

HOUSE BILL REPORT

HB 2570

As Reported by House Committee On:
Environment & Energy
Appropriations

Title: An act relating to managing growth by planning and zoning for accessory dwelling units.

Brief Description: Managing growth by planning and zoning for accessory dwelling units.

Sponsors: Representatives Gregerson, Barkis, Ryu, Goodman, Peterson, Fitzgibbon, Walsh, Thai, Corry, Macri, Robinson, Gildon, Doglio, Jenkin, Hudgins, Hoff, Frame, Lekanoff, Kloba, Leavitt, Irwin, Bergquist, Davis, Walen, Tharinger, Cody and Ormsby.

Brief History:

Committee Activity:

Environment & Energy: 1/28/20, 2/4/20 [DPS];

Appropriations: 2/10/20, 2/11/20 [DP2S(w/o sub ENVI)].

Brief Summary of Second Substitute Bill

- Requires some cities and counties (covered jurisdictions) planning under the Growth Management Act (GMA) to adopt four specified policies related to accessory dwelling units (ADUs) by July 1, 2021.
- Encourages covered jurisdictions to adopt 17 optional specified policies related to ADUs.
- Provides that the adoption of the required or encouraged ADU policies by covered jurisdictions are exempt from appeals under the GMA.
- Provides that the adoption of the required or encouraged ADU policies by all cities and all counties taking action within designated urban growth areas are exempt from appeals under the State Environmental Policy Act.
- Requires the Department of Commerce to update a model ADU policy created in a predecessor agency's 1994 report to the Legislature that guides the ADU policies of certain cities and counties by December 15, 2021.

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 10 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; DeBolt, Ranking Minority Member; Dye, Assistant Ranking Minority Member; Boehnke, Doglio, Goehner, Mead, Robinson and Shewmake.

Minority Report: Do not pass. Signed by 1 member: Representative Fey.

Staff: Jacob Lipson (786-7196).

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 Originally enacted in 1990 and 1991, the GMA establishes land-use designation and environmental protection requirements for all Washington counties and cities.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.

The GMA directs jurisdictions that fully plan under the GMA (planning jurisdictions) to adopt internally consistent comprehensive land-use plans that are generalized, coordinated land-use policy statements of the governing body. Comprehensive plans must address specified planning elements, each of which is a subset of a comprehensive plan. Comprehensive plans are implemented through locally adopted development regulations, both of which are subject to review and revision requirements prescribed in the GMA.

Counties that fully plan under the GMA must designate Urban Growth Areas (UGAs). UGAs are 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.

Counties and cities planning 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. Additionally, impact fees may only be imposed for system improvements 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.

Local Planning for Accessory Apartments.

Certain local governments must have accessory apartment, commonly referred to as an accessory dwelling unit (ADU), provisions incorporated in their development regulations, zoning regulations, or official controls. These provisions must be consistent with a 1994 report to the Legislature by the predecessor agency to the Department of Commerce: the Department of Community, Trade, and Economic Development (CTED). This 1994 CTED report provided recommendations designed to encourage developing and placing ADUs in areas zoned for single-family residential use. The CTED model ordinance recommendations include standards and criteria regarding size, parking, design, and quantity of ADUs. To

allow local flexibility, the CTED recommendations are subject to regulations, conditions, procedures, and limitations determined by the local city or county legislative authority. The local governments to which the CTED recommendation provisions apply are:

- counties planning under the GMA;
- counties with a population of over 125,000; and
- cities with a population of over 20,000.

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. 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.

Government decisions can be appealed under the SEPA on procedural grounds related to a threshold determination of significance or on substantive grounds related to an agency's decision to deny or condition a project approval upon the completion of mitigation. Depending on the applicable rules or ordinances related to SEPA appeals that have been adopted by a lead agency, a SEPA appeals process may either begin in an administrative appeals forum or may directly proceed to a judicial review.

Summary of Substitute Bill:

Certain cities and counties planning under the Growth Management Act (GMA) are required to adopt specified policies related to accessory dwelling units (ADUs) and are encouraged to adopt other policies. The cities and counties to which the requirements apply (covered jurisdictions) are:

- counties planning under the GMA that have a population of at least 15,000; and
- cities, code cities, and towns planning under the GMA that have a population of at least 2,500.

The Department of Commerce is directed to update the 1994 Department of Community, Trade, and Economic Development report to the Legislature by December 15, 2021. Upon publication, the recommendations supersede those from 1994, but the recommendations may not take effect before May 1, 2022. The recommendations apply to covered jurisdictions.

Mandatory Accessory Dwelling Unit Policies.

