

SENATE BILL REPORT

EHB 1337

As Reported by Senate Committee On:
Local Government, Land Use & Tribal Affairs, March 28, 2023

Title: An act relating to expanding housing options by easing barriers to the construction and use of accessory dwelling units.

Brief Description: Expanding housing options by easing barriers to the construction and use of accessory dwelling units.

Sponsors: Representatives Gregerson, Barkis, Berry, Christian, Duerr, Fitzgibbon, Taylor, Ramel, Reeves, Simmons, Walen, Graham, Bateman, Reed, Lekanoff, Doglio, Tharinger, Cortes, Macri and Stonier.

Brief History: Passed House: 3/2/23, 81-15.

Committee Activity: Local Government, Land Use & Tribal Affairs: 3/16/23, 3/28/23 [DPA].

Brief Summary of Amended Bill

- Requires a city or county planning under the Growth Management Act to adopt ordinances, development regulations, or other measures that allow for the construction of accessory dwelling units (ADUs) within urban growth areas (UGAs) within six months after the jurisdiction's next periodic comprehensive plan update.
- Prohibits a city or county from imposing certain regulations or restrictions on the construction of ADUs, including certain maximum gross floor area requirements and roof height limits.
- Authorizes cities and counties to adopt ordinances, development regulations, or other measures that waive, defer, or reduce fees and taxes, or offer other incentives for the construction or development of ADUs that are subject to certain binding commitments or covenants.
- Prohibits restrictive covenants or deed restrictions created after the

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effective date of the bill from prohibiting the construction, development or use of ADUs within UGAs.

- Provides that restrictive covenants or deed restrictions created to protect public health and safety, and ground and surface waters from on-site wastewater may restrict or prohibit the construction, development, or use on a lot of an ADU located in a UGA.
- Repeals statutes regarding accessory apartments.

SENATE COMMITTEE ON LOCAL GOVERNMENT, LAND USE & TRIBAL AFFAIRS

Majority Report: Do pass as amended.

Signed by Senators Lovelett, Chair; Salomon, Vice Chair; Torres, Ranking Member; Kauffman and Short.

Staff: Maggie Douglas (786-7279)

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.

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. Planning jurisdictions must include within their UGAs sufficient areas and densities to accommodate projected urban growth for the succeeding 20-year period.

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. Comprehensive plans must be reviewed and, if necessary, revised every ten years to ensure that it complies with the GMA. When developing their comprehensive plans, counties and cities must consider various goals set forth in statute.

Each comprehensive plan must include a plan, scheme, or design for certain enumerated elements, including a mandatory housing element. The housing element must ensure the

vitality and character of established residential neighborhoods and among other requirements consider the role of accessory dwelling units in meeting housing needs.

Accessory Dwelling Units. Any county fully planning under the GMA, city with a population over 20,000, or county with a population over 125,000 must have accessory dwelling unit (ADU) provisions incorporated in their development regulations, zoning regulations, or official controls. These provisions must be consistent with a 1993 report from the Department of Community, Trade, and Economic Development that provided recommendations to encourage the development and placement of ADUs in areas zoned for single-family residential use. However, local communities have some flexibility to adapt these recommendations to local needs and preferences.

As of July 1, 2021, fully planning cities under the GMA may not require the provision of off-street parking for ADUs within a quarter mile of a major transit stop, such as a high capacity transportation system stop, a rail stop, or certain bus stops, unless the city determines that on-street parking is infeasible for the ADU.

An ADU is a residential living unit providing independent living facilities and permanent provisions for sleeping, cooking, sanitation, and living on the same lot as a single-family home, duplex, triplex, townhome, or other housing unit. A short-term rental is a lodging use, outside of a hotel, motel, or bed and breakfast, in which a room is offered for a fee for fewer than 30 consecutive nights.

