

HOUSE BILL REPORT

HB 1923

As Reported by House Committee On:
Environment & Energy

Title: An act relating to increasing urban residential building capacity.

Brief Description: Increasing urban residential building capacity.

Sponsors: Representatives Fitzgibbon, Macri, Appleton, Doglio, Dolan, Santos and Frame.

Brief History:

Committee Activity:

Environment & Energy: 2/14/19, 2/21/19 [DPS].

Brief Summary of Substitute Bill

- Requires cities planning fully under the Growth Management Act (GMA) to take certain actions to increase residential building capacity and housing affordability.
- Requires cities that do not accomplish the actions to make certain updates to the housing element of their comprehensive plan.
- Prohibits cities that do not accomplish the actions from receiving funding from the Public Works Assistance Account, the Water Quality Capital Account, and the Transportation Improvement Account.
- Establishes standards for residential parking requirements for certain affordable housing units and certain housing units for seniors or people with disabilities.
- Exempts from the requirements of the State Environmental Policy Act (SEPA) amendments to development regulations that are made in order to comply with the residential building capacity and housing affordability requirements of the act.
- Exempts certain project actions from certain appeals under SEPA, provided they meet certain criteria.
- Authorizes permanent supportive housing as a permitted use in all areas where multifamily housing is permitted.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- Prohibits local governments from charging higher per-unit impact fees for multifamily residential construction than for single-family construction.
- Authorizes funds in the Growth Management Planning and Environmental Review Fund to be used to cover costs associated with the adoption of optional elements of comprehensive plans consistent with the subarea plan provisions of SEPA.
- Prohibits local governments from charging impact fees that cumulatively exceed \$50,000 for any single-family residential project.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; Doglio, Fey, Mead, Peterson and Shewmake.

Minority Report: Do not pass. Signed by 3 members: Representatives Shea, Ranking Minority Member; Dye, Assistant Ranking Minority Member; Boehnke.

Staff: Robert Hatfield (786-7117).

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 29 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.

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. In developing their comprehensive plans, counties and cities must consider various goals set forth in statute. These goals include:

- *Urban Growth.* Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
- *Housing.* Encourage the availability of affordable housing to all economic segments of the population of Washington State, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.
- *Public Facilities and Services.* Ensure that those public facilities and services necessary to support development are adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

Counties that fully plan under the GMA must include a plan, scheme, or design for different types of land use areas, including Urban Growth Areas (UGAs)—areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature. Planning jurisdictions must include within their UGAs sufficient areas and densities to accommodate projected urban growth for the succeeding 20-year period. In addition, cities must include sufficient areas to accommodate the broad range of needs and uses that will accompany the projected urban growth, including, as appropriate, medical, governmental, institutional, commercial, service, retail, and other nonresidential uses.

Growth Management Planning and Environmental Review Fund.

The Growth Management Planning and Environmental Review Fund exists to make grants to assist counties and cities planning fully under the GMA in preparing the State Environmental Policy Act (SEPA) environmental analyses that are integrated with comprehensive plans or subarea plans and development regulations. A county or city must be making substantial progress toward compliance with the GMA to be eligible for a grant.

State Environmental Policy Act.

The 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).

Projects which undergo a SEPA review may be required to mitigate significant adverse environmental impacts in order to receive approval from the government entity performing the SEPA analysis. Project proponents may also choose to mitigate environmental impacts identified in the environmental checklist in order to receive a determination that the project does not have significant environmental impacts, and therefore can avoid the process of completing an EIS for the project.

State Environmental Policy Act—Subarea Plans.

A city with a population greater than 5,000 may adopt optional elements of its comprehensive plans and optional development regulations that apply within specified subareas of the cities that are either: areas designated as mixed-use or urban centers in a land use or transportation plan adopted by a regional transportation planning organization; or areas within 0.5 miles of a major transit stop that are zoned to have an average minimum density of 15 dwelling units or more per gross acre.

