SENATE BILL REPORT
E2SHB 2160

As of February 24, 2024

Title: An act relating to promoting community and transit-oriented housing development.

Brief Description: Promoting community and transit-oriented housing development.

Sponsors: House Committee on Capital Budget (originally sponsored by Representatives Reed, Fey, Mena, Alvarado, Berry, Bateman, Ormsby, Ramel, Macri, Street, Peterson, Gregerson, Ryu, Cortes, Riccelli, Doglio and Pollet; by request of Office of the Governor).

Brief History: Passed House: 2/13/24, 56-40.
Committee Activity: Local Government, Land Use & Tribal Affairs: 2/15/24, 2/20/24 [DPA-WM, DNP].
Ways & Means: 2/24/24.

Brief Summary of Amended Bill

- Establishes that cities planning under the Growth Management Act (GMA) may not enact or enforce any new development regulation within a station area that prohibits the siting of multifamily residential housing on parcels where other residential use is permissible and must allow new residential and mixed-use development within any station area at certain transit-oriented development densities.
- Requires at least 10 percent of all residential units in buildings constructed within a station area be maintained as affordable housing for at least 50 years except under certain conditions.
- Prohibits counties and cities planning under the GMA from requiring off-street parking as a condition of permitting development within a station area, with exceptions.

SENATE COMMITTEE ON LOCAL GOVERNMENT, LAND USE & TRIBAL AFFAIRS

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.

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Lovelett, Chair; Salomon, Vice Chair; Kauffman.

Minority Report: Do not pass.
Signed by Senators Torres, Ranking Member; Short.

Staff: Karen Epps (786-7424)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Trevor Press (786-7446)

Background: Growth Management Act. The Growth Management Act (GMA) is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, the GMA establishes numerous planning requirements for counties and cities obligated by mandate or choice to fully plan under the GMA and a reduced number of directives for all other counties and cities. Twenty-eight of Washington's 39 counties, and the cities within those counties, are planning jurisdictions.

The GMA sets forth 14 planning goals to guide the development and adoption of comprehensive plans and development regulations of counties and cities that fully plan under the GMA. The transportation goal encourages efficient multimodal transportation systems based on regional priorities and coordinated with county and city transportation plans. The housing element must ensure the vitality and character of established residential neighborhoods. Among other things, the housing element must include:

- an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth;
- adequate provisions for existing and projected needs of all economic segments of the community;
- identification and implementation of policies and regulations to address and begin to undo racially disparate impacts, displacement, and exclusion of housing caused by local policies, plans, and actions; and
- establishment of antidisplacement policies.

Fully planning cities are encouraged to take an array of specified planning actions to increase residential building capacity. This may include, for example:

- authorizing a development in one or more areas of certain size that include at least one train station served by commuter rail or light rail with an average of at least 50 residential units per acre that require no more than an average of one on-site parking space per two bedrooms in the portions of multifamily zones located within the area; or
- authorizing a development in one or more areas of certain size and population that include at least one bus stop served by a scheduled bus service of at least four times per hour for 12 or more hours per day with an average of at least 25 residential units

per acre that require no more than an average of one on-site parking space per two bedrooms in portions of the multifamily zones located within the area.

Limits on Minimum Residential Parking Requirements. For affordable housing units, that are affordable to very low-income or extremely low-income individuals and are located within one-quarter mile of a transit stop that receives transit service at least two 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 three-quarters space per unit. For market rate multifamily housing units located within one-quarter mile of a transit stop that receives transit service from at least one route that provides 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 three-quarters space per unit.

Average Minimum Density Requirements. Floor area ratio is the measurement of a building's floor area in relation to the size of the lot or parcel on which the building is located. Minimum density specifies a minimum size, or floor area ratio, for new development.

Joint Legislative Audit and Review Committee. The Joint Legislative Audit and Review Committee (JLARC) is a committee comprised of an equal number of House and Senate members, Democrats and Republicans. JLARC conducts performance audits, program evaluations, sunset reviews, and other analyses. Assignments to conduct studies are made by the Legislature and JLARC itself. Based on these assignments, JLARC's nonpartisan staff auditors, under the direction of the Legislative Auditor, independently seek answers to audit questions and issue recommendations to improve performance. JLARC's audits are directed to be independent, objective, and accurate.

