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**SUBSTITUTE SENATE BILL 5812**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senate Housing Stability & Affordability (originally sponsored by Senators Palumbo, Liias, and Nguyen)

AN ACT Relating to local governments planning and zoning for accessory dwelling units; amending RCW 19.27.060, 82.02.060, 35.63.210, 35A.63.230, 36.70.677, and 36.70A.400; adding a new section to chapter 19.27 RCW; adding a new chapter to Title 36 RCW; and repealing RCW 43.63A.215.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  FINDINGS AND INTENT. (1) The legislature makes the following findings:

(a) Washington state is experiencing a housing affordability crisis. Many communities across the state are in need of more housing options for renters.

(b) Accessory dwelling units typically rent below market rate, providing additional affordable housing options for renters.

(c) Accessory dwelling units also help to provide housing for very low-income households. More than ten percent of accessory dwelling units in some areas are occupied by tenants who pay no rent at all; among these tenants are grandparents, adult children, family members with disabilities, and friends going through life transitions. Accessory dwelling units meet the needs of these people who might otherwise require subsidized housing space and resources needed by other households.

(d) Homeowners who add an accessory dwelling unit to her or his property may benefit from added income and an increased sense of security.

(e) Accessory dwelling units can also benefit neighborhoods by expanding rental options near public amenities such as schools, parks, and transit without changing the look and feel of existing neighborhoods.

(f) Accessory dwelling units may reduce economic displacement in existing communities by expanding the range of available housing options and prices.

(g) Accessory dwelling units are a housing choice that provides environmental benefits. They promote energy conservation compared with average size single-family homes. In addition, the siting of additional accessory dwelling units near transit hubs can help to reduce greenhouse gas emissions.

(h) Removing certain regulatory barriers to the construction of accessory dwelling units, such as inflexible design standards and siting restrictions, may substantially reduce construction costs, thereby enabling more homeowners to add accessory dwelling units to their properties. The increased availability of accessory dwelling units will provide benefits to homeowners, renters, the community, and the environment.

(2) The legislature intends to promote and encourage the creation of accessory dwelling units as a means to address the need for additional affordable housing options. The legislature encourages local governments to increase the availability of affordable housing by subsidizing accessory dwelling units with local sales tax revenue, as authorized by House Bill No. 1406.

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Accessory dwelling unit" means a dwelling unit located on the same lot as a single-family housing unit, duplex, triplex, townhome, or other housing unit.

(2) "Attached accessory dwelling unit" means an accessory dwelling unit located within or attached to a single-family housing unit, duplex, triplex, townhome, or other housing unit.

(3) "Detached accessory dwelling unit" means an accessory dwelling unit that consists partly or entirely of a building that is separate and detached from a single-family housing unit, duplex, triplex, townhome, or other housing unit.

(4) "Dwelling unit" means a residential living unit that provides complete independent living facilities for one or more persons and that includes permanent provisions for living, sleeping, eating, cooking, and sanitation.

(5) "Cities" means, except as provided in section 4(2) of this act, (a) all cities, code cities, and towns with a population of ten thousand or more, and (b) all cities, code cities, and towns with a population of at least two thousand five hundred but less than ten thousand in which any portion of the city, code city, or town lies within a transit service district.

(6) "Counties" means all counties with a population of fifteen thousand or more.

(7) "Gross floor area" means the interior habitable area of a dwelling unit including basements and attics but not including a garage or accessory structure.

NEW SECTION. **Sec.**  ACCESSORY DWELLING UNIT REGULATIONS REQUIRED. (1) Cities and counties must adopt or amend by ordinance and incorporate into their development regulations, zoning regulations, and other official controls, an authorization for the creation of accessory dwelling units that is consistent with this chapter.

(2) Ordinances, development regulations, and other official controls adopted or amended pursuant to this chapter may only apply in the portions of towns, cities, and counties that are within designated urban growth areas.

(3) Cities and counties must implement the requirements of this chapter by June 1, 2021. Any city or county that does not comply with this subsection must consider any permit application it receives under this chapter in accordance with this chapter unless it adopts its own ordinance, development regulation, or other official control in accordance with this subsection within sixty days after receipt of the application.

