

SENATE BILL REPORT

SB 5148

As of February 18, 2025

Title: An act relating to ensuring compliance with the housing element requirements of the growth management act.

Brief Description: Ensuring compliance with the housing element requirements of the growth management act.

Sponsors: Senators Bateman, Lias, Nobles and Stanford.

Brief History:

Committee Activity: Housing: 1/24/25, 2/07/25 [DPS-WM].

Ways & Means: 2/18/25.

Brief Summary of First Substitute Bill

- Allows a city or county that is required to plan under the Growth Management Act to submit any housing element or housing development regulations to the Department of Commerce (Commerce) for review.
- Requires certain cities or counties to submit their housing element and development regulations to Commerce for review.
- Specifies required content and processes for a determination of compliance from Commerce.
- Prohibits a city or county from denying an affordable or moderate-income housing development under certain circumstances if their housing element is subject to review and not in compliance.
- Specifies that counties and cities must demonstrate substantial progress towards compliance with housing element deadlines in order to receive particular grants, loans, pledges, or financial guarantees.

SENATE COMMITTEE ON HOUSING

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.

Majority Report: That Substitute Senate Bill No. 5148 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Bateman, Chair; Alvarado, Vice Chair; Goehner, Ranking Member; Gildon, Orwall, Salomon and Trudeau.

Staff: Benjamin Omdal (786-7442)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Trevor Press (786-7446)

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.

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 various goals set forth in statute.

Mandatory Housing Element. Comprehensive plans must include a housing element that ensures the vitality and character of established residential neighborhoods. The housing element must include the following:

- an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth, as provided by the Department of Commerce;
- a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing;
- identification of sufficient capacity of land for various housing;
- adequate provisions for existing and projected needs of all economic segments of the community;
- identification of local policies and regulations that result in racially disparate impacts, displacement, and exclusion of housing;
- identification and implementation of policies and regulations to address and begin to undo racially disparate impacts, displacement, and exclusion of housing;
- identification of neighborhoods that may be at higher risk of displacement from market forces; and
- establishment of anti-displacement policies.

Growth Management Hearings Board. The Growth Management Hearings Board (GMHB)

hears petitions and resolves disputes concerning the GMA. The GMHB is comprised of five members appointed by the Governor. Petitions are heard by three-member regional panels that generally include two members from the region where the case arose, and one member from a different region.

The GMHB may hear and determine petitions alleging that a state agency or planning jurisdiction is not in compliance with the GMA. The GMHB may issue a final order finding compliance or it may remand for plans and regulations to be brought into compliance. If a plan or regulation is found to be not in compliance, the GMHB must remand it back to the affected state agency, county, or city.

The GMHB must allow a reasonable time, generally 180 days, within which the agency, county, or city must come into compliance. A county or city subject to a determination of invalidity may adopt interim controls and other measures to be in effect until adoption of a plan or regulation that complies with the GMA. The GMHB must modify or rescind the determination of invalidity if it determines that the plan or regulation, as amended or made subject to interim controls will no longer substantially interfere with the goals of the GMA.

After the time to come into compliance has passed, the GMHB must have a hearing to determine whether the agency, city, or county is in compliance. A finding of compliance or noncompliance must be issued within 45 days of the hearing. If the GMHB finds the agency, county, or city to not be in compliance, it must transmit such finding to the Governor and may recommend sanctions be imposed.

Eligibility for Certain Infrastructure Funding. In order to receive grants, loans, pledges, or financial guarantees for certain public works projects, counties and cities must:

- comply with the comprehensive plan update deadlines specified in the GMA; or
- for development regulations that protect critical areas, demonstrate substantial progress towards compliance with the comprehensive plan update deadlines.

Summary of Bill (First Substitute): Review of Housing Elements and Housing Development Regulations. Counties or cities that are required or have chosen to plan under the GMA may submit any housing elements and housing development regulations to the Department of Commerce (Commerce) for a determination of compliance.

Targeted Review. A city or county must submit their housing element and any housing development regulations adopted or amended on or after the effective date of the bill if Commerce determines that the city or county:

- has not planned for and accommodated for their portion of the countywide housing need determined by the county;
- housing production is less than 50 percent of the annual housing need for all income levels;
- housing production consists of greater than 80 percent single-family homes aimed at primarily households whose income is at or greater than 120 percent of the median

household income for the city or county.

Commerce shall review and select cities and counties under this threshold criteria, but may not select more than ten cities or counties for review in a calendar year.

Determination of Compliance. Commerce shall issue a determination of compliance for a city or county submitting a housing element or regulation unless it finds that the element or regulation is not consistent with any of the following with the following laws and regulations:

- the GMA housing planning goal;
- the GMA housing element requirements;
- any relevant rules adopted by Commerce;
- any relevant State Environmental Policy Act (SEPA) requirements;
- the county's or city's comprehensive plan;
- emergency shelter, transitional housing, emergency housing, and permanent supportive housing requirements;
- co-living housing requirements;
- density bonus requirements;
- parking requirements; and
- certain other GMA housing requirements.