Summary of Amended Bill: Accessory Dwelling Units—General Requirements. A city or county fully planning under the GMA must adopt or amend by ordinance, and incorporate into their development regulations, zoning regulations, and other official controls all of the following policies to take effect six months after the jurisdiction's next periodic comprehensive plan update:

- may not assess impact fees on the construction of ADUs greater than 50 percent of the impact fees that would be imposed on the principal unit;
- may not require the owner of a lot on which there is an ADU to reside in or occupy the ADU or another housing unit on the same lot;
- must allow at least two ADUs on all lots located in all zoning districts within an UGA that allow for single-family homes in the following configurations:
 1. one attached ADU and one detached ADU;
 2. two attached ADUs; or
 3. two detached ADUs, which may be comprised of either one or two detached structures;
- permit ADUs in structures detached from the principal unit;
- allow an ADU on any lot that meets the minimum lot size required for the principal unit;
- may not establish a maximum gross floor area requirement for ADUs less than 1000 square feet;
- may not establish roof height limits on ADUs less than 24 feet, unless the height

- limitation that applies to the principal unit is less than 24 feet, in which case the jurisdiction may not impose roof height limitation on ADUs less than the height limitation that applies to the principal unit;
- may not impose setback requirements, yard coverage limits, tree retention mandates, restrictions on entry door locations, aesthetic requirements, or requirements for design review for ADUs that are more restrictive than those for principal units;
 - must allow ADUs to be sited at a lot line if the lot line abuts a public alley, unless the jurisdiction routinely plows snow on the public alley;
 - must allow ADUs to be converted from existing structures, including but not limited to detached garages, even if they violate current code requirements for setbacks or lot coverage;
 - may not prohibit the sale or other conveyance of a condominium unit independently of a principal unit solely on the grounds that the condominium unit was originally built as an ADU; and
 - may not require public street improvements as a condition of permitting ADUs.

A city or county may impose a limit of two accessory dwelling units, in addition to the principal unit, on a residential lot of 2000 square feet or less.

These provisions do not apply to lots designated with critical areas or their buffers, or to a watershed serving as a reservoir for potable water if that watershed is or was listed as impaired or threatened under the United States Clean Water Act.

Incentives. A city or county may adopt ordinances, development regulations, and other official controls that waive or defer fees, including impact fees, defer the payment of taxes, or waive specific regulations. A city or county may only offer such reduced or deferred fees, deferred taxes, waivers, or other incentives for the development or construction of ADUs if:

- the units are located within a UGA; and
- the units are subject to a program adopted by the city or county with effective binding commitments or covenants that the units will be primarily utilized for long-term housing.

Accessory Dwelling Units Guidance Recommendations. The Department of Commerce (Commerce) must revise its recommendations for encouraging ADUs to include the provisions in this act no later than December 31, 2023. During each comprehensive plan review, Commerce must review local government comprehensive plans and development regulations for compliance with this act and the recommendations provided by Commerce.

Applicability of Provisions. A fully planning city or county must adopt or amend by ordinance, and incorporate into their development regulations, zoning regulations, and other official controls the ADU requirements established by this act to take effect six months after the jurisdiction's next periodic comprehensive plan update. Any conflicting development regulations are preempted and superseded after this deadline.

Nothing in this act requires or authorizes a city or county to authorize the construction of an ADU in a location where development is restricted under other laws, rules, or ordinances as a result of physical proximity to on-site sewage system infrastructure, critical areas, or other unsuitable physical characteristics of a property.

Nothing in this act prohibits a city or county from:

- restricting the use of ADUs for short-term rentals;
- applying public health, safety, building code, and environmental permitting requirements to an ADU that would be applicable to the principal unit, including regulations to protect ground and surface waters from on-site wastewater;
- applying generally applicable development regulations to the construction of an ADU, except when the application of such regulations would be contrary to the ADU policies established by this act;
- prohibiting the construction of ADUs on lots not connected to or served by public sewers; or
- prohibiting or restricting the construction of ADUs in residential zones with a density of one dwelling unit per acre or less that are within areas designated as wetlands, fish and wildlife habitats, flood plains, or geologically hazardous areas.

The ordinances, development regulations, and other official controls adopted or amended in accordance with these requirements must only apply to the portions of towns, cities, and counties within UGAs. Attached or detached ADUs may not be considered as contributing to the overall underlying density within the UGA boundary of a county.

Liability. Declarations or governing documents governing condominiums, homeowners' associations, and common interest communities created after the effective date of the act may not prohibit the construction, development, or use of an ADU within a UGA unless such declarations or governing documents were created to protect public health and safety, and ground and surface waters from on-site wastewater. A city or county that issues a permit for the construction of an ADU may not be held civilly liable on the basis that the construction would violate the restrictive covenant or deed restriction created after the effective date of the act.