(4) Any county that takes action necessary to meet the requirements of this chapter is held harmless from any appeals brought under chapter 36.70A or 43.21C RCW.

NEW SECTION. **Sec.**  GENERAL REGULATORY REQUIREMENTS. (1) Ordinances, development regulations, and other official controls adopted or amended as required by this chapter:

(a)(i) Except as provided in (a)(ii) of this subsection, must allow, on all lots located in single-family residential zoning districts and on all lots on which there is a single-family housing unit, duplex, triplex, or townhome, regardless of zoning district: (A) One attached accessory dwelling unit and one detached accessory dwelling unit; or (B) two attached accessory dwelling units. Such units may not be considered as contributing to the overall underlying density within the county for purposes of compliance with chapter 36.70A RCW;

(ii) Must allow one attached accessory dwelling unit on each lot in a single-family residential zoning district if: (A) The lot is located in a jurisdiction where cluster zoning or lot size averaging has been adopted; and (B) the lot is under three thousand square feet in size;

(b) May not impose a minimum lot size requirement for the siting of accessory dwelling units;

(c) May only require installation of a new or separate utility connection between an attached accessory dwelling unit and a utility after a finding that the site-specific technical, environmental, or financial considerations warrant a separation of utility connections for accessory dwelling units from preexisting structures;

(d) May not consider attached accessory dwelling units to be new residential uses for the purpose of calculating connection fees or capacity charges for utilities. Any connection fees or capacity charges must (i) be proportionate to the burden of the proposed accessory dwelling unit, based on its size or number of plumbing fixtures, upon the water or sewer system and (ii) not exceed the reasonable cost of providing the service;

(e) May require a new or separate utility connection directly between a detached accessory dwelling unit and a utility and may subject the connection to a connection fee or capacity charge that must: (i) Be proportionate to the burden of the proposed accessory dwelling unit, based on its size or number of plumbing fixtures, upon the water or sewer system; and (ii) not exceed the reasonable cost of providing the service;

(f) May not prohibit the sale or other conveyance of a condominium unit solely on the grounds that the unit was originally built as an accessory dwelling unit;

(g) May not count residents of accessory dwelling units against any limits on the number of unrelated residents on a single-family lot;

(h) May not establish a requirement for the provision of off-street parking for accessory dwelling units within one-half mile of a transit stop, park, school, hospital, community center, or area designated for commercial use, mixed use, or multifamily housing. Except as provided in this subsection (1)(h), jurisdictions may require up to one additional off-street parking space per lot in which there is at least one accessory dwelling unit; and

(i) May not count the gross floor area of an accessory dwelling unit against any floor area ratio limitations that apply to single-family housing units.

(2) Any city with a population of one hundred thousand or more may not require the owner of a lot on which there is an accessory dwelling unit to reside in or occupy the accessory dwelling unit or another housing unit on the same lot.

NEW SECTION. **Sec.**  DEVELOPMENT STANDARDS. (1) Ordinances, development regulations, and other official controls adopted or amended as required by this chapter:

(a) Should not establish a roof height limitation on detached accessory dwelling units that is less than twenty-four feet;

(b) Should not establish a wall height limitation on detached accessory dwelling units that is less than seventeen feet;

(c) Should not establish a maximum gross floor area for accessory dwelling units that is less than one thousand square feet;

(d) Should not establish a minimum gross floor area for accessory dwelling units that is greater than one hundred forty square feet;

(e) May not establish setback regulations for accessory dwelling units that are more restrictive than regulations for single-family housing units; and

(f) May not establish tree retention requirements for accessory dwelling units in addition to any tree retention requirements for single-family housing units.

(2) Cities are encouraged to allow detached accessory dwelling units to be sited at the lot line of the rear yard if the rear yard is adjacent to an alley.

NEW SECTION. **Sec.**  A new section is added to chapter 19.27 RCW to read as follows:

By April 1, 2020, the building code council shall adopt rules pertaining to accessory dwelling units that are consistent with the definitions and standards in chapter 36.--- RCW (the new chapter created in section 14 of this act).