A city that elects to include subarea development elements into its comprehensive plan must prepare a nonproject EIS specifically for the subarea. At least one community meeting must be held before the scoping of the EIS. All property owners within the subarea and within 150 feet of the subarea must be notified of the community meeting. Additional notice provisions are specified. A person may appeal the adoption of the subarea or the implementing regulations if they meet the requirements for standing provided in the GMA.

In a city with over 500,000 residents (large city), community meeting notices must be mailed to all small businesses within the subarea and within 150 feet of the subarea. A large city must also analyze whether the subarea plan will result in the displacement or fragmentation of businesses, existing residents, or cultural groups. The analysis must be discussed at the community meeting and incorporated in the nonproject EIS.

Until July 1, 2018, project-specific developments cannot be appealed as long as they are within the scope of the EIS and the development application is vested within a timeframe established by the city not to exceed 10 years from the adoption of the final EIS. After July 1, 2018, project specific developments cannot be appealed as long as they are within the scope of the EIS, the final EIS is issued by July 1, 2018, and the development application is vested.

State Environmental Policy Act—Categorical Exemptions.

Under SEPA, certain nonproject actions are categorically exempted from the requirements of SEPA. Examples of categorically exempt nonproject actions include certain amendments to development regulations and certain amendments to technical codes.

State Environmental Policy Act—Categorical Exemptions—Infill Development.

Counties and cities planning fully under GMA may establish categorical exemptions from the requirements of SEPA to accommodate infill development. Locally authorized categorical exemptions may differ from the categorical exemptions established by the Department of Ecology by rule. 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 lower than called for in the goals and policies of the applicable comprehensive plan;
- the action would not 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.

Impact Fees.

Counties and cities that are obligated by population or choice to fully plan under the GMA may impose impact fees on development activity as part of the financing of public facilities needed to serve new growth and development. This financing cannot rely solely on impact fees and must provide a balance between impact fees and other sources of public funds.

Additionally, impact fees:

- may only be imposed for system improvements, a term defined in statute, that are reasonably related to the new development;
- may not exceed a proportionate share of the costs of system improvements; and
- must be used for system improvements that will reasonably benefit the new development.

Public Works Assistance Account.

The Public Works Assistance Account (PWAA) was established in 1985 to encourage local government self-reliance in meeting public works needs and to assist in financing critical infrastructure projects. Funds in the PWAA must be used to make loans and give financial guarantees and may also be appropriated to provide state match for federal dollars. Loan repayments and revenues from three tax sources have historically been deposited into the PWAA.

Water Quality Capital Account.

The Water Quality Capital Account (WQCA) was established in 2007. Expenditures from the WQCA may only be spent after appropriation and may only be used: (1) to make grants or loans to public bodies for the capital component of water pollution control facilities and activities; (2) to assist a public body in obtaining ownership interest in pollution control facilities; or (3) for capital components of payments made by public bodies for certain pollution control service agreements.

Transportation Improvement Account.

The Transportation Improvement Account (TIA) was established in 1988 to address economic development and population growth in certain areas. To be eligible to receive funds from the TIA, a project must be consistent with the GMA, the Clean Air Act, and the Commute Trip Reduction Law, and consideration must have been given to the project's relationship with the statewide rail passenger program and rapid mass transit. Projects must be consistent with any adopted high capacity transportation plan, must consider existing or reasonably foreseeable congestion levels attributable to economic development or growth and all modes of transportation and safety, and must be partially funded by local government or private contributions, or a combination of such contributions.

Summary of Substitute Bill:

Increased Residential Building Capacity and Housing Affordability.

Cities planning fully under the Growth Management Act (GMA) with a population greater than 10,000 must take two or more of the following actions by December 31, 2022, in order to increase residential building capacity:

- authorize development of at least 50 residential units per acre in locations that are located within 0.5 miles of a fixed guideway transit station;
- authorize at least one duplex, triplex, or courtyard apartment on each parcel in one or more zoning districts that permit single-family residences unless a city documents a specific infrastructure or physical constraint that would make this requirement unfeasible for a particular parcel;
- require no more than one on-site parking space per two dwelling units in multifamily zones that are located within 0.5 miles of a fixed guideway transit station;
- authorize accessory dwelling units on all lots located in zoning districts that permit single-family residences;
- adopt a planned action pursuant to the subarea plan provisions of the State Environmental Policy Act (SEPA);

- adopt a planned action pursuant to the planned action provisions of SEPA, except that an Environmental Impact Statement (EIS) need not be prepared for such a planned action;
- adopt increases in categorical exemptions pursuant to the infill development provisions of SEPA for single-family and multifamily development; and
- authorize a duplex on each corner lot within all zoning districts that permit single-family residences.