Covered jurisdictions must adopt ADU policies, through ordinances, development regulations, or other official controls, that achieve the following six outcomes:

- allow at least one ADU on all lots located in all zoning districts that allow for single-family housing, which may be either located within or attached to the housing unit (attached ADU) or separate and detached from the housing unit (detached ADU). For detached ADUs, lots must exceed 3,500 square feet;

- may not require the provision of off-street parking for ADUs, except that cities may require a parking spot for ADUs on property no closer than 0.5 mile from major transit stops frequented by service no less often than every 30 minutes, if the properties are located in areas with a lack of access to parking, physical space impediments, or other reasons that on-street parking for ADUs would be infeasible;
- may not require the owner of a lot with an ADU to live in the ADU or another housing unit on the lot, unless the owner owns five ADUs within the same county or the ADU is used as a short-term rental, and may not require a period of continuous ownership before ADU construction is authorized;
- may not charge building permitting and plan review fees that exceed 50 percent of the amount charged to single-family houses;
- may not establish impact fees for ADUs that exceed 50 percent of the amount set for single-family residences; and
- may only require utility connection charges that are proportionate to the burden of the ADU, that do not exceed the reasonable cost of service, and are not inconsistent with water availability requirements, water system plans, or established policies adopted by a water or sewer utility provider.

Optional Accessory Dwelling Unit Policies.

Covered jurisdictions are encouraged to adopt ADU policies that:

- do not require impact fees for ADUs;
- do not establish tree retention requirements specifically applicable to ADUs;
- do not prohibit the sale or conveyance of a condominium unit on the basis that the unit was built as an ADU;
- require ADUs to be accessible to fire department apparatus;
- do not establish a minimum gross floor area requirement for ADUs of greater than 200 square feet;
- do not establish a limit of less than 60 percent of the rear yard that an ADU may cover;
- do not establish setback requirements for ADUs that are more restrictive than for single-family housing;
- do not require that the exterior appearance of an ADU is similar to the appearance of the principal housing unit;
- do not count the gross floor area ratio of an ADU against the floor area ratio limitations that apply to other primary housing units;
- allow ADUs to be sited within 5 feet of a lot line with written approval from the adjacent property owner;
- do not regulate the location of ADU entry doors;
- allow two attached or detached ADUs on all lots in which there is a residential housing unit ranging in size from single-family housing to apartment buildings;
- do not establish maximum gross floor area requirements of less than 1,000 for ADUs;
- do not establish ADU roof height limitations of less than 24 feet;
- adopt model ADU architectural plans that are preapproved for public use under some or all local building and environmental permitting requirements;
- allow ADUs to be sited at the lot line of the rear yard if adjacent to an alley; and
- are identical to some or all of the model ordinance updated by the Department of Commerce and taking effect in 2022.

Implementation of Mandatory and Optional Accessory Dwelling Unit Policies.

Covered cities and counties must adopt required ADU policies by July 1, 2021. Beginning July 1, 2021, the required ADU policies apply and take effect in any covered city or covered county that has not adopted required ADU ordinances, development regulations, or other official controls, and supersede, preempt, and invalidate local regulations in conflict with the ADU requirements. If a city or county becomes a covered jurisdiction after July 1, 2021 because of population growth, required ADU policies must take effect in the jurisdiction no later than 12 months after the Office of Financial Management determines that the city or county has exceeded the population threshold. Ordinances, development regulations, or other official controls are only required to apply in the portions of covered jurisdictions within an urban growth area designated under the GMA. Accessory dwelling units are prohibited from being considered as contributing to the overall density within an UGA for purposes of the GMA. Covered jurisdictions are not required to authorize the construction of ADUs where development is restricted because of physical proximity to on-site sewage system infrastructure, critical areas, or other unsuitable physical characteristics of property.

The adoption of ADU policies that covered jurisdictions are required or encouraged to adopt are exempt from appeals under the State Environmental Policy Act and the GMA.

Nothing in the act modifies or limits any rights or interests legally recorded in the governing documents of Condominium, Homeowner, or Common Interest Ownership Associations.

Substitute Bill Compared to Original Bill:

The substitute makes the following changes to the original version of the bill:

- eliminates the requirement that covered counties and cities choose three of five specified accessory dwelling unit (ADU) policy outcomes and instead adds those five policy outcomes to the menu of ADU options that covered cities and counties are encouraged to adopt and for which they are exempt from State Environmental Policy Act (SEPA) and Growth Management Act (GMA) appeals;
- allows covered cities and counties to adopt ADU policies that include owner-occupancy restrictions that apply to owners that own more than five ADUs within a county and to ADUs used as short-term rentals;
- authorizes covered cities and counties to adopt ADU policies that require one additional parking space for ADUs located no closer than 0.5 mile from major transit stops if in areas with a lack of access to parking, physical space impediments, or other reasons that onstreet parking for ADUs would be infeasible;
- allows covered cities and counties to require new or separate utility connections to ADUs and to consider them new residential uses for purposes of calculating connection fees and utility capacity charges;
- restores provisions of existing law that refer to the 1994 model ADU ordinance by the Department of Commerce (Commerce) and requires Commerce to update the model ADU ordinances developed in 1994 by December 15, 2021, and so that the model ordinance takes effect after May 1, 2022;
- exempts counties and cities that adopt model ordinance policies from appeal under SEPA and deems them in compliance with GMA requirements; and

- declares that nothing in the act modifies or limits any rights or interests legally recorded in the governing documents of Condominium, Homeowner, or Common Interest Ownership Associations.
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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.

