SENATE BILL REPORT
SB 5670

As Reported by Senate Committee On:
Housing & Local Government, January 27, 2022

Title: An act relating to creating additional middle housing near transit and in areas traditionally dedicated to single-family detached housing.

Brief Description: Creating additional middle housing near transit and in areas traditionally dedicated to single-family detached housing.

Sponsors: Senators Das, Kuderer, Frockt, Liias, Lovelett, Mullet, Nguyen, Nobles, Pedersen, Saldaña and Stanford; by request of Office of the Governor.

Brief History:
Committee Activity: Housing & Local Government: 1/18/22, 1/27/22 [DPS-WM, w/oRec].

Brief Summary of First Substitute Bill

- Requires any fully planning city with a population of 20,000 or more to authorize the development of all middle housing types on all lots zoned for single-family residential use within one-half mile of a major transit stop and duplexes, triplexes, and fourplexes on all other lots zoned for single-family residential use.
- Requires any fully planning city with a population of 10,000 or more to authorize the development of duplexes on all lots zoned for detached single-family residential use.
- Provides an alternative for fully planning cities to implement new middle housing zoning policy and related requirements through alteration of local zoning to allow for certain average minimum density equivalents.
- Requires the Department of Commerce to provide technical assistance and publish model middle housing ordinances to assist cities to implement the new middle housing zoning policy and related

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requirements.

SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

Majority Report: That Substitute Senate Bill No. 5670 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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

Minority Report: That it be referred without recommendation.

Signed by Senator Sefzik.

Staff: Brandon Popovac (786-7465)

Background: Growth Management Act. The Growth Management Act (GMA) is the comprehensive land-use planning framework for counties and cities in Washington. 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 28 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 also 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. When developing their comprehensive plans, counties and cities must consider various goals set forth in statute.

Planning Actions. Fully planning cities are encouraged to take an array of specified planning actions to increase residential building capacity. Specified planning actions include, for example:

- authorizing a minimum net density of six dwelling units per acre in all residential zones;
- authorizing middle housing types on parcels in one or more zoning districts that permit single-family residences unless unfeasible to do so; and
- allowing off-street parking to compensate for lack of on-street parking when private roads are used or a parking demand study shows less parking is required.

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.

The information collected through the SEPA review process may be used to condition a proposal mitigating environmental impacts or to deny a proposal when significant adverse environmental impacts are identified. Any appeal brought under SEPA must be linked to a specific governmental action.

Summary of Bill (First Substitute): Any fully planning city with a population of 20,000 or more must authorize the development of all middle housing types on all lots zoned for detached single-family residential use within one-half mile of a major transit stop. "Middle housing" is defined as duplexes, triplexes, fourplexes, fiveplexes, sixplexes, stacked flats, townhouses, and courtyard dwellings. Definitions for townhouses, stacked flats, and courtyard dwellings are also provided. "Major transit stop" is defined as:

- stops on a high capacity transportation system;
- commuter rail stops;
- stops on rail or fixed guideway systems, including transitways;
- stops on bus rapid transit routes or routes that run on high occupancy vehicle lanes;
- stops for a bus or other transit mode providing actual fixed route service at intervals of at least 15 minutes for at least five hours on weekdays; or
- Washington State ferry terminals.

Any fully planning city with a population of 20,000 or more must also authorize the development of duplexes, triplexes, and fourplexes on all other lots zoned for single-family residential use. Any fully planning city with a population of at least 10,000, but fewer than 20,000, must authorize the development of duplexes on all lots zoned for detached single-family residential use, and may allow all middle housing types in addition to duplexes.

