

SENATE BILL REPORT

SB 5254

As of March 1, 2017

Title: An act relating to ensuring adequacy of buildable lands and zoning in urban growth areas and providing funding for low-income housing and homelessness programs.

Brief Description: Ensuring adequacy of buildable lands and zoning in urban growth areas and providing funding for low-income housing and homelessness programs.

Sponsors: Senators Fain, Palumbo, Zeiger, Angel, Hobbs and Mullet.

Brief History:

Committee Activity: Local Government: 1/26/17, 2/14/17 [DPS-WM].
Ways & Means: 2/22/17.

Brief Summary of Substitute Bill

- Adds consideration of a reasonable land market supply factor and zoning, development, and environmental regulations to the review and evaluation program in the Growth Management Act.
- Creates a property tax exemption program for cities and counties to preserve affordable housing for low-income households.
- Extends the \$40 surcharge for local homeless housing and assistance to 2027.

SENATE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: That Substitute Senate Bill No. 5254 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Short, Chair; Angel, Vice Chair; Takko, Ranking Minority Member; Palumbo and Sheldon.

Staff: Bonnie Kim (786-7316)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Daniel Masterson (786-7454)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background: Growth Management Act (GMA). The GMA is the comprehensive land use planning framework for counties and cities in Washington. The GMA sets forth three broad planning obligations for those counties and cities who plan fully under the GMA: the county legislative authority must adopt a countywide planning policy; the county, and the cities within the county, must designate critical areas, agricultural lands, forestlands, and mineral resource lands, and adopt development regulations accordingly; and the county must designate and take other actions related to Urban Growth Areas (UGAs).

UGAs. Counties that fully plan under the GMA must designate UGAs, areas within which urban growth must be encouraged and outside of which growth may occur only if it is not urban in nature. Planning jurisdictions must include within their UGAs sufficient areas and densities to accommodate projected urban growth for the succeeding 20-year period. In addition, cities must include sufficient areas to accommodate the broad range of needs and uses that will accompany the projected urban growth, including, as appropriate, medical, governmental, institutional, commercial, service, retail, and other nonresidential uses.

Countywide Planning Policy. A countywide planning policy is a written policy statement used solely for establishing a countywide framework from which county and city comprehensive plans are developed and adopted. The policy must address certain issues, including policies for promoting orderly development and provision of urban services, for siting public capital facilities, and for joint county and city planning within UGAs. Cities and the Governor may appeal an adopted policy to the Growth Management Hearings Board (GMHB) within 60 days of adoption.

Review and Evaluation Program. Counties and cities must determine whether they are achieving urban densities within UGAs by comparing growth and development assumptions in comprehensive plans and countywide planning policies with actual growth and development. Counties and cities must identify reasonable measures to comply with GMA requirements. The review must include data collection regarding land uses and activities and must, at a minimum, determine whether there is sufficient suitable land to accommodate countywide population projections.

Population. The Office of Financial Management (OFM) determines the population of each county as of April 1st of each year. At least once every five years or on availability of census data, whichever is later, OFM must prepare 20-year growth management planning population projects for each county that adopts a comprehensive plan.

Affordable Housing For All Surcharge. The county auditor may charge a \$10 surcharge per document recorded. Of the \$10, the county may retain up to 5 percent for administrative costs; 40 percent is deposited into the Affordable Housing for All Account; and remaining funds may be retained by the county for eligible housing activities. The Department of Commerce (Department) must use these funds to provide housing and shelter for extremely low-income households.

Surcharge for Local Homeless Housing and Assistance. From September 1, 2012, to June 30, 2019, the county auditor may charge an additional \$40 surcharge to administer the requirements of the Homeless Housing and Assistance Act. After June 30, 2019, the fee is reduced to \$10. Of the total fee, 2 percent is retained by the auditor to cover collection costs;

60 percent goes to the county to administer a local homeless housing program; 6 percent may be used by the county to cover related administrative costs; and 32 percent goes to programs directly related to accomplishing the goals of the county's local homeless housing plan. Certain documents are exempt from this surcharge.

Capital Project Maintenance - Use of Additional Tax Funds. If the following conditions are met, a city or county may use the greater of \$100,000 or 25 percent of available funds up to \$1 million for the maintenance of capital projects:

- the city or county prepares a written report demonstrating that it has or will have adequate funding from all sources of public funding to pay for all capital projects identified in its capital facilities plan for the succeeding two-year period; and
- the city or county has not enacted, after June 9, 2016, any requirement on the listing or sale of real property; or any requirement on landlords, at the time of executing a lease, to perform or provide physical improvements or modifications to real property or fixtures, except if necessary to address an immediate threat to health or safety.

WA Homeless Census. The Department conducts an annual Washington homeless census. The census attempts to count all homeless individuals living outdoors, in shelters, and in transitional housing, coordinated with the existing homeless census. Generally, the Department coordinates with local governments to determine the data to be collected.

