

SENATE BILL REPORT

SB 5412

As of January 26, 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: Senators Salomon, Liias, Kuderer, Lovelett, Mullet and Pedersen.

Brief History:

Committee Activity: Local Government, Land Use & Tribal Affairs: 1/26/23.

Brief Summary of Bill

- Establishes that counties and cities planning under the Growth Management Act may apply only clear and objective development regulations governing the exterior design of certain new development in a design review process.
- Categorically exempts project actions that propose to develop one or more residential housing units within the incorporated areas in an urban growth area, or middle housing within the unincorporated areas in an urban growth area, and meet certain criteria from the State Environmental Policy Act.

SENATE COMMITTEE ON LOCAL GOVERNMENT, LAND USE & TRIBAL AFFAIRS

Staff: Karen Epps (786-7424)

Background: Growth Management Act. The Growth Management Act (GMA) is the

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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—planning jurisdictions—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.

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.

Design Review. Design review is a formally adopted local government process by which projects are reviewed for compliance with design standards for the type of use adopted through local ordinance. Design review focuses on the appearance of new construction, site planning, and items such as landscaping, signage, and other aesthetic issues.

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 categorical exemptions to exempt government action related to development that is new residential development, mixed-use development, or commercial development up to 65,000 square feet, proposed to fill in a UGA when:

- current density and intensity of the use in the area is roughly equal to or lower than called for in the goals and policies of the applicable comprehensive plan;
- the action would not clearly exceed the density or intensity of use called for in the goals and policies of the applicable comprehensive plan;

- the local government considers the specific probable adverse environmental impact of the proposed action and determines that those specific impacts are adequately addressed by other applicable regulations, comprehensive plans, ordinances, or other local, state, and federal laws and rules; and
- the applicable comprehensive plan was previously subjected to environmental analysis through an EIS according to SEPA.

Summary of Bill: Design Review. Counties and cities planning under the GMA may apply only clear and objective development regulations governing the exterior design of new development in a design review process, except for structures listed on the Washington Heritage Register or the National Register of Historic Places. For the design review process, a clear and objective development regulation:

- must include one or more ascertainable guidelines, standards, or criterion by which an applicant can determine whether a given building design is permissible under that development regulation; and
- may not have the effect, either alone or together with other development regulations, of discouraging needed housing through unreasonable cost, delay, or uncertainty.

A design review process must be conducted concurrently, or otherwise logically integrated, with the consolidated review and decision process for project permits, and no design review process may include more than one public meeting.

State Environmental Policy Act—Categorical Exemptions—Housing 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 an urban growth area or middle housing within the unincorporated areas in an urban growth area, and that meet certain criteria are categorically exempt from SEPA. The project action is eligible for categorical exemption only if it meets the following criteria:

- the proposed development is not inconsistent with an applicable comprehensive plan adopted under the GMA by the jurisdiction in which the development is proposed;
- the proposed development would not exceed the density or intensity of use called for in the goals and policies of that applicable comprehensive plan; and
- the city or county's applicable comprehensive plan was previously subject to environmental analysis through an environmental impact statement under SEPA prior to adoption, or the city or county has prepared an environmental impact statement that considers the proposed use or density and intensity of use in the area proposed for an exemption for housing development.

For this housing development categorical exemption, middle housing is defined to mean fourplexes, attached and detached accessory dwelling units, cottage housing, stacked flats, townhouses with more than four units, and courtyard apartments.

Locally authorized categorical exemptions for housing development may differ from the

categorical exemptions established by the Department of Ecology by rule.

Appropriation: None.

Fiscal Note: Not requested.

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: PRO: This is a housing affordability, housing supply bill. Currently, there is a two-step process that can slow down housing and make it more expensive. When a comprehensive plan is done, anyone can appeal to make sure any environmental questions were addressed and adequately solved. Once a builder is developing housing, there can be an appeal right before development is about to happen for the same reason at the lot level. The bill will create objective standards for design review that can be applied and is fairer. Urban communities do an extensive EIS on their comprehensive plan, which looks at the densities allowed both within cities and outside cities within the UGA. This bill aligns with that work and allows local development to occur consistent with that EIS. The objective design standards in this bill will help eliminate delays. Design standards can add months to the timeline of a project and this bill will help limit delays. The bill will encourage more participation by all entities at the planning level and will provide a full environmental review to consider all factors.

OTHER: It is critical that the Department of Transportation (WSDOT) retain the ability to review significant development proposals to avoid introducing safety challenges and ensure access and travel needs are met with multi modal transportation. SEPA is one of the only tools WSDOT has at the project level to determine if mitigation is necessary to address safety and operational impacts to the state highway system.

Persons Testifying: PRO: Senator Jesse Salomon, Prime Sponsor; Josie Cummings, Building Industry Association of Washington; Scott Hazlegrove, Master Builders Association of King & Snohomish Counties; Carl Schroeder, Association of Washington Cities; Bryce Yadon, Futurewise.

OTHER: Kerri Woehler, Washington State Department of Transportation.

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