

SENATE BILL REPORT

ESHB 1042

As Reported by Senate Committee On:
Housing, March 22, 2023

Title: An act relating to the creation of additional housing units in existing buildings.

Brief Description: Concerning the use of existing buildings for residential purposes.

Sponsors: House Committee on Housing (originally sponsored by Representatives Walen, Ryu, Barkis, Simmons, Duerr, Goodman, Bateman, Reed, Ramel, Peterson, Pollet, Doglio, Macri, Reeves, Mena, Tharinger, Wylie, Gregerson, Springer, Bergquist, Thai, Kloba, Santos and Ormsby).

Brief History: Passed House: 2/8/23, 96-0.

Committee Activity: Housing: 2/17/23, 3/22/23 [DPA].

Brief Summary of Amended Bill

- Prohibits cities from imposing certain restrictions or requirements on existing buildings through ordinances, development and zoning regulations, or other official controls.

SENATE COMMITTEE ON HOUSING

Majority Report: Do pass as amended.

Signed by Senators Kuderer, Chair; Frame, Vice Chair; Fortunato, Ranking Member; Braun, Cleveland, Gildon, Rivers, Saldaña, Shewmake, Trudeau and Wilson, J..

Staff: Melissa Van Gorkom (786-7491)

Background: 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

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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 that are generalized, coordinated land use policy statements of the governing body. 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.

Cities and counties that do not fully plan under the GMA may, under the state's optional planning statutes, adopt comprehensive plans, zoning ordinances, and other official controls regulating land uses within their boundaries. Land use regulations may generally include:

- the location and the use of buildings, structures, and land for residence, industry, trade, and other purposes;
- the height, construction, and design of buildings and structures;
- the size of yards, open spaces, lots, and tracts;
- the setback of buildings; and
- the subdivision and development of land.

State Building Code Council. The State Building Code Council (SBCC) is responsible for adopting, amending, and maintaining the State Building Code. The SBCC must regularly review updated versions of the model codes and adopt a process for reviewing proposed statewide and local amendments.

Summary of Amended Bill: Beginning July 1, 2024, a city may not impose any of the following on an existing building through ordinances, development and zoning regulations, or other official controls:

- restrictions on housing unit density that prevent additional units at a density up to 50 percent more than what is allowed in the underlying zone if constructed entirely within an existing building envelope in a building located within a zone that permits multifamily housing, so long as generally applicable health and safety standards can be met;
- parking requirements on the addition of dwelling or living units added within an existing building, however cities may require the retention of existing parking that is required under local laws for nonresidential uses that remain after new units are added;
- permitting requirements beyond those requirements generally applicable to all residential development within the building's zone, unless used as emergency or transitional housing;
- design standard requirements, including setbacks, lot coverage, and floor area ratio requirements beyond those requirements generally applicable to all residential development within the building's zone;

- exterior design or architectural requirements beyond those necessary for health and safety of the use of the interior of the building, unless the building is a designated landmark or is within a historic district established through local preservation ordinance;
- prohibitions on the addition of housing units in any specific part of a building, unless the units would violate applicable building codes or health and safety standards;
- current energy code requirements for unchanged portions the building solely due to the addition of new dwelling units, however, if more than ten new dwelling units are created each of those new units must meet the requirements of the current energy code; or
- a transportation concurrency or State Environmental Policy Act (SEPA) study based on the addition of residential units.

A city may not deny a building permit application for the addition of housing units to an existing building due to the nonconformity regarding parking, height, setbacks, elevator size for gurney transport, or modulation, unless the city official with decision-making authority makes written findings that the nonconformity is causing a significant detriment to the surrounding area.

A city is not required to approve a building permit application for the addition of housing units within an existing building that cannot satisfy life safety standards.

By July 1, 2024, cities must incorporate the standards into their development and zoning regulations, and other official controls, or any conflicting local development regulations are superseded, preempted, and invalidated. Adoption or amendment of ordinances, development regulations, zoning regulations, and other official controls made by cities to meet these requirements are categorically exempt from SEPA.

