

SENATE BILL REPORT

SB 5466

As of February 12, 2023

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

Brief Description: Promoting transit-oriented development.

Sponsors: Senators Liias, Gildon, Kuderer, Lovelett, MacEwen, Mullet, Braun, Billig, Dhingra, Frame, Hunt, Kauffman, Nguyen, Nobles, Pedersen, Saldaña, Salomon, Shewmake, Stanford, Valdez, Van De Wege and Wilson, C.; by request of Office of the Governor.

Brief History:

Committee Activity: Local Government, Land Use & Tribal Affairs: 1/31/23, 2/07/23
[DP-TRAN, w/oRec].
Transportation: 2/13/23.

Brief Summary of Bill

- Requires the Department of Transportation to establish a competitive grant program to help finance qualifying housing projects within rapid transit corridors, and to provide technical assistance for implementing, and compliance review of, transit-oriented development regulations.
- Establishes that cities planning under the Growth Management Act (GMA) may not enact or enforce any new development regulation within a transit station area that prohibits the siting of multifamily residential housing on parcels where any other residential use is permissible.
- Establishes that cities planning under the GMA may not enact any new development regulation within a transit station area or hub that imposes a maximum floor area ratio of less than the applicable transit-oriented density for any use otherwise permitted, or imposes a maximum residential density, measured in residential units per acre or other metric of land area.
- Prohibits counties and cities planning under the GMA from requiring

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off-street parking as a condition of permitting development within a transit station area, with exceptions.

- Expands the categorical exemption for infill development to facilitate the timely and certain deployment of sustainable transit-oriented development.

SENATE COMMITTEE ON LOCAL GOVERNMENT, LAND USE & TRIBAL AFFAIRS

Majority Report: Do pass and be referred to Committee on Transportation.

Signed by Senators Lovelett, Chair; Salomon, Vice Chair; Kauffman.

Minority Report: That it be referred without recommendation.

Signed by Senators Torres, Ranking Member; Short.

Staff: Karen Epps (786-7424)

SENATE COMMITTEE ON TRANSPORTATION

Staff: Brandon Popovac (786-7465)

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—planning jurisdictions—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-stop 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.

Comprehensive Plans. 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. When developing their comprehensive plans, counties and cities must consider the 14 planning goals.

The Department of Commerce (Commerce) must establish a program of technical and financial assistance to encourage and facilitate cities and counties to adopt and implement comprehensive plans.

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 0.25 miles 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 0.75 spaces per unit. For market rate multifamily housing units that are located within 0.25 miles 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 0.75 space per unit.

Counties, as well as cities, may establish a requirement for the provision of more than one parking space per bedroom for market rate multifamily housing, if the jurisdiction has determined a particular housing unit to be in an area with a lack of access to street parking capacity, physical space impediments, or other reasons supported by evidence that would make on-street parking infeasible for the unit.

As of July 1, 2021, fully planning cities under the GMA may not require the provision of

off-street parking for accessory dwelling units 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 accessory dwelling 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.

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. Government decisions identified as having significant adverse environmental impacts must then undertake 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—Infill Development. Counties and cities planning fully under the GMA may establish categorical exemptions from SEPA to accommodate infill development. 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 roughly equal to or lower than called for in the goals and policies of the applicable comprehensive plan;
- the action would not clearly 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.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Transit-Oriented Development Technical Assistance and Grant Programs. The Washington State Department of Transportation (WSDOT) must create a new division within its agency or expand an existing division within its agency to:

provide technical assistance and award planning grants to cities for transit-oriented development regulation adoption;

- provide compliance review of any transit-oriented development regulations; and

- mediate or help resolve disputes between WSDOT, local governments, and project proponents regarding land use decisions and processing development permit applications.

WSDOT must establish and administer a competitive grant program, in consultation with Commerce, to assist with financing housing projects within rapid transit corridors and prioritize eligible projects by occupancy date, with a target occupancy date of December 31, 2025, and consider certain criteria when prioritizing projects, such as those that:

- are comprised of the largest percentage of affordable units;
- have a high concentration of units affordable to households with incomes at or below 50 percent area median income;
- abide by antidisplacement measures, if appropriate; or
- include units with additional bedrooms or are intended for occupancy by families with multiple dependents.

