

SENATE BILL REPORT

ESSB 5466

As Passed Senate, March 1, 2023

Title: An act relating to promoting transit-oriented development.

Brief Description: Promoting transit-oriented development.

Sponsors: Senate Committee on Transportation (originally sponsored by Senators Liias, Gildon, Kuderer, Lovelett, MacEwen, Mullet, Braun, Billig, Dhingra, Frame, Hunt, Kauffman, Nguyen, Nobles, Pedersen, Saldaña, Salomon, Shewmake, Stanford, Valdez, Van De Wege and Wilson, C.; by request of Office of the Governor).

Brief History:

Committee Activity: Local Government, Land Use & Tribal Affairs: 1/31/23, 2/07/23 [DP-TRAN, w/oRec].

Transportation: 2/13/23, 2/23/23 [DPS, w/oRec].

Floor Activity: Passed Senate: 3/1/23, 40-8.

Brief Summary of Engrossed First Substitute Bill

- Requires the Department of Transportation to establish a competitive grant program to help finance qualifying housing projects within rapid transit corridors, and to provide technical assistance for implementing, and compliance review of, transit-oriented development regulations.
- Establishes that cities planning under the Growth Management Act (GMA) may not enact or enforce any new development regulation within a transit station area that prohibits the siting of multifamily residential housing on parcels where any other residential use is permissible.
- Establishes that cities planning under the GMA may not enact any new development regulation within a transit station area or hub that imposes a maximum floor area ratio of less than the applicable transit-oriented density for any use otherwise permitted, or imposes a maximum residential density, measured in residential units per acre or other metric

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of land area.

- Prohibits counties and cities planning under the GMA from requiring off-street parking as a condition of permitting development within a transit station area, with exceptions.
- Expands the categorical exemption for infill development to facilitate the timely and certain deployment of sustainable transit-oriented development.

SENATE COMMITTEE ON LOCAL GOVERNMENT, LAND USE & TRIBAL AFFAIRS

Majority Report: Do pass and be referred to Committee on Transportation.
Signed by Senators Lovelett, Chair; Salomon, Vice Chair; Kauffman.

Minority Report: That it be referred without recommendation.
Signed by Senators Torres, Ranking Member; Short.

Staff: Karen Epps (786-7424)

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: That Substitute Senate Bill No. 5466 be substituted therefor, and the substitute bill do pass.

Signed by Senators Lias, Chair; Lovick, Vice Chair; Shewmake, Vice Chair; King, Ranking Member; Holy, Assistant Ranking Member; Cleveland, Kauffman, Lovelett, MacEwen, Nobles, Randall, Valdez, Wilson, C. and Wilson, J..

Minority Report: That it be referred without recommendation.
Signed by Senator Padden.

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—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.

The GMA sets forth 14 planning goals to guide the development and adoption of

comprehensive plans and development regulations of counties and cities that fully plan under the GMA. The transportation goal encourages efficient multimodal transportation systems based on regional priorities and coordinated with county and city transportation plans. The housing element must ensure the vitality and character of established residential neighborhoods. Among other things, the housing element must include:

- an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth;
- adequate provisions for existing and projected needs of all economic segments of the community;
- identification and implementation of policies and regulations to address and begin to undo racially disparate impacts, displacement, and exclusion of housing caused by local policies, plans, and actions; and
- establishment of antidisplacement policies.

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

- authorizing a development in one or more areas of certain size that include at least one train station served by commuter rail or light rail with an average of at least 50 residential units per acre that require no more than an average of one on-stop parking space per two bedrooms in the portions of multifamily zones located within the area; or
- authorizing a development in one or more areas of certain size and population that include at least one bus stop served by a scheduled bus service of at least four times per hour for 12 or more hours per day with an average of at least 25 residential units per acre that require no more than an average of one on-site parking space per two bedrooms in portions of the multifamily zones located within the area.

Comprehensive Plans. The GMA 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 the 14 planning goals.

The Department of Commerce (Commerce) must establish a program of technical and financial assistance to encourage and facilitate cities and counties to adopt and implement comprehensive plans.

