

HOUSE BILL REPORT

2SSB 5412

As Passed House - Amended:

April 12, 2023

Title: An act relating to reducing local governments' land use permitting workloads, by ensuring objective and timely design review for housing and other land use proposals within cities and counties and allowing proposed housing within urban growth boundaries to rely on environmental reviews completed at the comprehensive planning level.

Brief Description: Reducing local governments' land use permitting workloads.

Sponsors: Senate Committee on Transportation (originally sponsored by Senators Salomon, Lias, Kuderer, Lovelett, Mullet and Pedersen).

Brief History:

Committee Activity:

Local Government: 3/21/23, 3/24/23 [DPA].

Floor Activity:

Passed House: 4/12/23, 95-2.

Brief Summary of Second Substitute Bill (As Amended by House)

- Exempts, categorically, project actions that develop residential housing units or middle housing within an urban growth area from the State Environmental Policy Act (SEPA) if specified criteria are met.
- Exempts, categorically, project actions that develop residential housing units or middle housing within a city west of the crest of the Cascade Mountains that meets specified population criteria from the SEPA.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass as amended. Signed by 7 members: Representatives Duerr,

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.

Chair; Alvarado, Vice Chair; Goehner, Ranking Minority Member; Jacobsen, Assistant Ranking Minority Member; Berg, Griffey and Riccelli.

Staff: Elizabeth Allison (786-7129).

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 Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities.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 28 counties, and the cities within those counties, that are obligated to satisfy all planning requirements of the GMA.

Counties that fully plan under the GMA must designate urban growth areas (UGAs), within which urban growth must be encouraged and outside of which growth may occur only if it is not urban in nature. Each city in a county must be included in a UGA. Planning jurisdictions must include within their UGAs sufficient areas and densities to accommodate projected urban growth for the succeeding 20-year period.

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 (EIS). Under SEPA, certain nonproject actions are categorically exempt from threshold determinations and EISs in rule. Examples of categorical exemptions include various kinds of minor new construction and minor land use decisions.

State Environmental Policy Act—Categorical Exemptions—Infill Development.

Counties and cities planning fully under the 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 a categorical exemption that meets the following criteria:

- It categorically exempts government action related to development proposed to fill in a UGA where current density and intensity of use in the area is roughly equal to or

lower than called for in the goals and policies of the applicable comprehensive plan, and the development is residential development, mixed-use development, or commercial development up to 65,000 square feet.

- It does not exempt government action related to development that is inconsistent with the applicable comprehensive plan or would clearly exceed the density or intensity of use called for in the goals and policy of the applicable comprehensive plan.
- The local government considers the specific probable adverse environmental impacts of the proposed action and determines that these specific impacts are adequately addressed by the development regulations or other applicable requirements of the comprehensive plan, subarea plan element of the comprehensive plan, planned action ordinance, or other local, state, or federal rules or laws.
- The city's or county's applicable comprehensive plan was previously subjected to environmental analysis through an EIS under the requirements of SEPA prior to adoption, or the city or county has prepared an EIS that considers the proposed use or density and intensity of use in the area proposed for an exemption for infill development.

Summary of Amended Bill:

State Environmental Policy Act—Categorical Exemptions—Infill Development.

The infill development categorical exemption is expanded to include housing development. All project actions that propose to develop one or more residential housing units within the incorporated areas in a UGA, or middle housing within the unincorporated areas in a UGA, and that meet certain criteria are categorically exempt from the SEPA.

Before adopting the categorical exemption, jurisdictions must satisfy the following criteria:

- the proposed development must be consistent with all development regulations implementing an applicable comprehensive plan under the GMA adopted by the jurisdiction in which the development is proposed, with the exception of any development regulation that is inconsistent with applicable provisions of the GMA; and
- the city or county has prepared an environmental analysis that considers the proposed use or density and intensity of use in the area proposed for exemption and analyzes multimodal transportation impacts.