State agencies, local governments, and nonprofit or for-profit housing developers are eligible to receive grant awards, and grant awards may be used for project capital costs and infrastructure costs and to address gaps in project financing that would prevent ongoing or complete project construction. Eligible housing projects must meet the following requirements:

- be within one-quarter mile of a rapid transit corridor;
- comply with floor area ratio or net density minimums;
- produce at least 100 units of housing; and
- include a covenant on the property requiring at least 20 percent of units remain affordable for households with incomes at or below 80 percent of area median income for at least 99 years.

The Transit-Oriented Development Housing Partnership Account is created in the custody of the state treasurer, and the secretary of WSDOT, or their designees, and may authorize expenditures from the account. Account revenue may include gifts, donations, or other private contributions, with authorized expenditures for the competitive grant program to finance housing projects in rapid transit corridors and for costs related to duties of the new or expanded division created within WSDOT.

Appropriations from the Growth Management Planning and Environmental Review Fund, for grants to cities to facilitate transit-oriented development, may:

- be used to pay for the costs associated with environmental impact statements, planned action ordinances, subarea plans, the use of other tools under GMA or SEPA, and local code adoption and implementation; and
- only fund efforts that address environmental impacts and consequences, alternatives, and mitigation measures to allow the analysis to be adopted by applicants for development permits within the geographic area analyzed in the plan.

In consultation with WSDOT, Commerce must prioritize applications for grants to facilitate

transit-oriented development that maximize certain policy objectives in the area covered by a proposal, such as:

- the total number of housing units authorized for new development in station areas, with specific attention to station hubs;
- proximity and quality of transit access
- plans that exceed applicable transit-oriented densities for station areas and station hubs;
- plans in areas that eliminate on-site parking requirements;
- existence or establishment of incentive zoning, inclusionary housing, use of the multifamily tax exemption, or other tools to promote low-income housing in the area; and
- organization planning and financing of housing benefit districts.

Development Regulations Within a Station Area or Station Hub. 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. Cities planning under GMA may not enact any new development regulation within a station area or hub that:

- imposes a maximum floor area ratio of less than the applicable transit-oriented density for any use otherwise permitted within a station area or station hub;
- imposes a maximum residential density, measured in residential units per acre or other metric of land area within a station area or station hub; or
- renders a parcel in a station area impracticable to build a usable structure for permitted uses at the applicable transit-oriented density or applicable floor area ratio except for development standards contained in:
 1. a shoreline master program or critical area ordinance; or
 2. to any parcel that is nonconforming with local subdivision standards, or is a listed historic structure.

As an alternative, cities may by ordinance designate parts of a station area or station hub in which to enact or enforce floor area ratios that are more or less than the applicable transit-oriented density if the following conditions are met:

- the average maximum floor area ratio of all buildable land within a station area or station hub is no less than the applicable transit-oriented density;
- no part of a station hub is subject to a maximum floor area ratio that is less than 1.0; and
- no part of a station area is subject to a maximum floor area ratio that is less than 0.5.

If a city has enacted a development regulation that imposes a maximum floor area ratio of less than the applicable transit-oriented density or a maximum residential density measured in residential units within a station area or station hub, the city must enforce and apply the development regulation consistent with the requirements above. Cities planning under GMA must comply with the requirements above by the time of their next periodic

comprehensive plan update.

Within any station area or station hub, any maximum floor area ratio otherwise enacted or enforceable must include an increased density bonus of 50 percent for affordable housing for households with incomes at or below 60 percent area median income or for long-term inpatient care for behavioral health services.

Childcare facilities, a small business with fewer than 50 employees, and residential units with at least three bedrooms in multifamily housing that are within a station area must not be counted toward applicable floor area ratio limits.

The requirements on transit-oriented development regulations do not:

- alter, displace, or limit industrial uses or industrial areas within the urban growth area; or
- limit the amount of affordable housing provided through local mandatory housing affordability programs.

Parking. To encourage transit-oriented development and transit use and resulting substantial environmental benefits, counties and cities planning under GMA may not require off-street parking as a condition of permitting development within a station area, except for off-street parking that is permanently marked for the exclusive use of individuals with disabilities. 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. Minimum residential parking requirements for affordable housing units, housing units for seniors or persons with disabilities, and market rate multifamily housing units, in close proximity of certain transit stops, are removed.