Cities planning fully under the GMA with a population greater than 10,000 must take one or more of the following actions by December 31, 2022, in order to increase housing affordability:

- adopt an inclusionary zoning program, in which 25 percent of the new housing capacity directed under the act consists of affordable housing;
- provide surplus property to be used for affordable housing; and
- enact an affordable housing levy.

A city may rely on actions that take effect on or after January 1, 2015, for purposes of compliance with the requirements to increase residential building capacity and housing affordability.

A city that is subject to the residential building capacity and housing affordability requirements but that fails to comply with the requirements by December 31, 2022, must update the housing element of its comprehensive plan as described below.

The actions taken by a city to comply with the residential building capacity and housing affordability requirements are not subject to SEPA.

A city that is subject to the residential building capacity and housing affordability requirements must certify to the Department of Commerce (Commerce) once it has satisfied the requirements. The Department of Commerce must take such steps as are necessary to confirm the accuracy of the certification. Once Commerce confirms the accuracy of the certification, Commerce must issue a letter of verification. A city who receives a letter of verification is eligible to receive a one-time grant of \$100,000 from Commerce in order to support planning and outreach efforts.

A city that is subject to the residential building capacity and housing affordability requirements but that fails to comply with the requirements by December 31, 2022, is not eligible to receive grants from the Public Works Assistance Account, the Water Quality Capital Account, or the Transportation Improvement Account, until the city certifies to Commerce that it has complied with the requirements.

Growth Management Act—Housing Element Update.

A new section is added to the GMA to describe the housing element updates that must be accomplished by cities who do not comply with the residential building capacity and housing affordability requirements described above.

The items that must be included in the housing element of the comprehensive plan for such cities are modified to add the following:

- a quantification of existing and projected housing needs for all income levels, including extremely low-income households, with documentation of housing and household characteristics, including housing stock condition, overcrowding, and comparison of level of payment with ability to pay;
- policies, regulations, and programs to conserve and preserve existing private market and subsidized affordable housing and existing manufactured home parks;
- in cities with a population greater than 80,000, policies, regulations, and programs to minimize displacement;
- if the housing inventory prepared as part of the housing element demonstrates a lack of sufficient sites to accommodate housing needs for extremely low-income, very low-income, and low-income households, a program to make sufficient sites available at multifamily densities available for development;
- an analysis of population and employment trends, with documentation of projections;
- a zone where emergency shelters are permitted without a discretionary review process;
- an eight-year schedule of programs and actions to implement the policies of the housing element and to accommodate the planned housing units, including incentives and funding for affordable housing; and
- a review and evaluation of the previous housing element, including an evaluation of success in attaining planned housing units, achievement of goals and policies, and implementation of the schedule of programs and actions.

The features described above must be incorporated into the housing element of a city's comprehensive plan by the next regularly scheduled comprehensive plan update.

The Department of Commerce must review the housing element, and if it complies with statutory requirements, must approve the housing element of each GMA planning jurisdiction after each periodic comprehensive plan update. Promptly after approval or disapproval of a city's housing element, Commerce must publish notice that the housing element has been approved or disapproved. The date of publication of the adoption or amendment of the housing element is the date that Commerce publishes notice that the housing element has been approved or disapproved.

The Department of Commerce's certification of the housing element update as described above may be appealed to the Growth Management Hearings Board.

Growth Management Act—Definitions.