**Sec.**  RCW 19.27.060 and 2018 c 302 s 2 are each amended to read as follows:

(1) The governing bodies of counties and cities may amend the codes enumerated in RCW 19.27.031 as amended and adopted by the state building code council as they apply within their respective jurisdictions, but the amendments shall not result in a code that is less than the minimum performance standards and objectives contained in the state building code except as provided in subsection (2) of this section.

(a) Except as provided in subsection (2) of this section, no amendment to a code enumerated in RCW 19.27.031 as amended and adopted by the state building code council that affects single-family or multifamily residential buildings shall be effective unless the amendment is approved by the building code council under RCW 19.27.074(1)(b).

(b) Any county or city amendment to a code enumerated in RCW 19.27.031 which is approved under RCW 19.27.074(1)(b) shall continue to be effective after any action is taken under RCW 19.27.074(1)(a) without necessity of reapproval under RCW 19.27.074(1)(b) unless the amendment is declared null and void by the council at the time any action is taken under RCW 19.27.074(1)(a) because such action in any way altered the impact of the amendment.

(2)(a) Except as provided in (b) of this subsection, the legislative body of a county or city, in exercising the authority provided under subsection (1) of this section to amend the code enumerated in RCW 19.27.031(1)(b), may adopt amendments that eliminate any minimum gross floor area requirement for single-family detached dwellings or that provide a minimum gross floor area requirement below the minimum performance standards and objectives contained in the state building code.

(b) Cities and counties, as defined by section 2 of this act, must adopt ordinances, development regulations, and other official controls regarding the minimum gross floor area of accessory dwelling units that are consistent with chapter 36.--- RCW (the new chapter created in section 14 of this act).

(3) Except as permitted or provided otherwise under this section, the state building code shall be applicable to all buildings and structures including those owned by the state or by any governmental subdivision or unit of local government.

(4) The governing body of each county or city may limit the application of any portion of the state building code to exclude specified classes or types of buildings or structures according to use other than single-family or multifamily residential buildings. However, in no event shall fruits or vegetables of the tree or vine stored in buildings or warehouses constitute combustible stock for the purposes of application of the uniform fire code. A governing body of a county or city may inspect facilities used for temporary storage and processing of agricultural commodities.

(5) No provision of the uniform fire code concerning roadways shall be part of the state building code: PROVIDED, That this subsection shall not limit the authority of a county or city to adopt street, road, or access standards.

(6) The provisions of the state building code may be preempted by any city or county to the extent that the code provisions relating to the installation or use of sprinklers in jail cells conflict with the secure and humane operation of jails.

(7)(a) Effective one year after July 23, 1989, the governing bodies of counties and cities may adopt an ordinance or resolution to exempt from permit requirements certain construction or alteration of either group R, division 3, or group M, division 1 occupancies, or both, as defined in the uniform building code, 1988 edition, for which the total cost of fair market value of the construction or alteration does not exceed fifteen hundred dollars. The permit exemption shall not otherwise exempt the construction or alteration from the substantive standards of the codes enumerated in RCW 19.27.031, as amended and maintained by the state building code council under RCW 19.27.070.

(b) Prior to July 23, 1989, the state building code council shall adopt by rule, guidelines exempting from permit requirements certain construction and alteration activities under (a) of this subsection.

**Sec.**  RCW 82.02.060 and 2012 c 200 s 1 are each amended to read as follows:

The local ordinance by which impact fees are imposed:

(1) Shall include a schedule of impact fees which shall be adopted for each type of development activity that is subject to impact fees, specifying the amount of the impact fee to be imposed for each type of system improvement. The schedule shall be based upon a formula or other method of calculating such impact fees. In determining proportionate share, the formula or other method of calculating impact fees shall incorporate, among other things, the following:

(a) The cost of public facilities necessitated by new development;

(b) An adjustment to the cost of the public facilities for past or future payments made or reasonably anticipated to be made by new development to pay for particular system improvements in the form of user fees, debt service payments, taxes, or other payments earmarked for or proratable to the particular system improvement;

(c) The availability of other means of funding public facility improvements;

(d) The cost of existing public facilities improvements; and

(e) The methods by which public facilities improvements were financed;

(2) May provide an exemption for low-income housing, and other development activities with broad public purposes, from these impact fees, provided that the impact fees for such development activity shall be paid from public funds other than impact fee accounts;