State Environmental Policy Act—Categorical Exemptions—Infill Development. The categorical exemption for infill development is expanded to facilitate the timely and certain deployment of sustainable transit-oriented development. A project action that meets the following criteria is categorically exempt from the requirements of this chapter:

- it is related to a proposed development that would fill in a station hub or station area;
- it is related to a proposed multifamily residential development, mixed-use development, or commercial development; and
- it is not inconsistent with the applicable comprehensive plan, and does not clearly exceed the density or intensity of use called for in the goals and policies of the applicable comprehensive plan.

A categorical exemption for sustainable transit-oriented development applies even if it differs from the categorical exemptions adopted by Department of Ecology rules.

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 density within a station area or require off-street parking that is inconsistent or in conflict with parking provisions applicable within a station area.

Definitions. Station area means all parcels that are fully within an urban growth area and fully or partially within a three-quarter mile radius of a major transit stop, except that it excludes any parcels without possible or practicable pedestrian access to the applicable major transit stop except by travel outside of the station area, such as the intervening presence of a river or interstate highway that prevents direct pedestrian access between the parcel in question and the applicable major transit stop. Station hub means all parcels that are fully within an urban growth area and fully or partially within a one-quarter mile radius of a major transit station, except that it excludes any parcels without possible or practicable pedestrian access to the applicable major transit station except by travel outside of the station hub.

Definitions for other key terms are provided, including major transit stop, major transit area, floor area ratio, and transit-oriented density.

Appropriation: None.

Fiscal Note: Requested on January 27, 2023.

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 Original Bill (Local Government, Land Use & Tribal Affairs): PRO: It is important to maximize investment of transportation by siting jobs and housing next to them so people can use new modes of transportation that are critically important. This bill helps communities respond to and leverage investments in transit service to meet the need for more housing across the state. The bill provides local governments with technical assistance and gives them flexibility to accomplish target densities. Transit oriented development in this bill will leverage existing and future investments, and create walkable neighborhoods, close to transit, and provide needed affordable housing. Paired with anti-displacement strategies, this bill also protects existing residents and businesses as new development occurs, ensuring that the benefits of ongoing investments are broadly shared. This bill plays an important role in advancing state housing policy by linking transit investments with increased housing density. The bill will remove barriers that keep housing from being built in transit areas. This bill takes advantage of both state and local investment in transit and will provide workforce level housing in Washington. The bill allows for a collaborative approach with builders and WSDOT around issues that can delay a project, such as right of way and access roads. With the standards in the bill, urban centers can develop in a logical and efficient manner. This bill addresses

restrictive zoning by establishing flexible zoning standards so that cities with transit assets can work together to reduce the housing shortage and maximize the investments in transit. The densities in the bill have been tailored to support and encourage mid-rise apartment construction. This bill will allow for more commercial space and rental opportunities to be built, together with more ownership opportunities. The bill sets a baseline level of density near transit while giving cities flexibility on how the growth within station areas is distributed. This bill can give those with disabilities the ability to own or rent in transit areas.

OTHER: This bill would make it difficult for affordable home ownership projects to happen near transit. There is a need for a mixture of housing types while meeting the need for more density near transit. There is concern about how the bill will interact with common interest communities and homeowners' associations. Applying this bill to existing associations would potentially override real property covenants that apply to those associations. Parking is a concern and local communities should be allowed to regulate the parking impact.

Persons Testifying (Local Government, Land Use & Tribal Affairs): PRO: Senator Marko Liias, Prime Sponsor; Jesse Simpson, Housing Development Consortium; Dan Bertolet, Sightline Institute; Joe Kunzler, None; Bryce Yadon, Futurewise; Alex Hur, Master Builders Association of King and Snohomish Counties; Josie Cummings, Building Industry Association of Washington; Kristina Walker, Deputy Mayor, City of Tacoma; Wes Stewart, Sierra Club Washington; Mike Ennis, Association of Washington Business; Angela Rozmyn, Natural and Built Environments; Jennifer Gregerson; Kelli Refer, Move Redmond; Noha Mahgoub, Office of Financial Management; Nathan Gorton, Washington REALTORS; Dave Andersen, Washington Department of Commerce; BILL CLARKE, Amazon; Cristina Mateo, WA Build Back Black Alliance - (WBBA); Brian Lagerberg, Director of Public Transportation, WA State Department of Transportation; Josh Friedmann, NAIOP.

OTHER: Ryan Donohue, Habitat for Humanity Seattle-King & Kittitas Counties; Carl Schroeder, Association of Washington Cities; Dean Martin, Washington State Chapter of Community Association Institute.

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