

# SENATE BILL REPORT

## ESSB 5235

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As Amended by House, April 7, 2021

**Title:** An act relating to increasing housing unit inventory by removing arbitrary limits on housing options.

**Brief Description:** Increasing housing unit inventory by removing arbitrary limits on housing options.

**Sponsors:** Senate Committee on Housing & Local Government (originally sponsored by Senators Lias, Das, Nguyen, Nobles, Saldaña and Wilson, C.).

**Brief History:**

**Committee Activity:** Housing & Local Government: 1/26/21, 2/04/21 [DPS, w/oRec].

**Floor Activity:** Passed Senate: 2/24/21, 43-6.

Passed House: 4/7/21, 57-40.

**Brief Summary of Engrossed First Substitute Bill**

- Prohibits counties planning under the Growth Management Act and cities within such counties from prohibiting primarily renter occupied housing units on the same lot as an accessory dwelling unit, with exceptions.
- Prohibits local governments from limiting the number of unrelated persons occupying a home, with exceptions.

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### SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

**Majority Report:** That Substitute Senate Bill No. 5235 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kuderer, Chair; Das, Vice Chair; Fortunato, Ranking Member; Gildon, Assistant Ranking Member; Cleveland, Lovelett, Salomon and Warnick.

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

**Minority Report:** That it be referred without recommendation.

Signed by Senator Short, Assistant Ranking Member.

**Staff:** Brandon Popovac (786-7465)

**Background:** Growth Management Act. The Growth Management Act (GMA) is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, the GMA establishes numerous planning requirements for counties and cities obligated by mandate or choice to fully plan under the GMA and a reduced number of directives for all other counties and cities. Twenty-eight of Washington's 39 counties, and the cities within those counties, are planning jurisdictions.

Local Planning for Accessory Apartments. Local governments are required to have accessory apartments (ADUs) provisions incorporated in their development regulations, zoning regulations, or official controls. These provisions must be consistent with a 1993 report from the Department of Community, Trade, and Economic Development (CTED) that provided recommendations to the Legislature designed to encourage the development and placement of accessory apartments in areas zoned for single-family residential use. The CTED recommendations include standards and criteria regarding size, parking, design, and quantity of accessory apartments. However, local communities have some flexibility to adapt these recommendations to local needs and preferences. "Local government" means a county planning under the GMA, a city with a population of over 20,000, and a county with a population of over 125,000.

Accessory Dwelling Unit Regulation. In 2019, the Legislature encouraged fully planning cities to take an array of specified planning actions to increase residential building capacity. Specified planning actions relating to ADUs include authorizing attached and detached ADUs on all parcels containing single-family homes on lots of a certain size.

In 2020, the Legislature required any city within a county planning under the GMA, that has not adopted or substantively amended its ADU regulations within the previous four years, to adopt or amend ordinances, regulations, or other official controls that do not require the provision of off-street parking for ADUs within 0.25 mile of a major transit stop, with exceptions.

Unrelated Occupants. Many local ordinances make a distinction between what constitutes family and unrelated persons, usually with a limit on the total number of unrelated individuals when regulating residential uses in single or multi-family zones. A local jurisdiction can limit the number of unrelated individuals living together as long as it does not conflict with the Federal Fair Housing Act or any state laws regulating certain group living arrangements. For example, adult family homes are regulated under state law as residential homes in which persons provide personal care, special care, room, and board to qualifying persons. Adult family homes consist of at least one, but no more than six adults who are not related by blood or marriage to the persons providing services.

Some local ordinances set occupancy limits for short-term rentals, or, as defined in state statute with exceptions, any lodging use, that is not a hotel or motel or bed and breakfast, in which a dwelling unit, or portion thereof, is offered or provided to a guest by a short-term rental operator for a fee for fewer than 30 consecutive nights. Any short-term rental operator who offers a dwelling unit, or portion thereof, for short-term rental use must post the maximum occupancy limit for the unit in a conspicuous place.

There is a federal prohibition on limiting the number of related persons or family residing together pursuant to the United States Supreme Court case, *Moore v. City of East Cleveland* (1977).

**Summary of Engrossed First Substitute Bill:** Accessory Dwelling Unit Regulation. Any county planning under the GMA and any city within such county must adopt or amend ordinances, regulations, or other official controls that do not prohibit any housing unit on the same lot as an ADU from being primarily renter occupied, unless the owner of the lot owns more than five accessory dwelling units within the same city or county according to the following timelines:

- by July 1, 2022, for any new housing subdivision;
- by July 1, 2024, for any existing housing subdivision subject to owner-occupancy requirements or any new construction within an existing housing subdivision; or
- by July 1, 2025, for any existing housing subdivision within a residential zoning designation of R-8 or higher and subject to owner-occupancy requirements.

