

SENATE BILL REPORT

E2SHB 1923

As Reported by Senate Committee On:
Housing Stability & Affordability, April 1, 2019
Ways & Means, April 9, 2019

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

Committee Activity: Housing Stability & Affordability: 3/27/19, 4/01/19 [DPA-WM, DNP].

Ways & Means: 4/05/19, 4/09/19 [DPA, w/oRec, DNP].

Brief Summary of Amended Bill

- Requires cities with a population greater than 40,000, planning under the Growth Management Act (GMA), to take at least two actions to increase residential building capacity by April 1, 2021.
- Exempts amendments to development regulations made to implement actions to increase residential building capacity from appeals under the State Environmental Policy Act.
- Directs the Center for Real Estate Research at the University of Washington to produce a report every two years compiling housing supply and affordability metrics for certain cities planning under the GMA.
- Authorizes a city complying with residential building capacity actions to be eligible for a one-time grant of \$100,000 from the Department of Commerce.
- Imposes a \$2.50 document recording surcharge for five years of implementation costs, and thereafter the funds may be used for permanent supportive housing.

SENATE COMMITTEE ON HOUSING STABILITY & AFFORDABILITY

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.

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Kuderer, Chair; Das, Vice Chair; Darneille and Saldaña.

Minority Report: Do not pass.
Signed by Senators Zeiger, Ranking Member; Fortunato and Warnick.

Staff: Jeff Olsen (786-7428)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.
Signed by Senators Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Bailey, Billig, Carlyle, Darneille, Hunt, Keiser, Liias, Palumbo, Pedersen, Van De Wege and Warnick.

Minority Report: That it be referred without recommendation.
Signed by Senators Brown, Assistant Ranking Member, Operating; Conway, Hasegawa and Schoesler.

Minority Report: Do not pass.
Signed by Senators Braun, Ranking Member; Honeyford, Assistant Ranking Member, Capital; Becker and Wagoner.

Staff: Julie Murray (786-7711)

Background: Growth Management Act. The GMA is the comprehensive land use planning framework for counties and cities in Washington. The GMA establishes land use designations 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 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; and
- 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 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.

State Environmental Policy Act. The State Environmental Policy Act (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 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 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 5000 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 scoping the EIS. All property owners within the subarea and within 150 feet of the subarea must be notified of the community meeting. 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 large city with over 500,000 residents, 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 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.

Impact Fees. Counties and cities that are obligated by population or choice to fully plan under the GMA may impose impact fees on development activity as part of the financing of public facilities needed to serve new growth and development. This financing cannot rely solely on impact fees and must provide a balance between impact fees and other sources of public funds. Additionally, impact fees:

- may only be imposed for system improvements, a term defined in statute, that are reasonably related to the new development;
- may not exceed a proportionate share of the costs of system improvements; and
- must be used for system improvements that will reasonably benefit the new development.

County Recording Surcharges. County auditors are the recording officers of counties for a variety of documents relating to real property, marriage licenses, other vital statistics, and other matters required by law to be filed and recorded in the county. There is a surcharge for affordable housing for all and an additional surcharge for local homeless housing and assistance. The surcharge for affordable housing for all is \$13, of which the county auditor retains up to 5 percent for collecting and administering the funds. The Affordable Housing for All Account receives 40 percent of the funds collected. The Department of Commerce uses these funds to provide housing and shelter for extremely low-income households. The remaining funds may be used by counties to fund eligible housing activities for very low-income households, with priority for extremely low-income households.

The county auditor must charge an additional \$62 surcharge to administer the requirements of the Homeless Housing and Assistance Act. 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.

Summary of Amended Bill: Increased Residential Building Capacity and Housing Affordability. To increase residential building capacity cities planning under the GMA with a population greater than 40,000 must take at least two of the following actions, and a city with a population between 20,000 and 40,000 must take at least one of the following actions, by April 1, 2021:

- authorize development of an average of at least 50 residential units per acre 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 that include one or more bus stops served by scheduled bus service;
- authorize at least one duplex, triplex, or courtyard apartment on each parcel in zoning districts that permit single-family residences unless a city documents a 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;
- require no more than one on-site parking space per two bedrooms in the portions of multifamily zones that are located within 0.5 miles of a fixed guideway transit station;
- authorize accessory dwelling units on all lots located in zoning districts that permit single-family residences, subject to certain restrictions;
- adopt a planned action pursuant to the subarea plan provisions of SEPA;
- adopt a planned action pursuant to the planned action provisions of SEPA, except that an 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;
- identify questions in the SEPA checklist that are adequately covered by a locally adopted ordinance, development regulation, land use plan, or other legal authority;
- form or joining existing subregional partnerships with neighboring jurisdictions to implement and promote affordable housing programs;
- authorize a 20 percent density bonus for all residential development projects when at least 10 percent of the total units within the project are provided as affordable housing;
- allow for the division of land into the maximum number of lots; or
- authorize a minimum net density of six dwelling units per acre.