The following terms are added to the definitions within the GMA:

- "affordable housing" means, unless the context clearly indicates otherwise, residential housing whose monthly costs, including utilities other than telephone, do not exceed 30 percent of the monthly income of a household whose income is 60 percent of the median family income adjusted for family size, for the county where the household is located, as reported by the United States Department of Housing and Urban Development (HUD);
- "extremely low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below 30 percent of the median family income adjusted for family size, for the county where the household is located, as reported by the HUD;

- "low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below 80 percent of the median family income adjusted for family size, for the county where the household is located, as reported by the HUD; and
- "very low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below 50 percent of the median family income adjusted for family size, for the county where the household is located, as reported by the HUD.

State Environmental Policy Act—Categorical Exemptions.

Amendments to development regulations in order to comply with the residential building capacity and housing affordability requirements of the act are categorically exempt from the requirements of SEPA.

Growth Management Act—Minimum Residential Parking Requirements.

For affordable housing units that are located within 0.25 miles of a transit stop that receives transit 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.

For housing units that are specifically for seniors or people with disabilities, that are located within 0.25 miles of a transit stop that receives transit service at least four times per hour for 12 or more hours per day, no minimum residential parking requirement may be imposed.

State Environmental Policy Act—Transportation Elements.

A project action evaluated under SEPA by a city, county, or town planning fully under the GMA is exempt from appeals under SEPA on the basis of the evaluation of or impacts to transportation elements of the environment, so long as the project does not present significant adverse impacts to state highways as determined by the Department of Transportation and the project is:

- consistent with a locally adopted transportation plan; or
- consistent with the transportation element of a comprehensive plan, and either a project for which traffic or parking impact fees are imposed pursuant to, or a project for which traffic or parking impacts are expressly mitigated by, an ordinance adopted by the city, town, or county.

State Environmental Policy Act—Subarea Plans.

The requirement that cities with populations greater than 500,000 take certain actions regarding notice of scoping for a nonproject EIS related to subarea plans is eliminated.

The requirement that cities with populations greater than 500,000 analyze whether an adopted subarea plan will result in displacement or fragmentation of certain populations is eliminated.

Until July 1, 2029, a proposed development that meets the criteria described below is exempt from appeal under SEPA as long as a complete application for such a development is submitted to the city within a time frame established by the city, not to exceed 19 years from the date of issuance of the final EIS for projects that are consistent with an optional element adopted by a city as of the effective date of this section, or 10 years from the date of issuance

of the final EIS for projects that are consistent with an optional element adopted by a city after the effective date of this section.

The criteria that a proposed development must meet in order to qualify for the SEPA appeal exemption are:

- the development must be consistent with the optional comprehensive plan or subarea plan policies and development regulations adopted under the SEPA subarea plan provisions;
- the development must set aside or require the occupancy of at least 10 percent of the dwelling units, or a greater percentage as determined by city development regulations, within the development for low-income households at a sale price or rental amount that is considered affordable by a city's housing program, for projects that are consistent with an optional element of a subarea plan adopted after the effective date of the act; and
- the development must be environmentally reviewed through a nonproject EIS pursuant to the SEPA subarea plan provisions.

Growth Management Planning and Environmental Review Fund.

The purposes for which monies in the Growth Management Planning and Environmental Review Fund may be spent are expanded to include covering costs associated with the adoption of optional elements of comprehensive plans consistent with the subarea plan provisions of SEPA.

Permanent Supportive Housing.

Permanent supportive housing is a permitted use in all areas of code cities and non-code cities where multifamily housing is permitted.

Impact Fees.

Local governments may not charge a higher per-unit impact fee for multifamily residential construction than for single-family residential construction. Local governments may not impose impact fees that cumulatively amount to more than \$50,000 for any single-family residential project.

Substitute Bill Compared to Original Bill:

The list of actions to increase residential building capacity from which certain cities may choose is expanded to include authorizing a duplex on each corner lot within zoning districts that permit single-family residences. The list of actions to increase housing affordability from which certain cities may choose is expanded to include providing surplus property to be used for affordable housing and enacting an affordable housing levy.

A provision is added that, with regard to compliance with the requirement that certain cities take actions to increase residential building capacity and increase housing affordability, cities may rely on actions that take effect on or after January 1, 2015.

Amendments to development regulations and other nonproject actions taken by cities to increase residential building capacity and increase housing affordability are exempt from the requirements of the State Environmental Policy Act (SEPA).