State Environmental Policy Act (SEPA). 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. Except for exempt projects, the SEPA generally requires a project applicant to submit an environmental checklist that includes answers to questions about the potential impacts of the project on the built and natural environments. The information collected through the SEPA review process may be used to condition a proposal to mitigate environmental impacts or to deny a proposal when significant adverse environmental impacts are identified.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Second Substitute): GMA Review and Evaluation Program. A provision limiting the review to Western Washington jurisdictions is removed. Counties and cities must also compare zoning and development regulations with actual growth and development. Counties and cities must collect and consider data regarding zoning, development, and environmental regulations, and housing affordability and availability.

Reasonable measures are actions necessary to reconcile differences between growth and development assumptions and the buildable lands report. The review must offer recommendations to resolve any differences in the countywide planning policy and comprehensive plan.

Sufficient suitable land means land with urban services likely to develop or redevelop during the 20-year planning cycle. The zoned capacity of land, alone, is insufficient to deem land suitable or likely for development or redevelopment.

To determine whether land is suitable for development or redevelopment, counties and cities must:

- review regulations and conditions which may impact development or prevent achievement of planned densities, such as land use designation and zoning and development regulations; and
- use a reasonable land market supply factor identifying reductions in suitable land for residential development and employment activities.

Counties and cities must provide an economic analysis if less than 5 percent of annual population or employment growth is not achieved. Counties and cities must also evaluate affordable housing goals, development regulations, and comprehensive plans to ensure the availability of affordable housing for all economic segments of the population.

Counties and cities must include the review and evaluation as part of housing element goals and practices. For projected housing needs, zoned capacity of land is inappropriate to find assumed growth will occur without an economic analysis showing anticipated growth.

The Department, through a contract with the Urban Land Institute, must develop guidance materials for local governments on the evaluation program. By December 1, 2018, the Department, with participation by affected stakeholders, must develop guidance for the appropriate market factor analysis and review and update of the overall buildable lands program.

Regional Transportation Planning Organization (RTPO). No transportation or growth strategy may include or adopt a maximum population, household, employment and/or job growth target applicable to an RTPO's member county, city, or town comprehensive plan. RTPOs have no authority to reject, disapprove, or otherwise limit its approval of a local government growth management comprehensive plan or element based on the local government's planning growth levels within a designated UGA in excess of the targets allocated to the local government. RTPOs also do not have the authority to adopt or determine maximum growth targets applicable to the RTPO's member counties', cities', or towns' comprehensive plans.

Countywide Planning Policy. A countywide planning policy must include a process and schedule providing for annual consideration of updates, amendments, or revisions of the policy proposed by the county or any city or town within the county. Cities and the Governor may appeal the denial of a proposed update, revision, or amendment to the GMHB. No countywide or multicounty planning policy may adopt or include maximum population, household, job, or employment targets applicable to city or town growth management comprehensive plans, or otherwise prevent cities or towns from planning for growth levels within a designated UGA in excess of the growth targets allocated to the local government.

OFM Population Projections. Rather than every five years or on the availability of census data, OFM must prepare the 20-year growth management planning population projections in the year prior to the year during which counties and cities are required to review and/or revise comprehensive plans. In its annual population trends report, OFM must include information for each county and city relating to: actual population growth; a comparison of job growth and housing growth; whether the population growth is more or less than the

population estimate used by the county in its most recent comprehensive plan; data on housing supply; the housing affordability index; and the residential housing inventory.

Affordable Housing For All Surcharge. Counties may retain up to 6 percent of funds to cover administrative costs related to its homeless housing plan.

Surcharge for Local Homeless Housing and Assistance. The \$40 surcharge may be charged until June 30, 2027. Documents recording a water-sewer district lien for nonpayment of water-sewer services are exempt from the surcharge.

Capital Project Maintenance - Use of Additional Tax Funds. From July 1, 2017, to June 30, 2019, the acquisition, construction, improvement, or rehabilitation of facilities to provide housing for the homeless is an allowable use of funds for cities or counties that are able to use additional tax funds for the maintenance and/or acquisition of capital projects. The effective date of this provision is 90 days after the effective date of the bill.

Property Tax Exemption Program. A city or county may adopt a property tax exemption program to preserve affordable housing for very low-income households. To qualify for this exemption, a minimum of 25 percent of units in a multiple-unit property must be affordable, and, in return, the property is exempt from property taxes—except for the state portion—for 15 successive years. The governing authority may extend the duration of the exemption period by three years for properties meeting energy and water efficiency standards. The property must meet certain standards to qualify for the exemption.