Limits on Minimum Residential Parking Requirements. For affordable housing units that are affordable to very low-income or extremely low-income individuals, and are located within 0.25 miles of a transit stop that receives transit service at least two times per hour for 12 or more hours per day, minimum residential parking requirements may be no greater than one parking space per bedroom or 0.75 spaces per unit. For market rate multifamily housing units that are located within 0.25 miles of a transit stop that receives transit service from at least one route that provides service at least four times per hour for 12 or more

hours per day, minimum residential parking requirements may be no greater than one parking space per bedroom or 0.75 space per unit.

Counties, as well as cities, may establish a requirement for the provision of more than one parking space per bedroom for market rate multifamily housing, if the jurisdiction has determined a particular housing unit to be in an area with a lack of access to street parking capacity, physical space impediments, or other reasons supported by evidence that would make on-street parking infeasible for the unit.

As of July 1, 2021, fully planning cities under the GMA may not require the provision of off-street parking for accessory dwelling units within a quarter mile of a major transit stop, such as a high capacity transportation system stop, a rail stop, or certain bus stops, unless the city determines that on-street parking is infeasible for the accessory dwelling unit.

Average Minimum Density Requirements. Floor area ratio is the measurement of a building's floor area in relation to the size of the lot or parcel on which the building is located. Minimum density specifies a minimum size, or floor area ratio, for new development.

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. Government decisions identified as having significant adverse environmental impacts must then undertake 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 SEPA to accommodate infill development. 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 an urban growth area 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 Engrossed First Substitute Bill: Transit-Oriented Development Technical Assistance and Grant Programs. The Washington State Department of Transportation (WSDOT) must create a new division within its agency or expand an existing division within its agency to:

- provide technical assistance and award planning grants to cities for transit-oriented development regulation adoption;
- provide compliance review of any transit-oriented development regulations; and
- mediate or help resolve disputes between WSDOT, local governments, and project proponents regarding land use decisions and processing development permit applications.

WSDOT must establish and administer a competitive grant program, in consultation with Commerce, to assist with financing housing projects within rapid transit corridors. State agencies, local governments, and nonprofit or for-profit housing developers are eligible to receive grant awards, and grant awards may be used for project capital costs and infrastructure costs and to address gaps in project financing that would prevent ongoing or complete project construction. Eligible housing projects must meet the following requirements:

- be within one-quarter mile of a rapid transit corridor;
- comply with floor area ratio or net density minimums;
- produce at least 100 units of housing; and
- include a covenant on the property requiring at least 20 percent of units remain affordable for households with incomes at or below 80 percent of area median income for at least 99 years.

WSDOT may award up to five percent of grant funds to housing projects within rapid transit corridors that meet such requirements except for either the 100-housing unit minimum requirement or the within one-quarter mile of a rapid transit corridor requirement. WSDOT must also prioritize eligible projects by occupancy date, with a target occupancy date of December 31, 2025, and consider certain criteria when prioritizing projects, such as those that:

- are comprised of the largest percentage of affordable units;
- have a high concentration of units affordable to households with incomes at or below 50 percent area median income;
- abide by antidisplacement measures, if appropriate; or
- include units with additional bedrooms or are intended for occupancy by families with multiple dependents.

The Transit-Oriented Development Housing Partnership Account is created in the custody of the state treasurer, and the secretary of WSDOT, or their designees, and may authorize expenditures from the account. Account revenue may include gifts, donations, or other private contributions, with authorized expenditures for the competitive grant program to finance housing projects in rapid transit corridors and for costs related to duties of the new or expanded division created within WSDOT.

Subject to funds appropriated to the Growth Management Planning and Environmental Review Fund in the transportation budget, for awarding grants to cities to facilitate transit-oriented development, Commerce may use such grants:

- to pay for the costs associated with environmental impact statements, planned action ordinances, subarea plans, the use of other tools under GMA or SEPA, and local code adoption and implementation; and
- to only fund efforts that address environmental impacts and consequences, alternatives, and mitigation measures to allow the analysis to be adopted by applicants for development permits within the geographic area analyzed in the plan.