This exception for an owner who owns more than five accessory dwelling units within the same city or county does not apply to ADUs owned by a nonprofit entity.

By the applicable deadlines, the new ADU requirement applies and takes effect in any GMA county or city that has not adopted or amended such regulations and supersede, preempt, and invalidate any conflicting local development regulations.

Unrelated Occupants. Cities, towns, code cities, and counties may not regulate or limit the number of unrelated persons that may occupy a household or dwelling unit except for any occupant limits on group living arrangements regulated under state law or on short-term rentals and any lawful limits on occupant load per square foot as established by applicable building code or city ordinance.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: Washington State has a history of housing discrimination on the basis of race and ethnicity, including within the state Constitution. Examples of redlining policies preventing housing access to African Americans and exclusionary covenants impacting Asian-Americans have had lasting effects on current homeownership rates for communities of color. Low-income individuals benefit from shared housing living situations, including immigrants and students too. The bill is one of several proposals to help root out systemic oppression in state. Homeownership should include the ability to rent property without arbitrary restrictions. The bill presents common sense solutions at no cost to the state. Seventy-one percent of recently surveyed cities regulate unrelated occupants. Rental options are reduced under strict ordinances. At least 89 of surveyed cities enforce owner-occupancy requirements on ADUs. Some cities have not fully embraced GMA density and housing policies but instead have adopted owner-occupancy requirements and arbitrary occupancy limits. Autonomy is not lost if cities are required to change ordinances. ADUs create more housing for multigenerational families. Some newer developments with ADUs have owner occupancy requirements unattractive to buyers.

CON: Renton has already overhauled its ordinances to address costs and impact fees, including bringing in an outside architect to help with ADU ordinances and implement a shelf-ready design. The bill is too prescriptive but should provide permissive authority and/or incentives. The Legislature has already passed a similar bill in 2020. Some cities suggest technical edits to the unrelated occupants portion to reference limits on the load of structure, including ordinances governing public health or septic requirements. There are concerns that new ADU regulations might conflict or supersede short-term rental regulations. The preference is for a more comprehensive review of racial equity issues across a variety of housing issues.

OTHER: Some city attorneys have language suggestions to include ordinances governing health, safety, and sanitation, especially concerning septic tank homes. There are additional concerns around impact of new ADU regulations on short-term rentals. Some cities have adopted or updated unique ADU ordinances addressing owner-occupancy requirements and incorporating different timelines. The bill is too prescriptive. Cities are already progressive with ADU policies but not completely unified on ADU regulation as a whole.

**Persons Testifying:** PRO: Senator Marko Liias, Prime Sponsor; Troy Schmeil, Sapphire Homes; Nisma Gabobe, Sightline Institute; Ben Stuckart, Spokane Low Income Housing Consortium.

CON: Doug Levy, Outcomes By Levy, LLC; Carl Schroeder, Association of Washington Cities.

OTHER: Briahna Murray, Cities of Kent, Redmond, Spokane Valley, Pasco, Issaquah.

**Persons Signed In To Testify But Not Testifying:** No one.

## **EFFECT OF HOUSE AMENDMENT(S):**

- Prohibits GMA counties and cities from imposing owner-occupancy requirements on a lot containing an ADU unless the ADU is being used as a short-term rental, but allows such counties and cities to impose owner-occupancy requirements for the first year of occupancy of the ADU or primary residence after permitting, or for an additional period if the city or county makes findings after at least two public hearings that such a restriction is necessary, addresses community feedback, and is limited in geographic scope.
- Allows GMA counties and cities to impose certain fees or taxes or waive such fees or taxes or provide other incentives for the construction or development of ADUs if the ADUs are subject to effective binding commitments or covenants providing that the ADUs will not be regularly offered for short-term rental, and the city or county has a program to audit compliance with such commitments or covenants.
- Requires GMA counties and cities that impose owner-occupancy requirements on lots containing ADUs to provide for a hardship exemption from such owner-occupancy requirements, while providing circumstances that would qualify for a hardship exemption and prohibiting a city or county that has failed to adopt a hardship exemption by certain deadlines from imposing owner-occupancy requirements outside of limited circumstances.
- Requires GMA counties and cities to conform to the restrictions on owner-occupancy regulations within two years of the next applicable deadline for its comprehensive plan review.
- Allows generally applicable health and safety provisions in applicable building codes or county ordinances to regulate or limit the number of unrelated persons that may occupy a housing or dwelling unit.
- Adds definitions for owner and short-term rental, and removes an allowance for cities and counties to impose owner-occupancy requirements on lots containing an ADU if the owner of the lot owned more than five ADUs in the same city or county.