

HOUSE BILL REPORT

E2SHB 1923

As Amended by the Senate

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

Brief Description: Increasing urban residential building capacity.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Fitzgibbon, Macri, Appleton, Doglio, Dolan, Santos and Frame).

Brief History:

Committee Activity:

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

Appropriations: 2/26/19, 2/28/19 [DP2S(w/o sub ENVI)].

Floor Activity:

Passed House: 3/13/19, 66-30.

Senate Amended.

Passed Senate: 4/13/19, 33-12.

Brief Summary of Engrossed Second Substitute Bill

- Encourages cities with a population of greater than 10,000 that are planning fully under the Growth Management Act (GMA) to take certain actions to increase residential building capacity and housing affordability.
- Encourages cities with a population of greater than 10,000 that are planning fully under the GMA to make certain updates to the housing element of their comprehensive plan.
- Exempts from the requirements of the State Environmental Policy Act (SEPA) amendments to development regulations that are made in order to implement the residential building capacity and housing affordability elements of the act.
- Exempts certain project actions from appeals under SEPA on the basis of transportation impacts, provided they meet certain criteria.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

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.

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).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Environment & Energy. Signed by 21 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Jinkins, Macri, Pettigrew, Ryu, Springer, Stanford, Sullivan, Tharinger and Ybarra.

Minority Report: Do not pass. Signed by 7 members: Representatives Chandler, Dye, Hoff, Kraft, Mosbrucker, Steele and Sutherland.

Minority Report: Without recommendation. Signed by 3 members: Representatives Pollet, Senn and Tarleton.

Staff: Meghan Morris (786-7119).

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.

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.

Summary of Engrossed Second 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 are encouraged to take two or more of the following actions in order to increase residential building capacity:

- authorize development of at least 50 residential units per acre in one or more areas of not fewer than 500 acres that include one or more train stations served by commuter rail or light rail;
- authorize development of an average of at least 25 residential units per acre in one or more areas of not fewer than 500 acres that include one or more bus stops served by scheduled bus service of at least four times per hour for 12 or more hours per day;

- 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;
- authorize cluster zoning or lot size averaging in all zoning districts that permit single-family residences;
- 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, subject to certain restrictions;
- 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;
- adopt a form-based code in one or more zoning districts that permit residential uses;
- authorize a duplex on each corner lot within all zoning districts that permit single-family residences; and
- identify questions in the SEPA checklist that are adequately covered by a locally adopted ordinance, development regulation, land use plan, or other legal authority.

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

- adopt an inclusionary zoning program, in which 10 percent of the new housing capacity directed under the act consists of affordable housing;
- provide surplus property to be used for affordable housing;
- enact an affordable housing levy;
- form or join existing subregional partnerships with neighboring jurisdictions to implement and promote affordable housing programs;
- adopt a renters' commission to advise on issues of displacement; or
- adopt a relocation assistance program.

The actions taken by a city to implement the residential building capacity and housing affordability elements are not subject to SEPA.

Growth Management Act—Housing Element Update.

Cities planning fully under the GMA with a population greater than 10,000 are encouraged to update the housing element of their comprehensive plan with the following components: 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;
- 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 should be incorporated into the housing element of a city's comprehensive plan by the next regularly scheduled comprehensive plan update.

State Environmental Policy Act—Categorical Exemptions.

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

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.

Null and Void Clause.

If specific funding for the purposes of the increased residential building capacity, increased housing affordability, and housing element update sections of the act is not provided by June 30, 2019, in the omnibus appropriations ct, those section are null and void.

EFFECT OF SENATE AMENDMENT(S):

The effect of Senate amendments includes the following:

- The scope of cities that are encouraged to take certain actions to increase residential building capacity is changed, from cities planning under RCW 36.70A.040 with a population greater than 10,000, to all cities planning under RCW 36.70A.040.
- The scope of suggested actions to increase residential building capacity is modified.
- The encouragement that certain cities take certain actions to update the housing element of their comprehensive plan is changed to an authorization for certain cities to adopt a housing action plan.

- The exemption from appeals under the State Environmental Policy Act (SEPA) for certain nonproject actions that increase residential building capacity is modified.
- A provision is added to exempt from appeal under the Growth Management Act (GMA) amendments to comprehensive plans made solely to include certain nonproject actions that increase residential building capacity.
- Planning grants of up to \$100,000 are added for certain cities that take certain actions in connection with housing action plans and increased residential building.
- Definitions are added for certain terms, including affordable housing, extremely low-income households, low-income households, permanent supportive housing, and very low-income households.
- A requirement is added that the Washington Center for Real Estate Research at the University of Washington prepare a biennial report on housing supply and affordability.
- A provision is added to establish standards for residential parking requirements for certain affordable housing units and certain housing units for seniors or people with disabilities.
- Certain project actions are exempted from appeals under SEPA, provided they meet certain criteria.
- The scope of permissible uses of the GMA Planning and Environmental Review Fund is expanded to include planning grants, the biennial study prepared by Washington Center for Real Estate Research, and costs associated with the adoption of optional elements of comprehensive plans.
- A provision is added that prohibits cities from prohibiting permanent supportive housing in areas where multifamily housing is permitted.
- A document recording fee of \$2.50 is added for certain documents, to be deposited into the GMA Planning and Environmental Review Fund.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except section 4, relating to the housing element, which takes effect December 31, 2020. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Environment & Energy):

(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.

Staff Summary of Public Testimony (Appropriations):

(In support) The legislation will increase housing near jobs that are critical to working families. The creation of additional construction jobs will stimulate the economy. This bill is a work in progress to find the right balance of density, affordability, and housing options that reflect the needs of the community.

(Opposed) Market rate is determined by negotiations between buyers and sellers; government should not attempt to control the residential real estate market. Lowering construction costs does not necessarily lead to residential projects, unless those units can be sold or rented. The attempt to balance density and redevelopment challenges faced by cities is an important one. However, cities with extensive zoning and streamlined permitting are still not seeing increased development. Additional resources are needed.

(Other) Affordable home ownership options of all kinds are needed. Local jurisdictions should be appropriately encouraged to create growth and development opportunities.

Persons Testifying (Environment & Energy): (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 Testifying (Appropriations): (In support) Joe Kendo, Washington State Labor Council and American Federation of Labor and Congress of Industrial Organizations; and Alex Hur, Master Builders Association of King and Snohomish Counties.

(Opposed) Bob Jacobs; and Carl Schroeder, Association of Washington Cities.

(Other) Jan Himebaugh, Building Industry Association of Washington.

Persons Signed In To Testify But Not Testifying (Environment & Energy): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.