

HOUSE BILL REPORT

ESSB 6061

As Reported by House Committee On:
Local Government

Title: An act relating to exemptions for housing development under the state environmental policy act.

Brief Description: Concerning exemptions for housing development under the state environmental policy act.

Sponsors: Senate Committee on Local Government, Land Use & Tribal Affairs (originally sponsored by Senators Lovelett and Salomon).

Brief History:

Committee Activity:

Local Government: 2/16/24, 2/21/24 [DPA].

Brief Summary of Engrossed Substitute Bill
(As Amended by Committee)

- Requires jurisdictions planning under the Growth Management Act to take additional actions prior to exempting a proposed housing development from the State Environmental Policy Act.
- Requires a city or county to establish the housing development categorical exemption within two years of the date for review or revision of the jurisdiction's comprehensive plan.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass as amended. Signed by 4 members: Representatives Duerr, Chair; Alvarado, Vice Chair; Berg and Riccelli.

Minority Report: Do not pass. Signed by 1 member: Representative Griffey.

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.

Minority Report: Without recommendation. Signed by 2 members: Representatives Goehner, Ranking Minority Member; Jacobsen, Assistant Ranking Minority Member.

Staff: Elizabeth Allison (786-7129).

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 Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities.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 28 counties, and the cities within those counties, that are obligated to satisfy all planning requirements of the GMA.

Counties that fully plan under the GMA must designate urban growth areas (UGAs), within which urban growth must be encouraged and outside of which growth may occur only if it is not urban in nature. Each city in a county must be included in a UGA. Within their UGAs, planning jurisdictions must include sufficient areas and densities to accommodate projected urban growth for the succeeding 20-year period.

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). Under SEPA, certain nonproject actions are categorically exempt from threshold determinations and EISs in rule. Examples of categorical exemptions include various kinds of minor new construction and minor land use decisions.

State Environmental Policy Act—Categorical Exemptions—Housing Development.

All project actions that propose to develop one or more residential housing units within the incorporated areas in a UGA, or middle housing within the unincorporated areas in a UGA, and that meet certain criteria, are categorically exempt from SEPA.

Before adopting the categorical exemption, jurisdictions must satisfy the following criteria:

- The proposed development must be consistent with all development regulations implementing an applicable comprehensive plan under the GMA and adopted by the jurisdiction in which the development is proposed, with the exception of any development regulation that is inconsistent with applicable provisions of the GMA.

- The city or county has prepared an environmental analysis that considers the proposed use, or density and intensity of use, in the area proposed for exemption and analyzes multimodal transportation impacts.

The environmental analysis must include documentation that the requirements for environmental analysis, protection, and mitigation for impacts to elements of the environment have been adequately addressed for the development exempted. Before finalizing the environmental analysis, the local government must provide a minimum of 60 days' notice to affected tribes, relevant state agencies, other jurisdictions that may be impacted, and the public and address any probable adverse impacts.

The categorical exemption is effective 30 days after the above requirements for environmental analysis are completed by a local government.

Until September 30, 2025, all project actions that propose to develop one or more residential housing or middle housing units within a city west of the crest of the Cascade Mountains, with a population of 700,000 or more, are categorically exempt from SEPA. After September 30, 2025, project actions that propose to develop one or more residential housing or middle housing units within the city may utilize the categorical exemption in the manner provided for cities and counties generally.

Summary of Amended Bill:

Before adopting a categorical exemption from SEPA for housing development, in addition to existing requirements, a jurisdiction must determine that the proposed development is capable of being connected to an established sewer system at the time of construction.

Before finalizing the environmental analysis, the local government must provide a minimum of 60 days' notice to relevant state agencies, including the Department of Archeology and Historic Preservation (DAHP), which must review and provide comment on the implications of the project for cultural resources.

A jurisdiction must establish the categorical exemption within two years of the date for review or revision of the jurisdiction's comprehensive plan.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill removes the requirement that an environmental analysis for a proposed development include documentation that the requirements for analysis and protection of cultural resources and any required mitigation have been adequately addressed and specifies that, before an environmental analysis is finalized, the DAHP must review and provide comment on the implications of the project for cultural resources. Jurisdictions must establish the exemption within two years of the date for review or revision of the

jurisdiction's comprehensive plan.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill is a trailer bill to a previous bill that had a SEPA exemption for housing developments. The bill left a couple factors unaddressed, and this bill is narrow in scope to address those. One of these changes is making sure that new development has the ability to connect to an existing sewer. Septic systems can fail and be incredibly expensive to fix. Before building out new development there needs to be available infrastructure. A major flaw of SEPA is that tribes have no interface with the process without cultural resources being present. Rather than having an appeal process for cultural resources, local jurisdictions should be interacting with the DAHP. The final part of this bill is an extension of the timeline, and for smaller jurisdictions that are potentially understaffed, this gives them more time to implement changes.

(Opposed) None.

(Other) Last year's proposal embodied a simple and positive concept, which was removing environmental review from project review to planning review. This, in turn, alleviates the need for additional environmental review at the project level. This bill makes a few changes. There is no objection to the sewer connection requirement. There is already a review for cultural resources as part of the standard environmental analysis. This notice requires 60-day notice to tribes and state agencies, as well as local governments and the public, before the analysis is complete. There should also be notice for folks at the DAHP. The extension of the timeline to potentially five years after the adoption of a comprehensive plan is concerning. One or two years would be preferable.

Persons Testifying: (In support) Senator Liz Lovelett, prime sponsor.

(Other) Scott Hazlegrove, Master Builders Association of King and Snohomish Counties; and Jan Himebaugh, Building Industry Association of Washington.

Persons Signed In To Testify But Not Testifying: None.