As an alternative to satisfying the new middle housing zoning policy and related requirements, such fully planning cities:

- with a population of 500,000 or more may alter local zoning to allow an average minimum density equivalent to 40 dwelling units or more per gross acre across the entirety of the city;
- with a population of at least 100,000, but fewer than 500,000, may alter local zoning to allow an average minimum density equivalent to 30 dwelling units or more per gross acre across the entirety of the city;
- with a population of at least 20,000, but fewer than 100,000, may alter local zoning to allow an average minimum density equivalent to 25 dwelling units or more per gross acre across the entirety of the city; and
- with a population of at least 10,000, but fewer than 20,000, may alter local zoning to

allow an average minimum density equivalent to 15 dwelling units or more per gross acre.

Any fully planning city choosing to alter local zoning to allow certain authorized average minimum density equivalents must also adopt findings of fact demonstrating that actions taken to implement that average minimum density will not result in racially disparate impacts, displacement, or further exclusion in housing, and transmit such findings to the Department of Commerce (Commerce).

Any fully planning city with a population of 10,000 or more must adopt development and design standards related to the siting and design of middle housing that are consistent with standards published by Commerce, without discouraging the development of middle housing through unreasonable costs, fees, delays, or other requirements or actions that make impracticable the permitting, siting, or construction of middle housing. Such development and design standards do not limit the amount of affordable housing a city requires to be provided, either on site or through an in-lieu payment, through an affordable housing incentive program.

A fully planning city with a population of 10,000 or more must apply to middle housing the same development permit, design review, and environmental review processes that apply to detached single-family residences. Such cities may allow zero lot line development where appropriate, and apply other applicable regulations related to health, safety, setbacks, utility access, sustainability, open space, limits on impermeable surface areas, sunlight, or tree canopy to middle housing if such regulations are not more restrictive than those required for detached single-family residences.

Any fully planning city with a population of 10,000 or more may not:

- apply any floor area ratio limit to middle housing;
- require minimum lot sizes or minimum frontage lengths for lots that accommodate fee-simple, for-sale townhouses;
- require off-street parking as a condition of permitting development of middle housing within one-half mile of a major transit stop;
- require more than one off-street parking space per lot as a condition of permitting development of middle housing on lots smaller than 6000 square feet; and
- require more than two off-street parking spaces per lot as a condition of permitting development of middle housing on lots greater than 6000 square feet.

Any fully planning city continues to be authorized to permit detached single-family residences.

Any fully planning city with a population of 10,000 or more must take all actions necessary to fully implement new middle housing zoning policy and related requirements on or before

the deadline for review and adoption of an updated comprehensive plan for the county in which the city is located.

New middle housing zoning policy and related requirements do not modify, limit, or supersede requirements related to building enclosure design documents and inspections and certifications for multiunit residential buildings. Real property owned within and subject to the requirements of condominium associations homeowners' associations, or common interest communities is exempt from the new middle housing zoning policy and related requirements.

Any measured increases to regional housing capacity following implementation of new middle housing zoning and related requirements are prohibited from being considered when determining that a jurisdiction has exceeded or will exceed its population forecast.

Commerce must provide technical assistance to fully planning cities to implement the new middle housing zoning policy and related requirements, and prioritize such technical assistance to cities demonstrating the greatest need.

Commerce must also publish:

- model middle housing ordinances no later than 18 months after the effective date of the act; and
- model design and development standards demonstrating infill development of middle housing that is generally compatible in scale and character with detached single-family housing.

For any fully planning city with a population of 10,000 or more that has not passed ordinances, regulations, or other official controls within applicable deadlines, the model middle housing ordinance developed by Commerce supersedes, preempts, and invalidates local development regulations until the city takes all necessary implementation actions.

Commerce must also establish a process for cities implementing the new middle housing zoning policy and related requirements to seek approval of necessary local actions. Any such local actions approved by Commerce are exempt from appeals under the GMA and SEPA.

Any fully planning city with a population of 10,000 or more may apply to Commerce to extend the implementation timelines for the new middle housing zoning policy and related requirements. Any such extension certified by Commerce may apply only to specific areas where a city has identified water, sewer, stormwater, or transportation services currently deficient, or are expected to be deficient within the next five years, and for which the local government has established a plan of actions to remedy the deficiency in those services on a specific timeline. Commerce may also certify additional extensions of a city's remediation timeline. An application for an implementation timeline extension by a city must be filed

with Commerce no later than 24 months following the effective date of the act.