Commerce must publish a defined set of minimum objective compliance standards within six months of the effective date of the bill. Commerce shall also publish and regularly update a local government compliance list that includes whether a jurisdiction is subject to the requirements, whether they have applied for a determination of compliance, and the result of Commerce's final decision.

Commerce may review housing development regulations adopted or amended before the effective date of the bill if amendments are necessary to implement the housing element or the specified laws and regulations. Housing elements and housing development regulations subject to review by Commerce do not take effect until Commerce issues a final decision determining compliance.

Application and Timeline for Review. Not less than 120 days prior to apply for approval of a housing element, a county or city choosing to submit an application must notify Commerce in writing that it intends to apply for approval. A county's or city's choosing to submit an application for review must also submit the application within ten days after any final action to amend, repeal, or replace the housing element or housing development regulations.

The application must include a cover letter, a copy of the ordinance or resolution adopting the housing element or housing development regulations, a statement explaining how the adopted housing element or housing development regulations comply with the laws and regulations specified for review, and a copy of the record for any public meetings or

hearings at which action was taken on the housing element or housing development regulations.

Commerce must issue a final decision on compliance within 90 days of the receipt of an application for review. Commerce may extend the review period with written agreement of the city or county. Commerce must issue its final decision in the form of a written statement including findings of fact and conclusions, noting the date of issuance, and conspicuously and plainly stating that it is the final decision. Commerce must promptly publish its final decision by notifying the city or county in writing, publishing a notice of action in the Washington State Register (WSR), posting a notice on its website, and notifying other relevant state agencies.

If Commerce determines that a city or county required to submit its housing element and housing development regulations is not in compliance Commerce shall notify the city or county of the deficiencies identified and propose amendments to correct any deficiencies. The city or county has 60 days to amend its housing element and any relevant housing development regulations to address any deficiencies noted by Commerce in its decision and must submit any amendments to its housing element or housing development regulations to Commerce in the same manner of the initial application for review. Commerce may extend the 60-day correction period with written agreement of the city or county.

Appeals on Final Decisions of Compliance. Commerce's final decision on compliance, and any housing element or housing development regulations may be appealed to GMHB by filing a petition. The GMHB is authorized to hear and determine any petition alleging that Commerce's final decision on compliance is clearly erroneous.

A petition must be filed within 60 days after Commerce publishes its final decision in the WSR or on its website, whichever is later. A GMHB decision concerning an appeal of Commerce's final decision must be based solely on whether the relevant housing element or housing development regulations comply with the laws and regulations specified for review.

Adoptions of ordinances, development regulations, and other nonproject actions by a city or county to implement housing element requirements are not subject to administrative or judicial appeals under the State Environmental Policy Act.

Affordable or Moderate-Income Housing Developments. A city or county that does not take amendatory action, or whose amendatory actions are determined to still not be compliant, may not deny an affordable or moderate-income housing development, or approve an affordable or moderate-income housing development with conditions that have a substantial, adverse impact on the viability or affordability of the development, unless at least one of the following conditions is met:

- the city or county has received a final decision from Commerce determining that its housing element and any housing development regulations are in compliance;
- the denial of the affordable or moderate-income housing development, or the

- approval of the housing development with conditions or restrictions that have a substantial, adverse impact on the viability or affordability of the development, is required to comply with specific state or federal law;
- the affordable or moderate-income housing development or proposed development site is located outside an urban growth area, in a critical area, critical area buffer, or area where residential uses are not allowed by the shoreline master program; or
 - the affordable or moderate-income housing development or proposed development site is located in an area where neither the local jurisdiction's comprehensive plan nor zoning ordinance permits residential or mixed uses.

The county or city must require the developer of an affordable or moderate-income housing development to include legally binding, enforceable restrictions on the development, recorded as a covenant or deed restriction, to ensure that the measures of affordability are met for a minimum 25-year period. The county or city must periodically audit compliance with the restrictions or provide another mechanism to ensure that the units committed to affordable or moderate-income housing meet the measures of affordability during the agreed term.

An "affordable or moderate-income housing development" is defined as a residential housing development where the developer has agreed to include legally binding, enforceable restrictions on the development, recorded as a covenant or deed restriction, to ensure that for at least 25-years:

- at least 20 percent of the units are for rental housing with monthly costs that do not exceed 30 percent of the monthly income of a household whose income is at 60 percent of the area median income (AMI);
- at least 20 percent of the units are for owner-occupied housing with monthly costs that do not exceed 30 percent of the monthly income of a household whose income is at 80 percent of the AMI;
- all of the units are for rental housing with monthly costs that do not exceed 30 percent of the monthly income of a household whose income is at 100 percent of the AMI; or
- all of the units are for owner-occupied housing with monthly costs that do not exceed 30 percent of the monthly income of a household whose income is at 120 percent of the AMI.

