. Additional resources are needed.

(Other) Affordable home ownership options of all kinds are needed. Local jurisdictions should be appropriately encouraged to create growth and development opportunities.

Persons Testifying (Environment & Energy): (In support) Representative Fitzgibbon, prime sponsor; Alex Hur, Master Builders Association of King and Snohomish Counties; Craig Enkelking, Sightline; and Michele Thomas, Washington Low-Income Housing Alliance.

(Opposed) Carl Schroeder, Association of Washington Cities; Jan Himebaugh, Building Industry Association of Washington; and Phyllis Booth.

(Other) Bryce Yadon, Futurewise; Dave Anderson, Department of Commerce; Tim Gates, Department of Ecology; Elizabeth Robbins, Department of Transportation; and Jeanette McKasgue, Washington Realtors.

Persons Testifying (Appropriations): (In support) Joe Kendo, Washington State Labor Council and American Federation of Labor and Congress of Industrial Organizations; and Alex Hur, Master Builders Association of King and Snohomish Counties.

(Opposed) Bob Jacobs; and Carl Schroeder, Association of Washington Cities.

(Other) Jan Himebaugh, Building Industry Association of Washington.

Persons Signed In To Testify But Not Testifying (Environment & Energy): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.