Staff Summary of Public Testimony:

(In support) Allowing accessory dwelling units (ADUs) into communities helps them stay intact by maintaining affordability. Accessory dwelling units provide a housing option for people of all ages. Housing affordability is a statewide problem that is addressed by this bill by adding housing supply to the market. This will not solve all housing affordability problems, but it will put a dent in it. This bill will allow cities to grow with additional density and will reduce vehicle miles traveled and greenhouse gas emissions. ADUs allow housing to be built where commutes will be short. Many cities currently authorize ADUs but make it so burdensome with permits, fees, and regulations that few property owners go through with building them. State law establishes statewide guidelines for many types of local policies, and it is appropriate to do so for ADUs. Owner-occupancy requirements that many local governments establish for ADUs prevent nonprofit organizations that provide affordable housing to persons in need from making full use of the properties that they own.

(Opposed) Many cities love the idea of siting ADUs and increasing density, and have recently updated policies to allow ADUs or lower regulatory hurdles to siting ADUs. However, cities want discretion and flexibility with respect to the ADU policies that they adopt. Local governments that have recently updated their ADU policies should not be required to redo all of their ADU policies that were just adopted. Local governments have the most knowledge about which portions of their jurisdiction are most appropriate for densification and ADUs. Housing policies that favor current homeowners carry forward discriminatory practices from the past. The bill does not ensure that ADUs will be sited near transit or in other locations with the infrastructure to support them. It is disingenuous to not count ADUs towards density targets in an appropriate comprehensive plan and reduces the value and applicability of each of the comprehensive plans that have been developed. It is unrealistic to restrict parking associated with ADUs, when many ADU inhabitants will still need to have a car in most jurisdictions. Placing ADUs on lots of properties will change the character of urban areas and remove green spaces, hurting urban agriculture and reducing homeowners' ability to install solar power. This bill will result in the end of medium-density neighborhoods and will allow many more housing units to be built.

Persons Testifying: (In support) Representative Gregerson, prime sponsor; Representative Barkis; Jennifer Gregerson, City of Mukilteo; Margaret Morales, Sightline Institute; Alex Hur, Master Builders Association of King and Snohomish Counties; Joanna Grist, AARP;

Greg Rock, Carbon Washington; Kelsey Hamlin, Sierra Club Washington State; Cynthia Stewart, League of Women Voters of Washington; and Marc Cote, Parkview Services.

(Opposed) Steve Victor, City of Tacoma; Doug Levy, Cities of Renton, Lake Stevens, and Fife; Will Hall, City of Shoreline; Judith Bardin; and Jay Elder.

Persons Signed In To Testify But Not Testifying: None.

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 20 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Rude, Assistant Ranking Minority Member; Caldier, Chopp, Cody, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Kilduff, Macri, Pettigrew, Ryu, Steele, Sutherland and Tarleton.

Minority Report: Do not pass. Signed by 11 members: Representatives Stokesbary, Ranking Minority Member; Chandler, Corry, Kraft, Pollet, Schmick, Senn, Springer, Sullivan, Tharinger and Ybarra.

Minority Report: Without recommendation. Signed by 1 member: Representative Mosbrucker.

Staff: Jessica Van Horne (786-7288).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Environment & Energy:

The Appropriations Committee makes the following changes to the substitute bill:

- raises the population thresholds for cities and counties required to adopt mandatory ADU policies to GMA-planning cities with populations of at least 5,000 and GMA-planning counties with populations of at least 50,000;
- allows covered jurisdictions to require off-street parking for all ADUs located at least one quarter of a mile from a major transit stop without site-specific determinations as to parking adequacy and other factors;
- allows covered jurisdictions to have owner-occupancy requirements applicable to ADUs;
- removes limitations on the impact fees and plan review fees that covered jurisdictions may charge for ADU fees;
- applies the exemption from appeal under the SEPA for mandatory and encouraged ADU policies to all cities and all counties taking action within designated urban growth areas, regardless of whether the city or county is subject to the mandatory ADU policies; and
- clarifies the date by which the Department of Commerce must update the model ADU ordinance.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Cities are facing a housing crisis, which feeds local homeless crises. Cities and counties are not building enough housing to meet the need. All types of housing should be considered to meet housing needs, including ADUs. This bill would assist local governments in providing more housing by building in unused spaces, which would increase density and allow better access to public transit. Building ADUs reduces the impact on green space. The impacts on city budgets will be small. Many impacts have already been paid for by the building in place. Local governments will be able to tailor their policies to suit their local needs.

(Opposed) Cities will incur costs under this bill to adopt mandatory ADU policies, including cities with small populations. Many cities covered by the bill already have ADU ordinances on the books that they feel are appropriate to their local setting. A statewide policy would reduce local control. The parking requirements assume that cities have similar transit systems to that of Seattle. Many residents would still need cars even if there is a transit stop nearby. Other required policies and restrictions on impact fees seem arbitrary and raise concerns around enforcement.

Persons Testifying: (In support) Lisa Parshley, Olympia City Council.

(Opposed) Shelly Helder, Cities of Bothell, Issaquah, Lake Forest Park, Mountlake Terrace, and Lakewood.

Persons Signed In To Testify But Not Testifying: None.