Commerce may adopt by rule any procedures necessary for cities to seek approval of necessary local actions and to implement timeline extension allowances.

EFFECT OF CHANGES MADE BY HOUSING & LOCAL GOVERNMENT COMMITTEE (First Substitute):

- Clarifies that adopting average minimum density equivalents, as an alternative option for cities subject to middle housing requirements, applies to the entire city and not the city's UGA.
- Removes the requirement for cities to perform certain antidisplacement measures under the mandatory housing element within one-half mile of a major transit stop if the city has not adopted such measures within nine months of the bill's effective date.
- Requires rather than authorizes cities to adopt development and design standards related to siting and design of middle housing, which must be consistent with standards published by Commerce.
- Clarifies that development and design standards does not limit the amount of affordable housing provided by a city through an affordable housing incentive program.
- Clarifies that cities may apply any regulations concerning health, safety, setbacks, utility access, sustainability, open space, and other elements as long as they are not more restrictive than regulations for detached single-family residences.
- Prohibits cities from applying a floor area ratio limit to middle housing and from requiring minimum lot sizes or frontage lengths for lots for fee simple townhouses.
- Authorizes cities to allow zero lot line development where appropriate.
- Removes the implementation timelines for the middle housing requirements, and requires cities to implement all middle housing requirements by the comprehensive plan update deadlines for the county in which the city is located.
- Clarifies that the middle housing requirements do not modify or limit certain building permit and inspection requirements.
- Exempts real property within condominium or homeowners' associations or common interest communities from middle housing requirements.
- Requires Commerce to publish model design and development standards for middle housing infill development compatible with detached single-family housing.
- Provides that measured increases to regional housing capacity after implementation of middle housing requirements may not impact a determination that a jurisdiction has exceeded or will exceed its population forecast.
- Amends and adds necessary definitions regarding middle housing types, major transit stops, floor area ratio, and zero lot line development.

Appropriation: None.

Fiscal Note: Requested on January 14, 2022.

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: The state suffers from a housing crisis with an insufficient number of homes for working families. Many households spend half of their income on housing costs. Middle housing options are in limited supply and not near amenities like transit and schools. Other west coast states have moved the needle to implement new middle housing zoning policies. New middle housing policies will bolster the economy and unlock the dream for families moving toward homeownership. The bill removes antiquated barriers in creating more housing in cities. The state has lost tens of thousands of acres of farmland to housing development through lack of adequate urban housing planning, and this bill will limit urban sprawl and provide more housing options. Middle housing types are more affordable since land costs can be shared across several households. The state has underproduced housing for decades and certain land is locked away in antiquated zoning codes based on race and class. Single family neighborhoods contribute to pollution and poorer health outcomes. A mix of housing choices would fit all income levels. Current single-family zoning is embedded in legacy of classicism and racial injustice, and this bill would desegregate communities. We have underproduced housing for a generation. Housing prices have doubled statewide with no relief in sight. Middle housing types allow for more participants to participate in housing development, including small business, contractors, or investors. Infrastructure costs are lower overall for middle housing. Increasing supply with middle housing addresses the housing shortage while providing the least burden on our transportation system. Missing middle policy could end up creating between 30,000 to 100,000 units over next 30 years. The bill would reduce vehicle miles traveled per capita as well as greenhouse gas emissions, and lessen burden on transportation system. The bill will help working families fulfill their American dream, especially historically marginalized communities looking for entry level homes. Middle housing policies should have been implemented 10 or 20 years ago. The bill is not a ban on construction of single-family homes. The bill helps persons with disabilities access transit areas and centers. The bill requires updates to setbacks and addresses impediments to producing more housing. Local government is structured to keep the status quo not challenge it. Building permits would not be granted if the proposed development is in violation of GMA and fails other infrastructure needs. Local governments need to be more efficient due to limited space and land availability. Middle housing is in demand, especially for older adults looking for lower cost housing alternatives. Green spaces can be accommodated and protected in other ways.