In consultation with WSDOT, Commerce must prioritize applications for grants to facilitate transit-oriented development that maximize certain policy objectives in the area covered by a proposal, such as:

- the total number of housing units authorized for new development in station areas, with specific attention to station hubs;
- proximity and quality of transit access
- plans that exceed applicable transit-oriented densities for station areas and station hubs;
- plans in areas that eliminate on-site parking requirements;
- existence or establishment of incentive zoning, inclusionary housing, use of the multifamily tax exemption, or other tools to promote low-income housing in the area; and
- organization planning and financing of housing benefit districts.

Development Regulations Within a Station Area or Station Hub. Cities planning under GMA may not enact or enforce any new development regulation within a station area that prohibits the siting of multifamily residential housing on parcels where any other residential use is permissible. Cities planning under GMA may not enact any new development regulation within a station area or hub that:

- imposes a maximum floor area ratio of less than the applicable transit-oriented density for any use otherwise permitted within a station area or station hub;
- imposes a maximum residential density, measured in residential units per acre or other metric of land area within a station area or station hub; or
- renders a parcel in a station area impracticable to build a usable structure for permitted uses at the applicable transit-oriented density or applicable floor area ratio except for development standards contained in:
 1. a shoreline master program or critical area ordinance; or
 2. to any parcel that is nonconforming with local subdivision standards, or is a listed historic structure.

As an alternative, cities may by ordinance designate parts of a station area or station hub in which to enact or enforce floor area ratios that are more or less than the applicable transit-oriented density if the following conditions are met:

- the average maximum floor area ratio of all buildable land within a station area or station hub is no less than the applicable transit-oriented density;
- no part of a station hub is subject to a maximum floor area ratio that is less than 1.0; and
- no part of a station area is subject to a maximum floor area ratio that is less than 0.5.

If a city has enacted a development regulation that imposes a maximum floor area ratio of less than the applicable transit-oriented density or a maximum residential density measured in residential units within a station area or station hub, the city must enforce and apply the development regulation consistent with the requirements above. Cities planning under GMA must comply with the requirements above, and collaborate with tribes as outlined under the GMA, by the time of their next periodic comprehensive plan update.

Within any station area or station hub, any maximum floor area ratio otherwise enacted or enforceable must include an increased density bonus of 50 percent for affordable housing for households with incomes at or below 60 percent area median income, for permanent supportive housing, or for long-term inpatient care for behavioral health services.

Childcare facilities, a small business with fewer than 50 employees, and residential units with at least three bedrooms in multifamily housing that are within a station area must not be counted toward applicable floor area ratio limits.

The requirements on transit-oriented development regulations do not:

- alter, displace, or limit industrial uses or industrial areas within the urban growth area; or
- limit the amount of affordable housing provided through local mandatory housing affordability programs.

Parking. To encourage transit-oriented development and transit use and resulting substantial environmental benefits, counties and cities planning under GMA may not require off-street parking as a condition of permitting development within a station area, except for off-street parking that is permanently marked for the exclusive use of individuals with disabilities. A city or county may consult with WSDOT and if the city or county and WSDOT determine that the lack of minimum parking requirements in a defined area would make on-street parking infeasible or unsafe for the authorized units, off-street parking may be allowed within a station area. If a project permit application within a station area does not provide off-street parking, the proposed absence of parking may not be treated as a basis for issuance of a determination of significance pursuant to SEPA. Minimum residential parking requirements for affordable housing units, housing units for seniors or persons with disabilities, and market rate multifamily housing units, in close proximity of certain transit stops, are removed.

State Environmental Policy Act—Categorical Exemptions—Infill Development. The categorical exemption for infill development is expanded to facilitate the timely and certain deployment of sustainable transit-oriented development. A project action that meets the

following criteria is categorically exempt from the requirements of this chapter:

- it is related to a proposed development that would fill in a station hub or station area;
- it is related to a proposed multifamily residential development, mixed-use development, or commercial development; and
- it is not inconsistent with the applicable comprehensive plan, and does not clearly exceed the density or intensity of use called for in the goals and policies of the applicable comprehensive plan.