(3) May provide an exemption from impact fees for low-income housing. Local governments that grant exemptions for low-income housing under this subsection (3) may either: Grant a partial exemption of not more than eighty percent of impact fees, in which case there is no explicit requirement to pay the exempted portion of the fee from public funds other than impact fee accounts; or provide a full waiver, in which case the remaining percentage of the exempted fee must be paid from public funds other than impact fee accounts. An exemption for low-income housing granted under subsection (2) of this section or this subsection (3) must be conditioned upon requiring the developer to record a covenant that, except as provided otherwise by this subsection, prohibits using the property for any purpose other than for low-income housing. At a minimum, the covenant must address price restrictions and household income limits for the low-income housing, and that if the property is converted to a use other than for low-income housing, the property owner must pay the applicable impact fees in effect at the time of conversion. Covenants required by this subsection must be recorded with the applicable county auditor or recording officer. A local government granting an exemption under subsection (2) of this section or this subsection (3) for low-income housing may not collect revenue lost through granting an exemption by increasing impact fees unrelated to the exemption. A school district who receives school impact fees must approve any exemption under subsection (2) of this section or this subsection (3);

(4) Shall provide a credit for the value of any dedication of land for, improvement to, or new construction of any system improvements provided by the developer, to facilities that are identified in the capital facilities plan and that are required by the county, city, or town as a condition of approving the development activity;

(5) Shall allow the county, city, or town imposing the impact fees to adjust the standard impact fee at the time the fee is imposed to consider unusual circumstances in specific cases to ensure that impact fees are imposed fairly;

(6) Shall include a provision for calculating the amount of the fee to be imposed on a particular development that permits consideration of studies and data submitted by the developer to adjust the amount of the fee;

(7) Shall establish one or more reasonable service areas within which it shall calculate and impose impact fees for various land use categories per unit of development; and

(8) May provide for the imposition of an impact fee for system improvement costs previously incurred by a county, city, or town to the extent that new growth and development will be served by the previously constructed improvements provided such fee shall not be imposed to make up for any system improvement deficiencies.

(9) May not establish an impact fee amount for accessory dwelling units, as defined in section 2 of this act, that is greater than fifty percent of the amount set for single-family residences.

For purposes of this section, "low-income housing" means housing with a monthly housing expense, that is no greater than thirty percent of eighty percent of the median family income adjusted for family size, for the county where the project is located, as reported by the United States department of housing and urban development.

**Sec.**  RCW 35.63.210 and 1993 c 478 s 8 are each amended to read as follows:

Any ((~~local government~~)) city or county, as defined in ((~~RCW 43.63A.215~~)) section 2 of this act, that is planning under this chapter shall comply with ((~~RCW 43.63A.215(3)~~)) chapter 36.--- RCW (the new chapter created in section 14 of this act).

**Sec.**  RCW 35A.63.230 and 1993 c 478 s 9 are each amended to read as follows:

Any ((~~local government~~)) city or county, as defined in ((~~RCW 43.63A.215~~)) section 2 of this act, that is planning under this chapter shall comply with ((~~RCW 43.63A.215(3)~~)) chapter 36.--- RCW (the new chapter created in section 14 of this act).

**Sec.**  RCW 36.70.677 and 1993 c 478 s 10 are each amended to read as follows:

Any ((~~local government~~)) city or county, as defined in ((~~RCW 43.63A.215~~)) section 2 of this act, that is planning under this chapter shall comply with ((~~RCW 43.63A.215(3)~~)) chapter 36.--- RCW (the new chapter created in section 14 of this act).

**Sec.**  RCW 36.70A.400 and 1993 c 478 s 11 are each amended to read as follows:

Any ((~~local government~~)) city or county, as defined in ((~~RCW 43.63A.215~~)) section 2 of this act, that is planning under this chapter shall comply with ((~~RCW 43.63A.215(3)~~)) chapter 36.--- RCW (the new chapter created in section 14 of this act).

NEW SECTION. **Sec.**  RCW 43.63A.215 (Accessory apartments—Development and placement—Local governments) and 1993 c 478 s 7 are each repealed.

NEW SECTION. **Sec.**  Sections 1 through 5 of this act constitute a new chapter in Title 36 RCW.

**--- END ---**