CON: The Legislature has already encouraged cities to adopt middle housing options and some cities have stepped up to implement similar policies. This bill renders past efforts of cities who have adopted housing action plans useless. The bill lacks transparency and is undemocratic. Middle housing options provided in most areas have not resulted in increased housing affordability. The bill ignores infrastructure needs that are not being met

or adequate. Certain cities implementing similar middle housing policies should be grandfathered in and not forced to overhaul all utility, transportation, and capital facilities. Some cities have reached and exceeded their growth target and have no more land to accommodate more housing. Cities that have already adopted housing action plans with new housing strategies should not be penalized. The bill is too much of a mandate; there is a need for local control. There is a need to preserve lower-cost single family housing. Congestion and public safety should be more of a consideration. Upzone strategies in other states and cities are too recent to evaluate and have not relieved housing demand. Middle housing options already exist in many cities across the state, with 50 cities covering 75 percent of buildable land with middle housing options. Zoning is not a prohibitive factor in housing and community development. Restrictions on use within homeowner associations and their demographics conflict with some of the goals of middle housing policies. The bill is a giveaway to developers by removing the ability to appeal middle housing policy actions. The bill will result in clear cuts of vegetation and landscape and impact the tree canopy. The average neighborhood density would increase five to six times, with single family homes becoming more expensive or demolished .

OTHER: Planning jurisdictions are already implementing optional zoning plans and strategies as part of housing action plans. A one size fits all approach incentivizes more commuting by car. Regional growth plans are problematic and create barriers. The bill wrongfully assumes a barrier to housing is lack of zoning options, but housing is more complex. There will be a negative impact on first-time home buyers with the removal of certain homes from the ladder of homeownership. New housing has not occurred in certain upzoned areas, especially near transit. There is already too much congestion in certain major transit areas and corridors. The bill is a shotgun approach to the housing problem. There are no requirements for tree canopy preservation to prevent heat islands.

Persons Testifying: PRO: Senator Mona Das, Prime Sponsor; Ryan Donohue, Habitat for Humanity Seattle-King & Kittitas Counties; Dani Madrone, American Farmland Trust; Joe A Kunzler, None; Alex Hur, Master Builders Association of King and Snohomish Counties; Mason Thompson; CARY WESTERBECK; Clifford Cawthon, Sightline Institute; Matt Hutchins; Dave Andersen, Washington Department of Commerce; Joe Tovar, American Planning Association Washington Chater; Celeste Gilman, Washington State Department of Transportation; Hugo Garcia; Mike Ennis, Association of Washington Business; Hal Ferris, Ferris Advisors; Rami Al-Kabra; Carolynn Ferris; Bill Clarke, WA REALTORS; Bryce Yadon, Futurewise; Jenne Alderks; Cathy MacCaul, AARP Washington State; Derek Young; Dorene Cornwell; Jan Himebaugh, Building Industry Association of Washington; John Flanagan, Governor's Office.

CON: Eliott Barnett, City of Tacoma; Arne Woodard, City of Spokane Valley; Carol Helland, Redmond Planning and Community Development Director; Nancy Backus, City of Auburn-Mayor; Jeni Woock, City of Gig Harbor City Council Member; Mayor Jim Ferrell, City of Federal Way; RAELENE SCHIFANO, HOA FIGHTCLUB; PAMELA JOHNSTON, SELF; Carl Schroeder, Association of Washington Cities; Eric Faison, City of

University Place; Richard Ellison; Tanner Lemke.

OTHER: Ruth Perez, Renton City Councilmember; Kristina Soltys, City of Covington, Councilmember; Briahna Murray, City of Kent; Shelly Helder, Cities of Issaquah & Mountlake Terrace; Steve Zemke, Tree PAC.

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