A categorical exemption for sustainable transit-oriented development applies even if it differs from the categorical exemptions adopted by Department of Ecology rules.

Common Interest Communities. Governing documents and declarations created after the effective date of the act and applicable to common interest communities, including condominium associations and home owners' associations, within cities that adopt development regulations related to maximum floor area ratios and maximum residential density provisions, may not prohibit construction or development of multifamily housing or transit-oriented density within a station area or require off-street parking that is inconsistent or in conflict with parking provisions applicable within a station area.

Definitions. Station area means all parcels that are fully within an urban growth area and fully or partially within a three-quarter mile walking distance of a major transit stop or fully or partially within a half-mile walking distance of a frequent bus stop. A fully planning city may adopt a station area variance but only after consultation and approval by WSDOT. Station hub means all parcels that are fully within an urban growth area and fully or partially within a one-quarter mile walking distance of a major transit station. A fully planning city may adopt a station hub variance but only after consultation and approval by WSDOT.

Definitions for other key terms are provided, including rapid transit corridor, major transit stop, frequent bus stop, major transit station, floor area ratio, and transit-oriented density.

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 (Local Government, Land Use & Tribal Affairs): PRO: It is important to maximize investment of transportation by siting jobs and housing next to them so people can use new modes of transportation that are critically important. This bill helps communities respond to and leverage investments in transit service to meet the need for more housing across the state. The bill provides local

governments with technical assistance and gives them flexibility to accomplish target densities. Transit oriented development in this bill will leverage existing and future investments, and create walkable neighborhoods, close to transit, and provide needed affordable housing. Paired with anti-displacement strategies, this bill also protects existing residents and businesses as new development occurs, ensuring that the benefits of ongoing investments are broadly shared. This bill plays an important role in advancing state housing policy by linking transit investments with increased housing density. The bill will remove barriers that keep housing from being built in transit areas. This bill takes advantage of both state and local investment in transit and will provide workforce level housing in Washington. The bill allows for a collaborative approach with builders and WSDOT around issues that can delay a project, such as right of way and access roads. With the standards in the bill, urban centers can develop in a logical and efficient manner. This bill addresses restrictive zoning by establishing flexible zoning standards so that cities with transit assets can work together to reduce the housing shortage and maximize the investments in transit. The densities in the bill have been tailored to support and encourage mid-rise apartment construction. This bill will allow for more commercial space and rental opportunities to be built, together with more ownership opportunities. The bill sets a baseline level of density near transit while giving cities flexibility on how the growth within station areas is distributed. This bill can give those with disabilities the ability to own or rent in transit areas.

OTHER: This bill would make it difficult for affordable home ownership projects to happen near transit. There is a need for a mixture of housing types while meeting the need for more density near transit. There is concern about how the bill will interact with common interest communities and homeowners' associations. Applying this bill to existing associations would potentially override real property covenants that apply to those associations. Parking is a concern and local communities should be allowed to regulate the parking impact.

Persons Testifying (Local Government, Land Use & Tribal Affairs): PRO: Senator Marko Liias, Prime Sponsor; Jesse Simpson, Housing Development Consortium; Dan Bertolet, Sightline Institute; Joe Kunzler, None; Bryce Yadon, Futurewise; Alex Hur, Master Builders Association of King and Snohomish Counties; Josie Cummings, Building Industry Association of Washington; Kristina Walker, Deputy Mayor, City of Tacoma; Wes Stewart, Sierra Club Washington; Mike Ennis, Association of Washington Business; Angela Rozmyn, Natural and Built Environments; Jennifer Gregerson; Kelli Refer, Move Redmond; Noha Mahgoub, Office of Financial Management; Nathan Gorton, Washington REALTORS; Dave Andersen, Washington Department of Commerce; BILL CLARKE, Amazon; Cristina Mateo, WA Build Back Black Alliance - (WBBA); Brian Lagerberg, Director of Public Transportation, WA State Department of Transportation; Josh Friedmann, NAIOP.