Upon adoption of a property tax exemption program, the governing authority is to establish standards for very low-income rental housing. This must include rent limits and income guidelines consistent with local housing needs in order to assist very low-income households that cannot afford market rate housing. Affordable housing units must be below market rate levels and affordable to households with an income of 50 percent or less than the county median income, adjusted for family size.

The governing authority may adopt a program for single-family dwelling units and accessory dwelling units occupied by tenants who meet these affordability requirements. Basic requirements of this program include:

- an application process and procedures;
- an inspection policy and procedures to ensure the property complies with health and quality standards; and
- ensuring that income and rent limits are met.

A governing authority may establish lower income levels or lower rent levels after holding a public hearing. A governing authority of a high-cost area may establish higher income levels after holding a public hearing. These higher income levels are not to exceed 60 percent of the county median area family income, adjusted for family size.

A governing authority may require that more than 25 percent of units in a multiple-unit building be affordable. Affordable units must be comparable in terms of quality and living conditions to market rate units in the building. At least 90 percent of the units in a multiple-unit property must be occupied by tenants at the time of application. The property must be

part of a residential or mixed-use project and provide a minimum of 50 percent of the space in each building for permanent residential occupancy.

The properties must meet guidelines as adopted by the governing authority that may include height, density, public benefit features, number and size of proposed development, parking, income limits for occupancy, limits on rents, and health and quality standards, among other adopted requirements. The property owner must enter into a contract with the city or county, under which the property owner has agreed to the terms and conditions satisfactory to the governing authority.

To be eligible for tax exemption, the property must also comply with all applicable land use regulations, zoning requirements, and building and housing code requirements. The governing authority may establish additional standards to meet local needs.

The property must be inspected at the time of application for tax exemption, and thereafter at least once every three years, as established by the government authority.

The application for this program must include:

- information setting forth the grounds supporting the requested exemption;
- a description of the project and site plan;
- a statement that the applicant is aware of the potential tax liability when the property ceases to be eligible for the exemption; and
- a certification of family size and annual income.

When approved, the governing authority is to issue the owner of the property a certificate of acceptance, or of conditional acceptance if rehabilitation is to be completed. If the application is denied, a written statement is to be provided, listing the reasons for the denial. Upon receipt of the denial, the owner has 30 days to appeal. The burden of proof is on the applicant to show that there was no substantial evidence to support the administrative official or commission's decision. The decision of the governing body in approving or denying the appeal is final.

At least annually, the owner of the property receiving a tax exemption is to obtain a certification of family size and annual income from each tenant living in the designated affordable housing units. Annually, the property owner is to file a report that also includes:

- a statement of occupancy and vacancy;
- a schedule of rents charged in the market-rate units;
- a certification that the property has not changed use;
- a description of changes or improvements;
- when rehabilitation is required to meet Evergreen Sustainable Development building performance standards, a progress report on compliance; and
- any other information required to determine compliance with program requirements or to measure program performance.

A governing authority that issues certificates of exemption is to report annually to the Department:

- the number of certificates granted;
- the number and type of units in buildings receiving a tax exemption;

- the number and type of units meeting affordable housing requirements;
- the total monthly rent amount of each affordable and market-rate unit;
- the value of the tax exemption for each project; and
- the total value of tax exemptions granted.

After a certificate of exemption has been filed with the county assessor, the tax exemption must be cancelled by the governing authority when:

- the owner intends to convert the property to another use that is not residential;
- the owner intends to discontinue compliance with affordable housing requirements;
- the owner fails to maintain the property in substantial compliance with applicable local building, safety and health code requirements; or
- the owner fails to meet affordable housing requirements.

Upon cancellation, additional real property tax is to be imposed upon the value of improvements and land in the amount normally imposed, plus a 20 percent penalty of the additional tax. The additional tax owed together with the interest and penalty becomes a lien on the land and attaches at the time the property or a portion of the property is no longer used as affordable housing. The lien has priority to and must be fully paid and satisfied before a recognizance, mortgage, judgment, debt, obligation, responsibility to, or with which the land may become charged and liable. The lien may be foreclosed upon in the same manner provided for by law for foreclosure of liens for delinquent property taxes.

Definitions. Accessory dwelling unit means one or more rooms that are located within a single-family dwelling unit or within an accessory structure on the same lot as a single-family dwelling unit.

Energy and water efficiency standards means housing that meets standards substantially equivalent to Evergreen Sustainable Development, as developed by the Department.

High cost area means a county where the third quarter median house price for the previous year, as reported by the Runstad center for real estate studies at the University of Washington, is equal to or greater than 130 percent of the statewide median house price published during the same time period. King, San Juan, and Snohomish Counties are high cost counties for 2016.

Very low-income household means a single person, family, or unrelated persons living together whose adjusted income is at or below 50 percent of the median family income, adjusted for family size, for the county in which the project is located as reported by the US Department of Housing and Urban Development (HUD). In high cost areas, very low-income household means a household that has an income at or below 60 percent of the median family income adjusted for family size, for the county in which the project is located, as reported by HUD.