The Growth Management Hearings Board is authorized to hear petitions alleging that the Department of Commerce's certification of updates to a city's housing element, as required by the act, is erroneous.

In order for certain project actions to be exempt from appeal under SEPA for impacts to the transportation elements of the environment, the Department of Transportation must have determined that the project action does not present significant adverse impacts to the state-owned transportation system.

Permanent supportive housing is a permitted use in all areas where multifamily housing is permitted, in both code and non-code cities.

Local governments may not impose impact fees that cumulatively amount to more than \$50,000 for any single-family residential project.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except section 4, relating to petitions that may be heard by the Growth Management Hearings Board, which takes effect December 31, 2020.

Staff Summary of Public Testimony:

(In support) This bill represents a big step forward. There are multiple proposals before the Legislature on the housing crisis, and this one does a good job of addressing the issue of density in urban areas. There should be a minimum density requirement, at least in most cities, that have the urban services to accommodate growth, such as light rail service.

This bill will help ensure cities do their part to provide enough homes for all of Washington. Rents are rising faster than incomes and the reason is that not enough new homes are being built. One factor holding housing back is restrictive zoning. This bill is not a silver bullet, but silver buckshot. Every city is unique, so the bill allows individual cities flexibility to adopt measures that work for them.

Affordability will never happen without taking additional actions. By passing a suite of complementary bills, Washington has a chance to be a national model for housing affordability.

There should be language in the bill about deep affordability. There should also be anti-displacement language in the bill. It is important to put affordable housing dollars to work faster. This bill deals with unnecessary parking requirements, impediments to permanent supportive housing, and higher impact fees for multi-family housing.

(Opposed) The bill silences citizens because they do not get to appeal when there has been a change in zoning. There is no clear definition of affordable housing. It would be good to look at the profiteering aspect of the bill.

The key to affordability is supply, and the bill makes a good faith effort at syncing up state policies to make that happen. There are concerns with elements of the mandatory affordability requirement.

This bill is the best of the various bills the Legislature is considering this year for housing affordability and building capacity. Zoning is not the major impediment to development in most cities. People simply will not build projects if they do not pencil out. There should be greater protection from appeals if the state is going to tell local governments to adopt these policies.

(Other) The outline of the legislation is fantastic. There are concerns about the safe harbor with regard to appeals under the State Environmental Policy Act (SEPA). Deeper affordability and displacement are important to look at. There may be value in looking at a sliding scale of cities that are subject to the requirements, rather than a flat number of 10,000. The housing element in section 2 of the bill should be better linked to section 1 in terms of requirements.

It is good to have a greater variety of housing options. It is important not to lose sight of the fiscal impact of the housing element update requirements. The state is not really funding periodic updates to comprehensive plans now; for cities to get that work done, they will need some help. The relationship is unclear between the appeal process and the role of the Department of Commerce.

Increasing housing near transit is a fundamental principle of good planning. There are some technical issues in the bill that should be addressed; for example, the bill amends the Growth Management Act to remove the requirements for an Environmental Impact Statement (EIS), but it also amends SEPA in a way that contemplates that an EIS would be prepared.

It is good to recognize the power of transit-oriented development. Increasing urban housing density in the vicinity of transit is much more efficient. There should be a role for the Department of Transportation to determine whether a project poses a significant impact to the state transportation system.

The bill will go a long way to helping to get more housing supply on the ground for all income levels.

Persons Testifying: (In support) Representative Fitzgibbon, prime sponsor; Alex Hur, Master Builders Association of King and Snohomish Counties; Craig Enkelking, Sightline; and Michele Thomas, Washington Low-Income Housing Alliance.

(Opposed) Carl Schroeder, Association of Washington Cities; Jan Himebaugh, Building Industry Association of Washington; and Phyllis Booth.

(Other) Bryce Yadon, Futurewise; Dave Anderson, Department of Commerce; Tim Gates, Department of Ecology; Elizabeth Robbins, Department of Transportation; and Jeanette McKasgue, Washington Realtors.

Persons Signed In To Testify But Not Testifying: None.