Any action taken by a city or county to comply with the above policies is not subject to legal challenge under the Growth Management Hearings Board or the State Environmental Policy Act.

Accessory Dwelling Units—Definitions. Terms, including gross floor area and principal unit are defined.

Statutes Repealed. Statutes pertaining to accessory apartments are repealed.

EFFECT OF LOCAL GOVERNMENT, LAND USE & TRIBAL AFFAIRS

COMMITTEE AMENDMENT(S):

- Removes the provision that a city or county may not establish a requirement for the provision of off-street parking for ADUs as one of the three of four options a jurisdiction must adopt in accordance with this act. The remaining options are added as mandatory for a jurisdiction to comply with in accordance with this act.
- Removes the provision that attached or detached accessory dwelling units may not be considered as contributing to the overall underlying density within the urban growth area of a county for purposes of compliance with the growth management act.
- Authorizes cities and counties to impose a limit of two accessory dwelling units, in addition to the principal unit, on a residential lot of 2000 square feet or less.
- Provides that the requirements in Section 3 do not apply to lots designated with critical areas or their buffers, or to a watershed serving a reservoir or potable water if that watershed is or was listed as impaired or threatened under the U.S. clean water act.
- Removes the provision added to the GMA prohibiting a restrictive covenant or deed restriction from imposing any restriction or prohibition on the construction, development, or use on a lot of an ADU located in a UGA. These provisions are now added under the statutes governing condominiums, homeowners' associations, and common interest communities.
- Provides that restrictive covenants or deed restrictions created to protect public health and safety, and ground and surface waters from on-site wastewater may restrict or prohibit the construction, development, or use on a lot of an ADU located in a UGA.

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 on Engrossed House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill has strong support from the House and has been worked on over the course of the last five years. We need at least one million additional housing units in the next 20 years and this bill provides housing options for families with aging parents or families wanting to downsize. These policies are part of the suite of housing policies the Legislature is considering this session. The differences between this bill and a similar ADU Senate bill (SB 5235) are differences in the provisions regarding owner occupancy requirements, parking mandates, impact fees, and maximum amount of ADUs per lot. California recently implemented legislation similar to this bill and as of last year, one in every seven new homes permitted in the state is an ADU, and one in every four new homes permitted in the City of Los Angeles is an ADU. The City of Seattle recently adopted similar provisions, and their ADU permit applications

are up by a factor of three in comparison to recent years. This bill addresses the largest barriers to ADU construction.

CON: There are many housing and land use policies before the Senate that need to be integrated for them to be implementable. The Senate ADU bill is preferred to this bill because it is less prescriptive on minor development regulations and provides greater flexibility for parking requirements. The GMA already requires cities and counties to consider all housing types, including ADUs, when meeting their housing targets. This bill would encourage growth outside urban boundaries, thereby putting the responsibility of providing additional infrastructure to the units on existing homeowners and residents.

OTHER: There are concerns about how this bill will interact with the other housing policies the Legislature is considering this session, specifically the middle housing bill and transit oriented development bill (SB 5466). There are also concerns about the overly prescriptive nature of the development regulations on ADUs under this bill, and it's unclear how ADUs sited at a lot line would be in compliance with the state building code and energy code, as well as the International Fire Code. The bill also needs to address how utilities are provided in the case an ADU is sold as a condo under the provisions of the bill.

Persons Testifying: PRO: Representative Mia Gregerson, Prime Sponsor; MATT HUTCHINS AIA CPHD, AIA Washington Council; Alex Hur, Master Builders Association of King and Snohomish Counties; Dan Bertolet, Sightline Institute; Bill Clarke, WA REALTORS; Troy Schmeil.

CON: Carl Schroeder, Association of Washington Cities; Angie Homola, Environment and Climate Caucus of the Washington State Democratic Party.

OTHER: Kaelene Nobis, City of Kent Senior Long Range Planner; Lacey Jane Wolfe, City of Bellevue; Briahna Murray, Cities of Redmond, Spokane Valley, Pasco.

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