Summary of Amended Bill: Development Regulations Within a Station Area. Cities planning under GMA may not enact or enforce any new development regulation within a station area that prohibits the siting of multifamily residential housing on parcels where any other residential use is permissible. Station area means all lots fully within an urban growth area and fully or partially within a one-half mile walking distance of an entrance to a train station with a stop on a light rail system, a commuter rail stop, or a stop on rail or fixed guideway systems; and one-quarter mile walking distance of a stop on a fixed route bus system that is designated as a bus rapid transit stop in the transit development plan, for which an environmental determination has been issued as required under the State Environmental Policy Act, and that features fixed transit assets that indicate permanent, high capacity service including, but not limited to, elevated platforms or enhanced stations, off-board fare collection, dedicated lanes, busways, or traffic signal priority. A fully planning city may adopt modification to a station area designation, but only after consultation with, and approval by, the Department of Commerce (Commerce).

Cities planning under GMA must allow new residential and mixed-use development within any station area at the transit-oriented development density of:

- at least three and a half floor area ratio, on average, within one-half mile walking distance of an entrance to a train station with a stop on a light rail system, a commuter rail stop, or a stop on rail or fixed guideway systems; and
- at least two and a half floor area ratio, on average, or at least a three floor area ratio, on average, if a city exempts up to 25 percent of station areas, within one-quarter mile walking distance of a stop on a fixed route bus system that is designated as a bus rapid transit stop in the transit development plan, for which an environmental determination has been issued as required under chapter 43.21C RCW, and that features fixed transit assets that indicate permanent, high-capacity service including, but not limited to, elevated platforms or enhanced stations, off-board fare collection, dedicated lanes, busways, or transit signal priority.

Cities planning under GMA may not enact or enforce any development regulation that imposes:

- a maximum floor area ratio of less than the transit-oriented development density for any residential or mixed-use development within a station area, unless a city exempts up to 25 percent of station areas and allows at least a three floor area ratio within the remaining station areas; or
- a maximum residential density, measured in residential units per acre or other metric of land area within a station area.

Cities planning under GMA may designate parts of a station area in which to enact or enforce floor area ratios for residential or mixed-use development more or less than the applicable transit-oriented development density, if the average maximum floor area ratio of all residential and mixed-use areas within a station area is no less than the applicable transit-oriented development density.

Within any station area, any building in which all units are affordable housing for at least 50 years or are dedicated to permanent supportive housing, an additional one and a half floor area ratio in excess of the applicable transit-oriented development density must be permitted. Any floor area within a building located in a station area reserved for residential units in multifamily housing that includes at least three bedrooms must not be counted toward applicable floor area ratio limits.

At least 10 percent of all residential units in buildings constructed within a station area must be maintained as affordable housing for at least 50 years, unless:

- the building is constructed on a lot in which a density that meets or exceeds the transit-oriented development density requirements was authorized prior to January 1, 2024;
- the building is subject to affordability requirements with a lower income threshold or a greater amount of required affordable housing enacted by a city prior to January 1, 2024; or
- a city has enacted or expands a mandatory program that requires a minimum amount of affordable housing that must be provided by residential development, either on-site

or through an in-lieu payment, in an area where development regulations must comply with the transit-oriented development density requirements.

A city is not prohibited from approving a multifamily property tax exemption (MFTE) within a station area so long as the building meets the affordability requirements of a station area and the MFTE requirements.

A city that has enacted an incentive program prior to January 1, 2024, that requires public benefits, such as school capacity, greater amounts of affordable housing, green space, or green infrastructure, in return for additional development allowances, may continue to require such public benefits if complying with the transit-oriented development density provides additional development capacity that would have triggered the public benefits requirements. A city may apply any objective development regulations within a station area that are required for other multifamily residential uses in the same zone, including tree canopy and retention requirements.

The requirements on transit-oriented development regulations do not alter, displace, or limit industrial or agricultural uses or industrial or agricultural areas within the urban growth area or require a city to issue a building permit if other federal, state, and local requirements for a building permit are not met.

Cities planning under GMA may exclude from the requirements on transit-oriented development regulations any portion of a lot designated as a shoreline environment governed by a shoreline master program or as a critical area governed by a critical area ordinance, except for critical aquifer recharge areas where a single-family detached house is an allowed use provided that any requirements to maintain aquifer recharge are met, and any lot that:

- is nonconforming with development regulations governing lot dimensions, unless an applicant demonstrates the nonconforming lot may be developed in compliance with development regulations;
- contains a designated landmark or is located within a historic district established under a local preservation ordinance;
- has been designated as containing urban separators by countywide planning policies; or
- is an industrial, manufacturing, or agricultural designated lot that either is limited to one dwelling unit per lot or only allows housing for individuals and their families. For cities subject to a growth target that limits the maximum residential capacity of the jurisdiction, any additional residential capacity required may not be considered an inconsistency with the countywide planning policies, multicounty planning policies, or growth targets.