The environmental analysis must include documentation that the requirements for environmental analysis, protection, and mitigation for impacts to elements of the environment have been adequately addressed for the development exempted. Before finalizing the environmental analysis, the local government must provide a minimum of 60 days' notice to affected tribes, relevant state agencies, other jurisdictions that may be impacted, and the public and address any probable adverse impacts.

The categorical exemption is effective 30 days after the above requirements for environmental analysis are completed by a local government.

All project actions that propose to develop one or more residential housing or middle housing units within a city west of the crest of the Cascade Mountains with a population of 700,000 or more are categorically exempt from the SEPA.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill is quite similar to House Bill 1293. The SEPA was passed due to concern for protecting the environment. It is arguable that, within UGAs, in certain circumstances the SEPA is not protective. Instead, the SEPA is used to prevent urban housing development, which then pressures growth out into the countryside and has the opposite desired effect. Some of the provisions of the SEPA allow lawsuits, which have been overused to question every nitpicky thing a city is trying to accomplish or develop. This bill says that an environmental analysis under the SEPA must be done during planning, at which point citizens still have the ability to sue, but after the permit is received, a lawsuit can no longer be brought again at the project level. Allowing additional lawsuits throughout the process is redundant and creates a delay. The design review component of the bill prevents a project from being stopped because it does not meet design review standards that may be unknown to the applicant. Under the bill, design review must be based on objective standards. This is a critical component. The middle housing definition in this bill is different than that of House Bill 1110, but it does not conflict. The definition applies only to this narrow bill, not outside of it. A portion of the middle housing requirements apply to unincorporated areas of UGAs, and this is in the hope that it might support further annexations quicker. Jurisdictions often take longer to annex areas right next to them that do not comply with housing standards. The goal of the bill is to bring all information, participants, and perspectives forward as part of the planning process. This will help give everyone an opportunity to have their voices heard. There is much detail and knowledge going into this plan, and this knowledge and detail will help facilitate and expedite construction that is consistent with the plan.

The Washington State Department of Transportation should step forward to participate upfront when decisions are made.

There is an interest in the need to increase affordable housing. Developers across the state have said that permitting processing delays and the high cost of construction factors into slowing housing development. The consultation with the Washington State Department of Transportation is helpful in ensuring that the transportation system is available. This is an

excellent bill to streamline the permitting process, which currently can be a years-long process. Streamlining the process up front is the right approach. The bill takes away friction points in the environmental review and also provides predictability in aesthetic design review.

(Opposed) None.

(Other) This is one of three active bills that amend the same SEPA statute in different ways that would be difficult to reconcile if all bills are passed. There have been some efforts to harmonize these bills. All three of these bills amend existing SEPA statutes for categorical exemptions for infill development. This bill flips the process around and makes the categorical exemption mandatory rather than optional. This is a sound concept, but the main question is in Section 3, regarding whether a comprehensive plan was previously subject to analysis under the SEPA. The exemption in the bill applies if any SEPA review was done, even if an environmental impact statement was never done. This could get an applicant through the door of project development without ever having to complete an environmental impact statement. This needs to be clarified.

The Washington State Department of Transportation supports removing barriers to housing where most of the needed transportation services can be provided. There is concern that exempting housing of all sizes within a UGA from the SEPA will create unintended consequences where housing is created without adequate specification for transportation. The Committee is urged to make revisions that work on proactive planning to support new development.

Persons Testifying: (In support) Senator Jesse Salomon, prime sponsor; Cynthia Stewart, League of Women Voters of Washington; Ian Morrison, NAIOP Washington State; Brent Ludeman, Building Industry Association of Washington; Scott Hazlegrove, Master Builders Association of King and Snohomish Counties; and Bryce Yadon, Futurewise.

(Other) Tim Gates, Washington State Department of Ecology; and Mark Gaines, Washington State Department of Transportation.

Persons Signed In To Testify But Not Testifying: None.