

HOUSE BILL REPORT

SSB 5818

As Passed House - Amended:

March 4, 2022

Title: An act relating to promoting housing construction in cities through amendments to and limiting appeals under the state environmental policy act and growth management act.

Brief Description: Promoting housing construction in cities through amendments to and limiting appeals under the state environmental policy act and growth management act.

Sponsors: Senate Committee on Housing & Local Government (originally sponsored by Senators Salomon, Lias, Kuderer, Saldaña and Short).

Brief History:

Committee Activity:

Environment & Energy: 2/24/22 [DP].

Floor Activity:

Passed House: 3/4/22, 97-1.

Brief Summary of Substitute Bill (As Amended by House)

- Exempts certain nonproject actions to increase housing capacity from review and appeal under both the Growth Management Act and the State Environmental Policy Act (SEPA).
- Exempts certain project actions from appeal under SEPA on the basis of impacts to the aesthetics and light and glare elements of the environment if the project is subject to design review at the local government level.
- Directs the Department of Ecology to modify maximum thresholds in certain SEPA categorical exemptions.
- Exempts a project applicant whose project qualifies as exempt or categorically exempt under SEPA from certain requirements to provide documentation to prove the exemption if certain conditions are met.

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

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: Do pass. Signed by 13 members: Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Abbarno, Berry, Boehnke, Fey, Goehner, Harris-Talley, Ramel, Shewmake and Slatter.

Staff: Robert Hatfield (786-7117).

Background:

Growth Management Act.

The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. 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 28 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 also 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. When developing their comprehensive plans, counties and cities must consider various goals set forth in statute.

Growth Management Act—Housing Element.

Each comprehensive plan must include a housing element. The housing element must ensure the vitality and character of established residential neighborhoods and, among other requirements must include an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth, including emergency housing, emergency shelters, and permanent supportive housing.

Growth Management Act—Increased Housing Capacity.

The adoption of ordinances, amendments to development regulations, and other nonproject actions taken by a city to implement certain actions related to increasing housing supply are not subject to administrative or judicial appeal under the State Environmental Policy Act (SEPA) if the adoption occurs prior to April 1, 2023. These actions include, among others:

- authorizing cluster zoning or lot size averaging in all zoning districts that permit single-family residences;
- authorizing a duplex on each corner lot within all zoning districts that permit single-family residences; and
- removing owner occupancy requirements related to accessory dwelling units.

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. Decisions made under SEPA may generally, although not always, be appealed, first at the administrative level, and then at the judicial level.

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 either a locally adopted transportation plan or the transportation element of a comprehensive plan; and
- 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—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. The Department of Ecology is directed to adopt rules that establish additional classes of governmental actions that are categorically exempt from review under SEPA.

Summary of Amended Bill:

State Environmental Policy Act—Exemption from Review and Appeal.

The adoption of ordinances, development regulations and amendments to such regulations, and other nonproject actions taken by a city to implement certain actions related to increasing housing supply are not subject to administrative or judicial appeal under the State Environmental Policy Act (SEPA).

The adoption of ordinances, development regulations and amendments to such regulations, and other nonproject actions by a city planning fully under the Growth Management Act (GMA) that increase housing capacity, increase housing affordability, and mitigate displacement and that apply outside of critical areas are not subject to environmental or judicial review under SEPA unless the adoption of such ordinances, development

regulations and amendments to such regulations, or other nonproject actions has a probable significant adverse impact on fish habitat.

Growth Management Act—Exemption from Review and Appeal.

Any action taken by a city prior to April 1, 2023, to amend its comprehensive plan, or to adopt or amend ordinances or development regulations, solely to implement certain actions related to increasing housing supply is not subject to legal challenge under the GMA.

State Environmental Policy Act—Exemptions.

Project actions that pertain to residential, multifamily, or mixed-use development evaluated under SEPA by a city or town planning fully under the GMA are exempt from appeals under SEPA on the basis of the evaluation of or impacts to the aesthetics or light and glare elements of the environment, provided the project was subject to design review pursuant to adopted design review requirements at the local government level.

"Design review," for the purposes of the exemptions described above, is defined as a formally adopted local government process by which projects are reviewed for compliance with design standards for the type of use adopted through local ordinance.

The existing exemption within SEPA that exists for certain project actions related to impacts to the transportation element of the environment is modified to provide that it does not apply if the Department of Transportation has found that the project will present significant adverse impacts to the state-owned transportation system.

By December 31, 2022, the Department of Ecology is required to modify its categorical exemption rules to accomplish the following:

- add the construction of four attached single-family residential units to the current exemption that applies to the construction of four detached single-family residential units;
- create a new categorical exemption for single-family residential project types with a total square footage of fewer than 1,500 square feet in incorporated urban growth areas (UGAs) of at least 100 units;
- increase the existing maximum categorical exemption levels for multifamily residential project types in incorporated UGAs from 60 units to 200 units; and
- add the following sentence to Ecology's categorical exemptions related to minor new construction: "The city, town, or county must document the result of its outreach with the department of transportation on impacts to state-owned transportation facilities, including consideration of whether mitigation is necessary for impacts to state-owned transportation facilities."

Any applicant whose project qualifies as exempt or categorically exempt under SEPA is not required to file a checklist or any other paperwork to prove the exemption if the initial project application contains sufficient information showing that the project is exempt or categorically exempt under SEPA.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) There is a crisis of homelessness in Washington. The solution to homelessness is housing. The state has a shortage of 250,000 housing units. Avoiding certain types of appeals simplifies housing construction. Appeals under the State Environmental Policy Act (SEPA) are frequently used as NIMBY (not in my backyard) actions.

The SEPA is a great tool to protect the environment, but should not be used to block development. The bill allows for construction of housing in places where local governments have said they want housing. It is important not to water the bill down; for the bill to work, it needs to be robust.

The bill helps address the state's housing crisis in two key ways. It allows cities to exempt more housing projects from SEPA review if they can show that the same level of environmental review rigor will be maintained. It provides a safe harbor for city development regulations that increase housing capacity.

This bill builds on past work by the Legislature to increase housing capacity in the state.

There have been instances where the weaponization of the SEPA appeals process has delayed housing projects for years. Housing delayed is housing denied.

Stakeholders have struggled to reach agreement on changes that can be made that help housing be produced more quickly. This bill addresses that at both the planning level and the individual project level. Any changes to the law, even small ones, will be helpful at delivering housing. It is important not to go backwards in terms of allowing for housing construction.

(Opposed) None.

Persons Testifying: Cynthia Stewart, League of Women Voters of Washington; Jan Himebaugh, Building Industry Association of Washington; Carl Schroeder, Association of Washington Cities; Bryce Yadon, Futurewise; Ian Morrison, National Association for Industrial and Office Parks; and Scott Hazlegrove, Master Builders Association of King and Snohomish Counties.

Persons Signed In To Testify But Not Testifying: None.