Cities with a population of 20,000 or less are encouraged to increase residential building capacity. A city may rely on actions that take effect on or after January 1, 2012, for purposes of compliance with the requirements to increase residential building capacity.

A city may adopt a housing action plan by April 1, 2021, to encourage additional affordable and market rate housing as an alternative to adopting two action items to increase residential building capacity. 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 must

quantify existing and projected housing needs for all income levels and develop strategies to increase the supply of housing. The plan must consider strategies to minimize displacement of low-income residents resulting from redevelopment and review and evaluate the current housing element. If a housing action plan is not adopted by April 1, 2021, a city must otherwise take actions to comply with residential building capacity requirements by October 1, 2021.

The actions taken by a city or county to implement the residential building capacity elements are exempt from administrative or judicial appeal under SEPA.

A city that is subject to the residential building capacity requirements must certify to the Department of Commerce (Commerce) once it has satisfied the requirements. A city that has complied with the requirements by December 31, 2022 is eligible to apply for a one-time grant of \$100,000 from Commerce to support planning and outreach efforts.

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

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 based on the evaluation of or impacts to transportation elements of the environment. To qualify for the SEPA exemption, the project must not present significant adverse impacts to state highways as determined by the Department of Transportation. In addition, the project must be consistent with a locally adopted transportation plan or a 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. The time frame may not 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 consistent with an optional element adopted by a city after the effective date of this section.

The criteria that a proposed development must meet 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.

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 15th of each even-numbered year beginning in 2020.

Impact Fees. A local ordinance imposing impact fees may not charge a higher per unit fee for multifamily residential construction than for single-family residential construction. In addition, the local ordinance may not impose impact fees that exceed \$50,000 for any single-family residential unit, as adjusted annually for inflation.

Document Recording Fee Surcharge. A \$2.50 document recording surcharge is imposed on each document recorded with county auditors to be deposited into the Growth Management Planning and Environmental Review Fund. For the first five fiscal years, funds may be used for planning grants and for the Washington Center for Real Estate Research reports, and thereafter for any allowable use of the fund. Beginning July 1, 2024, surcharge funds must be deposited into the Washington Housing Trust Fund for permanent supportive housing.

EFFECT OF WAYS & MEANS COMMITTEE AMENDMENT(S):

- Requires cities over 40,000 in population to select at least two actions, and cities between 20,000 and 40,000 in population to select at least one action to increase residential building capacity by April 1, 2021.
- Limits cities required to take at least two actions from choosing only transit density actions, unless those actions are in different geographic areas.
- Adds additional actions a city may choose to increase residential building capacity including the division of land into the maximum number of lots, establishing certain minimum net density requirements, and authorizing certain accessory dwelling units.
- Modifies acreage requirements for cities under 40,000 in population that choose to develop density requirements near bus service.
- Requires a city that chooses to adopt a housing action plan, to develop the plan by April 1, 2021, or otherwise comply with residential building capacity requirements by October 1, 2021.
- Clarifies that cities and counties that take actions to increase residential building capacity under the act are exempt from appeals under the State Environmental Policy Act.

- Adds a definition of permanent supportive housing and makes several clarifying and technical changes.
- Authorizes the \$50,000 cap on impact fees to be adjusted annually for inflation.
- Clarifies a city that complies with the requirements of the act by using actions taken prior to the effective date of the act are not eligible for grant funds.
- Imposes a \$2.50 document recording surcharge on each document recorded with county auditors to be deposited into the Growth Management Planning and Environmental Review Fund for five fiscal years, to be used first for planning grants for costs associated with implementing actions to increase residential density, for the Washington Center for Real Estate research reports, and thereafter for any allowable use of the fund.
- Beginning July 1, 2024, surcharge funds must be deposited into the Washington Housing Trust Fund for permanent supportive housing.

EFFECT OF HOUSING STABILITY & AFFORDABILITY COMMITTEE AMENDMENT(S):

- Requires, rather than encourages, cities over 20,000 in population to select at least two or more actions to increase residential density by December 31, 2022.
- Adds forming or joining existing subregional partnerships with neighboring jurisdictions to implement and promote affordable housing programs as an action item a city may select to increase residential density.
- Adds a 20 percent density bonus for all residential development projects when at least 10 percent of the total units within the project are provided as affordable housing as an action item a city may select to increase residential density.
- Encourages cities under 20,000 in population to take one or more action items to increase residential density.
- Amendments to development regulations and other nonproject actions taken by a city to add residential density requirements are exempt from appeals under SEPA, rather than categorically exempt from SEPA.
- Directs the Center for Real Estate Research at the University of Washington, in collaboration with the Housing Finance Commission and the Office of Financial Management, to produce a report every two years compiling housing supply and affordability metrics for each city planning under the GMA.
- A city that has complied with requirements to take at least two actions to increase residential density is eligible to apply to Commerce for a one-time grant of \$100,000.
- Encourages cities to prioritize creating affordable, inclusive neighborhoods and consider displacement.
- Modifies parking requirements for certain affordable housing units that are affordable to very low-income or extremely low-income individuals near transit locations.
- Removes the requirement for cities over 500,000 regarding notice of scoping for a nonproject EIS related to a subarea plan.
- Removes the requirement for cities over 500,000 to analyze whether an adopted subarea plan will result in displacement or fragmentation of certain populations.
- A city may not prohibit permanent supportive housing in areas where multifamily housing are permitted.