Eligibility for Certain Infrastructure Funding. In order to be eligible for certain grants, loans, pledges, or financial guarantees for infrastructure funding, a county or city must demonstrate substantial progress towards compliance with its comprehensive plan update deadlines for any housing element and any housing development regulations required to be submitted to Commerce for review.

A county or city remains eligible for this infrastructure funding until Commerce, the GMHB, or a court of competent jurisdiction issues a final decision determining that the county's or city's housing element or any related housing development regulations are not in compliance with the laws and regulations specified for review.

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

- Allows a city or county that is required to plan to submit any housing element or housing development regulations to Commerce for review.
- Requires certain cities or counties to submit their housing element and regulations for review based on specific criteria.
- Amends notification requirements.
- Allows Commerce to consult with housing developers and builders that are located in or have completed work in the jurisdiction in making its compliance decision.
- Gives cities and counties 60 days to amend their housing element and regulations to address any deficiencies noted by Commerce in its compliance decision.
- Allows Commerce to extend certain deadlines with written agreement of the city or county.

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 (Housing): *The committee recommended a different version of the bill than what was heard.* PRO: The Legislature has invested time in creating a floor for cities to follow in addressing the housing crisis. What we do not have is a process for reviewing and ensuring that the laws are being abided by. Ensuring accountability is currently not consistent across jurisdictions. The goal of transparency and predictability is shared by builders and local governments. Predictability gives financing banks stability in knowing project outcomes. Progress reporting will ensure that local governments are willing partners in solving the state's affordability crisis. The policy could result in fewer GMA appeals due to the review components.

CON: The bill is inconsistent with the Growth Management Act's core principles of local control and public participation. The bill adds new layers of oversight and bureaucracy, creating unnecessary complexity and making the process less efficient. Less than 1 percent of local government plans and regulations are found to be noncompliant when challenged. The changes to the housing element have not yet been adopted by local governments. A redundant process will not help address the community needs of more housing.

OTHER: Commerce already provides feedback before approval of regulations, allowing for corrective action and for city councils to be the last step before housing regulations are adopted.

Persons Testifying (Housing): PRO: Senator Jessica Bateman, Prime Sponsor; Bryce

Yadon, Futurewise; Alex Hur, Master Builders Association of King and Snohomish Counties; Andrea Smiley, Building Industry Association of Washington; Ethan Robinson, Habitat for Humanity Seattle-King & Kittitas Counties; Michone Preston, Habitat for Humanity of Washington State; Dan Bertolet, Sightline Institute; MARY HULL-DRURY, Washington Realtors.

CON: Salim Nice, City of Mercer Island; Kelsey Hulse, Association of Washington Cities and Washington State Association of Counties.

OTHER: Karl Almgren, City of Lynnwood.

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

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: This allows Commerce to have involvement to ensure the law is being followed. This makes it so the state has role in making sure the law is being followed and not just relying on interest organizations. We appreciate the changes that the policy committee made to streamline the bill. With this bill, developers gain a more clear and predictable environment to build in. Once local rules are certified by Commerce we know that they comply with all the major state mandates which reduces project risk and increases homeowner confidence as well as assurance to financiers that the project will move forward. Challenges continue to remain for getting affordable housing projects across the finish line, especially at the local level. This bill provides an important accountability mechanism. This bill provides a balanced approach providing local governments with guidance and review while preventing delays to well-planned affordable housing projects.

CON: We appreciate that there were changes by the sponsor. The assumption of this bill is that cities will not follow the law unless the state looks over their shoulder and makes them do that. We hope you will take a look at the full fiscal note when it becomes available. The fiscal note does not include costs for attorneys that will be looking at whether or not the law has actually been followed. Cities do not have the resources to invest in the 0 to 50 percent housing target that we all need.

OTHER: This bill includes many revisions that we are in support of but there are concerns about the timelines in the bill. Sixty days is not enough time for local jurisdictions to make their revisions to comply with the elements of the bill. There is not enough staffing availability at cities or at Commerce. We want to make sure there is language that limits Commerce's rulemaking abilities. We are encouraged by the revisions in the substitute bill especially the differentiation between the optional and targeted review. The first criterion in the targeted review aligns with the GMA. The second two criteria relate to housing production percentages which are more about market-based performance and does not align with the GMA and are not within the scope of what cities have control over. Please revise this to align more closely with GMA requirements.

Persons Testifying (Ways & Means): PRO: Alex Hur, Master Builders Association of

King and Snohomish Counties; Bryce Yadon, Futurewise; Alex Harrington, NAIOP Washington State; Andrea Smiley, Building Industry Association of Washington.

CON: Carl Schroeder, Association of Washington Cities.

OTHER: Karl Almgren, City of Lynnwood; Thara Johnson, City of Bellevue.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.