The deadline for fully planning cities to comply with the transit-oriented development requirements is based on the date of the city's next comprehensive plan update. Any city that is next required to review its comprehensive plan by December 31, 2024, must comply

by the earlier of December 31, 2029, or its first implementation progress report due after December 31, 2024. Any city that is next required to review its comprehensive plan after December 31, 2024, must comply no later than six months after its first comprehensive plan update due after December 31, 2024. Thereafter, all fully planning cities must comply at each comprehensive plan update or implementation progress report following the completion or funding of any transit stop that would create a new station area.

Commerce must publish a model transit-oriented development ordinance by June 30, 2026, and this ordinance will supersede, preempt, and invalidate local development regulations if a city does not implement the requirements by its deadline. Commerce may approve actions for cities that have, by June 30, 2025, adopted a plan and implementing development regulations for a specific station area substantially similar to the requirements of transit-oriented development density for that station area.

Work Group. No later than August 1, 2024, the Governor shall convene a work group to develop a list of antidisplacement guiding principles and strategies. The work group must be comprised, at a minimum, of the following representatives from or with:

- impacted cities and tenants;
- ethnic or cultural associations;
- organizations advocating for affordable housing and for nonprofit builders of affordable housing;
- an association representing tenants;
- a development industry association;
- experience developing affordable housing; and
- experience developing or implementing antidisplacement strategies.

The work group must develop definitions for displacement and gentrification, a list of recommended antidisplacement strategies, including strategies that mitigate the impacts of displacement and protect against gentrification, and identify the potential costs and funding sources to implement the strategies. By September 30, 2025, the work group must submit a report of its findings and recommendations to Commerce. No later than October 15, 2025, Commerce must develop antidisplacement guiding principles and a list of potential strategies and then make available to cities.

Antidisplacement. A city may apply to Commerce for extension from the transit-oriented development density requirements in any areas at high risk of displacement based on a city's antidisplacement analysis or an antidisplacement map. Commerce must review the city's analysis and certify a five-year extension from the transit-oriented density requirements for areas at high risk of displacement. The city must create an implementation plan that identifies the antidisplacement policies available to residents to mitigate displacement risk.

During the extension, the city may delay implementation or enact alternative floor area ratio requirements within any areas at high risk of displacement. Commerce may recertify an extension for additional five-year periods based on evidence of ongoing displacement risk

in the area.

Joint Legislative Audit Review Committee. JLARC must review jurisdictions' experiences with the effects of the 10 percent affordable housing requirement, in-lieu payment options for affordable housing requirements, and requirements for transit-oriented development density around fixed route transit stops providing frequent bus service. JLARC must complete the review and evaluation by June 30, 2035. JLARC must conduct case studies that consider the following factors:

- the effects on housing supply, including the supply of affordable housing;
- the implementation of transit-oriented development density regulations; and
- how statewide transit-oriented development density regulations are interacting with residential housing construction and development in specific cities.

In conducting its evaluation, JLARC must consult with representatives from certain entities, including Commerce, Washington State Housing Finance Commission, University of Washington's Runstad Department of Real Estate, cities, regional transportation planning organizations, and transit agencies serving areas that include cities with station areas, and affordable housing advocacy organizations and for-profit and nonprofit housing development industry working in cities with station areas.

Grant Program. Subject to appropriation, Commerce must establish and administer a capital grant program to assist cities in providing the infrastructure necessary to accommodate development at transit-oriented development densities within station areas, including water, sewer, stormwater, and transportation infrastructure and parks and recreation facilities.

Parking. To encourage transit-oriented development and transit use and resulting substantial environmental benefits, cities planning under GMA may not require off-street automobile parking as a condition of permitting residential or mixed-use development within a station area, except for off-street automobile parking permanently marked for the exclusive use of individuals with disabilities or parking that is permanently marked for the short-term exclusive use of delivery vehicles. If a project permit application within a station area does not provide off-street parking, the proposed absence of parking may not be treated as a basis for issuance of a determination of significance pursuant to SEPA.

The parking provisions do not apply to portions of cities within a one-mile radius of a commercial airport with at least 9 million annual enplanements or if a local government submits an empirical study to Commerce and Commerce finds and certifies the application of the parking limitations will be significantly less safe than if the jurisdiction's parking requirements were applied to the same location. Commerce must develop guidance to assist cities and counties on items to include in the study.

If a residential or mixed-use development provides parking for residential uses in excess of parking limitations, cities planning under GMA may enact or enforce development regulations to:

- require a share of any provided residential parking to be distributed between units designated as affordable housing and units offered at market rate; and
- include all or a portion of the cost of unbundled parking charges into the monthly cost for rental units designated as affordable housing.