- Authorizes a city to adopt a housing action plan to encourage additional affordable and market rate housing as an alternative to adopting two action items to increase residential building capacity.
- Limits impact fees to less than \$50,000 for any single-family residential unit.
- Modifies the null and void clause stating that if specific funding is not provided in the budget, including an amount not less than \$100,000 per city subject to residential density requirements, the act is null and void.

Appropriation: The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

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 Engrossed Second Substitute House Bill (Housing Stability & Affordability): *The committee recommended a different version of the bill than what was heard.* PRO: The original version of the bill is a more ambitious version than the bill in committee today. One of the more substantive aspects of the bill is exempting actions by cities to grow housing supply from the requirements of SEPA. While the bill does exempt certain actions from SEPA, the intent was to only exempt those actions from appeals under SEPA. The list of actions that cities may adopt were required in earlier versions of the bill. The goal is to provide a flexible menu of options for cities to choose that would grow the housing supply. It is important for cities to have the proper metrics that will help match incomes and needs of community members with housing. Cities need options to deliver more housing for all income levels. Encouraging rather than requiring actions will not adequately address the housing crisis. Many local governments would like to see increased densities, but they face many challenges and appeals. Affordable housing where for the middle class where jobs are is becoming out of reach for many workers. There is a supply problem in the housing market, and this bill helps to address that problem by increasing densities and building more housing. Cities appreciate the optional approach in the bill that allows for a broad menu of items cities can choose from to meet their diverse needs.

CON: There are signs that the residential market is recovering and rents and prices have stabilized. The private market establishes house prices. The focus should be on people with lower incomes, the working poor and the homeless, so they can participate in the housing market. The state and federal government needs to play a larger role in helping address the subsidized sector and homeless.

OTHER: Cities should be required to take actions to increase density and affordability, not just encouraged. The bill contains both short term and long term actions that need to be done to increase housing supply and affordability. There should be increased affordability requirements and anti-displacement provisions added to the bill. Many local governments cannot increase their zoning densities because their community does not support it. The list of menu items that the city can choose from to increase density could be increased.

Nonprofit developers have identified impediments to developing affordable housing including zoning restrictions and other barriers.

Persons Testifying (Housing Stability & Affordability): PRO: Representative Joe Fitzgibbon, Prime Sponsor; Alex Hur, Master Builders Association of King and Snohomish Counties; Madeline Kovacs, Sightline Institute; Jeanette McKague, Washington Realtors; Carl Schroeder, Association of Washington Cities; Joe Kendo, Washington State Labor Council, AFL-CIO.

CON: Bob Jacobs, citizen.

OTHER: Michele Thomas, Washington Low Income Housing Alliance; Jan Himebaugh, Building Industry Association of Washington; Bryce Yadon, Futurewise.

Persons Signed In To Testify But Not Testifying (Housing Stability & Affordability): No one.

Staff Summary of Public Testimony on the Bill as Amended by Housing Stability & Affordability (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: The bill contains actions that cities can take to increase density, and also allows a city to develop a housing action plan. Washington needs to increase density but also needs to balance growth with affordable housing. The planning grants in the bill are important to support the local jurisdictions undertaking the work to increase density and affordable housing. To improve the bill there should be two lists of actions, one for density and one for affordability. The housing action plan option may result in just another study and no real action. With 2 million people expected in the future, we need to plan for that growth. The bill is a balance between local control and state interest. The University of Washington Real Estate Research Center housing supply data will be of great use to cities when they are working on these actions to increase building capacity. Local jurisdictions need to get housing in the right places for the right income levels, and need to develop all markets, including work force housing.

OTHER: Many cities have already been working on their development regulations. There are also market factors and infrastructure constraints that impact development, not just zoning. The state should partner with local governments to defray the costs of updating their codes. One way to control the fiscal impacts of the bill is to limit the number of cities that are impacted by raising the population threshold. Currently, there are approximately 50 cities that would qualify for the \$100,000 grants, for a total cost of approximately \$5 million. The bill provides relief from appeals under SEPA, but the actions taken in the bill by local jurisdictions are still subject to the SEPA process.

Persons Testifying (Ways & Means): PRO: Bryce Yadon, Futurewise; Michele Thomas, Washington Low Income Housing Alliance; Craig Engelking, Sightline Institute; Alex Hur, Master Builders Association of King and Snohomish counties; Jan Himebaugh, Building Industry Association of Washington; Jeanette McKague, Washington REALTORS.

OTHER: Carl Schroeder, Association of Washington Cities; Mark McCaskill, Department of Commerce, Managing Director, Growth Management Services.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.