Cities must review the impact to the provisions relating to the need to meet the current energy code requirements and report the impact and any recommended changes to the Department of Commerce (Commerce) by the city's next comprehensive plan update. Commerce must consolidate the information received by cities into one report to the Legislature by July 1, 2028.

Existing building means a building that received a certificate of occupancy at least three years prior to the permit application to add housing units.

State Building Code Council. By January 1, 2024, the SBCC must amend the State Energy Code to waive the requirement for unchanged portions of an existing building to meet current energy code requirements solely due to the addition of new dwelling units in the building.

EFFECT OF HOUSING COMMITTEE AMENDMENT(S):

- Provides that cities may not impose a restriction on housing unit density that prevents the addition of housing units at a density up to 50 percent more than what is allowed in the underlying zone if constructed entirely within the existing building envelope.
- Allows cities to require the retention of existing parking that is required under local laws for nonresidential uses that remain after the new units are added.
- Provides that cities may impose permitting requirements on the use of existing emergency housing and transitional housing uses.
- Provides that cities cannot impose exterior design or architectural requirements unless the building is a designated landmark or is within a historic district established through a local preservation ordinance.
- Clarifies that cities may not require unchanged portions of an existing building meet the current energy code because of the addition of a new dwelling unit, but if more than ten new dwelling units are created within the existing building, each of those new dwelling units must meet the requirements of the current energy code.
- Clarifies that cities cannot deny a building permit for the addition of housing units to an existing building due to nonconformity of parking, height, setbacks, elevator size for gurney transport, or modulation, rather than for nonconformity of the existing structure.
- Authorizes the city official with decision-making authority, rather than the legislative authority of the city, to make written findings that nonconformity is causing a significant detriment to the surrounding area.
- Requires each city report the impact and any recommended changes to the provisions relating to the need to meet the current energy code requirements to the Commerce by the city's next comprehensive plan update and Commerce to issue one consolidated report to the Legislature by July 1, 2028.
- Defines an existing building as a building that received a certificate of occupancy at least three years prior to the permit application to add housing units.
- Exempts adoption or amendment of ordinances, development regulations, zoning regulations, and other official controls necessary to comply with the bill from the SEPA.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 23, 2023.

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 Engrossed Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The current economy is affecting the traditional use of buildings in our state causing many of these buildings to be under used and adaptive reuse of these buildings could help with housing. This policy would provide a framework for Washington to create an environment

for adaptive reuse of buildings. There are also opportunities for nonprofits to acquire these properties at lower cost to provide housing at a lower rent. It is cheaper to leverage lower cost on existing buildings to create more homes quickly with minimal impact to the community. There are many underutilized buildings but if you want to add housing to them there are often zoning barriers that prevent that such as parking regulations that require additional parking even if the current parking is not at full capacity, we have a housing crisis not a parking crisis. Removing parking from this bill would essentially gut the bill, parking should remain optional.

OTHER: The bill is moving very fast and needs more work. Under current law the impact of this bill is different than if the Legislature passes the middle housing bill which requires multi-family in all residential zones and so we ask that you consider the Legislation in its totality regarding how each component will fit together. It would be helpful to clarify that existing buildings are those buildings constructed as of the effective date of this act which would protect us from shell buildings being constructed just so that they fall under this act. The converted buildings should still be in line with the maximum density proposed so that cities can still plan for and prepare for growth. The deadlines in the bill should align with the next comprehensive plan update rather than July 2024 deadline. Exemption language for historic buildings should be amended to reflect changes in other bills. The bill should not apply to emergency and transitional housing units. Parking should be clarified to not require any new parking but ask that the current parking be retained for the building. The bill requires the Council waive requirements for existing building to meet the current energy code requirements because of the addition of units within the building, but we would like to amend the language to clarify that any new unit added must meet the requirements of the energy code.

Persons Testifying: PRO: Robert Pantley, Natural and Built Environments; Greg Hanon, NAIOP; Dan Bertolet, Sightline Institute.

OTHER: Carl Schroeder; Kristen Holdsworth, City of Kent, Long Range Planner; Briahna Murray, Cities of Bellevue and Redmond; Stoyan Bumbalov, State Building Code Council.

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