OTHER: Ryan Donohue, Habitat for Humanity Seattle-King & Kittitas Counties; Carl Schroeder, Association of Washington Cities; Dean Martin, Washington State Chapter of Community Association Institute.

Persons Signed In To Testify But Not Testifying (Local Government, Land Use & Tribal Affairs): No one.

Staff Summary of Public Testimony on Proposed Substitute (Transportation): *The committee recommended a different version of the bill than what was heard.* PRO: We face a housing shortage crisis, and there is no single solution. Studies have identified the development of housing units within transit areas as a potential solution. The bill will allow the state to utilize previous investments in transit, and build over 900,000 homes in transit-oriented density zones. The state is 262,000 housing units short of demand, especially for new home buyers. Land availability is tight and density is appreciated. Transit-oriented development (TOD) allows for smart development by tying housing to density and other middle housing legislation. Parking mandates can jeopardized projects moving forward with increased development costs. The bill addresses both climate change and housing crises. Transportation is the largest producer of greenhouse gas emissions. Housing near transit will help reduce carbon emissions. The GMA should mandate greater urban densification. TOD will allow transit agencies to provide more effective and efficient service, and create more multimodal options beneficial to families. Seventy-nine percent of persons support development near transit areas. The bill will allow people to live car-free lifestyles. The bill will help streamline permitting processes is appreciated. This bill supports racial and economic equity. Washington State ranks fiftieth in available housing units per family. Building homes near transit will improve walkability and reduce urban sprawl. Public and private sectors can work together to improving housing. Some transit agencies have already built housing units near transit stations. Amazon's housing equity fund will invest \$25 million for the new account created in the bill. Base floor area ratio minimums are important to achieve consistency among planning cities. Housing costs are driving persons away from where they work. Expanding housing near transit will improve transportation choices for families to reach their destinations. This bill combined with other middle housing bills would unlock opportunities for housing developers. Introduction of new resolution services provided by WSDOT is appreciated. Research shows that parking mandates will undermine the intent of the bill, and more parking has been constructed than what is needed. TOD positions workers and consumers closer to preferred destinations and eliminates unnecessary driving. Increasing infill housing is an important farmland protection strategy.

OTHER: We need a million homes in the next 20 years, with at least half being affordable. Affordable housing provisions are necessary to include in the bill. Bus service definitions need further development. Most housing developed under the bill will be market rate and not low-income. Parking restrictions are the biggest concern and questions remain on whether cities should regulate this area. Affordable homeownership strategies should be implemented, and homes of all types are needed. Some of the grant program requirements are prohibitive on some affordable housing projects. The bill should contemplate development of permanent supportive housing units.

Persons Testifying (Transportation): PRO: Senator Marko Liias, Prime Sponsor; Cynthia

Stewart, League of Women Voters of WA; Lars Erickson, Seattle Metropolitan Chamber of Commerce; Jesse Simpson, Housing Development Consortium; Leah Missik, Climate Solutions; Bill Stauffacher, Building Industry Association of Washington; Jodie Alberts, Bellevue Chamber of Commerce; Greg Hanon, NAIOP; Mike Ennis, Association of Washington Business; Alex Hur, Master Builders Association of King and Snohomish Counties; Breck Lebegue; Noha Mahgoub, Office of Financial Management; Dan Bertolet, Sightline Institute; Wes Stewart, Sierra Club Washington; Dani Madrone, American Farmland Trust; Nathan Gorton, WA REALTORS; Alice Shobe, AMAZON; Bryce Yadon, Transportation Choices Coalition and Futurewise; April Sims, Washington State Labor Council, AFL-CIO.

OTHER: Clifford Cawthon, Habitat for Humanity of Seattle-King & Kittitas Counties; Carl Schroeder, Association of Washington Cities; Michele Thomas, Washington Low Income Housing Alliance.

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