Common Interest Communities. Governing documents and declarations created after the effective date of the act and applicable to common interest communities, including condominium associations and home owners' associations, within cities that adopt development regulations related to maximum floor area ratios and maximum residential density provisions, may not prohibit construction or development of multifamily housing or transit-oriented development density within a station area or require off-street parking inconsistent or in conflict with parking provisions applicable within a station area.

EFFECT OF LOCAL GOVERNMENT, LAND USE & TRIBAL AFFAIRS COMMITTEE AMENDMENT(S):

- Amends bus rapid transit stop to include a bus rapid transit stop for which an environmental determination has been issued as required by the SEPA.
- Requires cities planning under the GMA to allow new residential and mixed-use development within any station area at the transit-oriented development density of at least 3.0 floor area ratio, on average if a city exempts up to 25 percent of station areas.
- Removes the categorical exemption under SEPA for all project actions that propose to develop residential or mixed-use development within a station area.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 14, 2025.

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 House Bill (Local Government, Land Use & Tribal Affairs): *The committee recommended a different version of the bill than what was heard.* PRO: This bill is addressing the need for affordable homes, near transit, in a walkable neighborhood, where people can commute to work and this bill does that by encouraging denser housing around the most used transit modes, including commuter rail, light rail, and bus rapid transit. This bill addresses the unintended consequences that can come from statewide zoning reform and ensures that the upzoned areas are mixed-income neighborhoods. Upzones create value to the land, this bill will do that, and it is critical to maintain some portion of that benefit for affordability. The bill creates a floor for the affordability mandate and there may need to be some tailoring to local markets. The bill establishes big density in transit and makes sure that it is affordable so that the community

has access to the development capacity created in the bill.

CON: While there is a need to increase housing near transit, the mandate for affordability does not work because the affordability issue is dependent on the local market. The increased costs of development will push development away from transit, not towards it. Cities have been planning for density and looking for density opportunities in the downtown areas and what is needed is assistance with infrastructure and affordable housing investments, not mandates to largely do what they are already doing but in a slightly different way. The affordable housing needs allocated by the bill will fall short of Washington's housing needs. There needs to be a change to the definition of station area to be a 1/4 mile for cities with a population of 20,000 and under. The bill is concerning because the statewide mandatory affordability provisions will halt new multifamily supply near transit and could make new housing near transit infeasible.

OTHER: This bill does not legalize the level of housing density that is appropriate for the state's biggest transit investments. The bill has a one-size fits all affordability requirement that could end up doing more harm than good.

Persons Testifying (Local Government, Land Use & Tribal Affairs): PRO: Representative Julia Reed, Prime Sponsor; Noha Mahgoub, Governor's Office; Jim Hammond, City of Shoreline; Bryce Yadon, Futurewise .

CON: Salim Nice, Mayor, City Mercer Island; Layla Khademi, NAIOP WA; Carl Schroeder, Association of Washington Cities; Ryan Windish, City of Sumner; Bill Clarke, WA Realtors.

OTHER: Dan Bertolet, Sightline Institute.

Persons Signed In To Testify But Not Testifying (Local Government, Land Use & Tribal Affairs): No one.

Staff Summary of Public Testimony on Bill as Amended by Local Government, Land Use & Tribal Affairs (Ways & Means): PRO: The state is behind in the number of units available and current zoning does not allow for the needed housing levels. This bill is still being worked on. This bill allows adequate development capacity near transit. This bill will increase development capacity. This bill will help address the housing affordability crisis and creates a significant bonus for affordable housing. This bill is a vehicle for providing disability oriented housing near transportation. Local governments are already creating affordable units in transit areas but other jurisdictions may need to do more assessment.

CON: The affordability mandate in the bill will send development outside of the transit areas. The bill does not take effect until 2029. We think it would be better to look at needs now and develop an approach after that. This bill disincentivizes builders to build in transit areas. The mandatory 10 percent affordability requirement in the bill is concerning. Zoning should be more locally determined, a one size fits all mandate will drive development out of

transit areas. This bill gives a suite of new requirements that are slightly different than what are already doing and as a result costs a lot of money to make these changes.

OTHER: Developing around airports is hazardous. As currently written, the affordability mandate contradicts best practices which says that affordability needs to be calibrated to local jurisdictions. This bill needs to allow for local flexibility in determining affordable housing requirements to be effective.

Persons Testifying (Ways & Means): PRO: Joe Kunzler; Noha Mahgoub, Governor's Office; Bryce Yadon, Futurewise; Jesse Simpson, Housing Development Consortium; James Hammond, City of Shoreline.

CON: Bill Clarke, Washington Realtors; Morgan Irwain, Association of Washington Business; Ian Morrison, NAIOPwa; Ian Morrison, NAIOPwa; Carl Schroeder, Association of Washington Cities.

OTHER: John Worthington; Dan Bertolet, Sightline Institute.

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