WA Homeless Census. Data on subpopulations and other characteristics of the homeless must, at a minimum, be consistent with United States Department of Housing and Urban Development requirements and include the following: chronically homeless individuals; chronically homeless families; unaccompanied homeless youth; male veterans; female

veterans; adults with severe mental illness; adults with chronic substance abuse issues; adults with HIV/AIDS; senior citizens; and victims of domestic violence.

Statewide Homeless Study. Subject to the availability of appropriated funds, the Department, in collaboration with the Washington State Institute for Public Policy (WSIPP), must conduct a statewide homeless study every ten years. The purpose of the study is to: supplement the current point-in-time census and homeless client management information system; review the efficacy of current programs and services; and provide recommendations on the type and timing of health and human service interventions needed for these populations to gain housing stability. The Department and WSIPP must develop a study proposal defining the study scope, methodology, and costs by January 1, 2019.

Reporting. The Department must, in consultation with the Interagency Council on Homelessness, the Affordable Housing Advisory Board, and the State Advisory Council on Homelessness, develop performance measures that address the limitations of the annual point-in-time count on measuring the effectiveness of the document recording fee surcharge funds in supporting homeless programs. The Department must report its findings and recommendations regarding the new performance measures to the Legislature by December 1, 2017.

The Department must implement at least three performance metrics, in addition to the point-in-time measurement, that measure the impact of surcharge funding on reducing homelessness by July 1, 2018.

The Joint Legislative and Audit Review Committee (JLARC) must review how the surcharge fees are expended to address homelessness, including a review of the related program performance measures and targets. JLARC must report its review findings by December 1, 2022, and update the review every five years thereafter.

Annual Report on Homelessness. By February 1st of each year, the Department must provide an update on the state's homeless housing strategic plan, including an assessment of the current condition of homelessness, funding information, shelter and housing information, and expenditure information. Any local government receiving state funds for homelessness programs must also report similar information.

SEPA. When a planned action in an area that contains or will contain a major transit stop is carried out in conjunction with a comprehensive plan or other community plan, significant environmental impacts must be adequately addressed in a threshold determination or in an environmental impact statement. If an infill development area contains or will contain a major transit stop, an environmental impact statement is not the required form of environmental analysis.

EFFECT OF CHANGES MADE BY LOCAL GOVERNMENT COMMITTEE (First Substitute):

- Removes a new provision requiring counties and cities to evaluate the adequacy of land within UGAs suitable for new or expanded public schools and industrial uses by port districts.

- Restores a provision allowing county auditors to retain 2 percent of the local homeless housing and assistance surcharge.
- Restores an exemption from the local homeless housing and assistance surcharge for documents recording a birth, marriage, divorce, or death.
- Adds an exemption from the local homeless housing and assistance surcharge for documents recording a water-sewer district lien for nonpayment for water-sewer services.

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): *The committee recommended a different version of the bill than what was heard.* PRO: This bill addresses the issue of the lack of supply of buildable lands and housing. AWC voted to support the bill. The purpose of the buildable lands section is to have the reports reflect the reality on the ground and be realistic. The issue with Puget Sound Regional Council needs to be clarified in terms of authority to approve or reject comprehensive plans. Homelessness is a huge problem statewide; it's not just an urban problem anymore. BIAW has been frustrated with the availability of buildable lands for affordable housing. We think it is time for the Legislature to step in and address the buildable lands issue. When first implemented, measures were taken under the GMA to address transportation service. One of the reasons for the GMA was to help local governments prioritize expenditures to meet growth. Regarding the buildable lands studies, because of the lack of county resources and the complexity of the studies, counties have relied on measures like zone capacity. These studies are beyond the expertise of the counties. Washington has record vacancy rates across the state and we appreciate this effort to address the problem.

CON: Futurewise has concerns with respect to the buildable lands provisions and the regional planning processes. The requirement to update the buildable lands report every year seems very costly. The default market factor of 50 percent may be too high. Pierce County sees the buildable lands sections as decreasing local control by creating a one-size-fits-all solution. Counties need flexibility to address local concerns. The market factors required are often unknowable and are only five-year projections. The timeline in the buildable lands section is impossible to meet. The document recording fee is a negative for counties because it removes certain documents to which the fee currently applies and also removes the two percent retained by the auditor for administrative purposes. WACO appreciates the extension of the recording fee but has concerns about the buildable lands sections. WACO is cautious about imposing reviews on flat growth counties that have never been required to conduct them before. The new market factors are ambiguous. Maybe there is a different entity, such as a public-private partnership, that can collect market factor data better than the counties. Ecology has concerns about the sections regarding SEPA because they allow for broad exemptions with respect to environmental impact statements.

OTHER: We appreciate that this bill starts the process to address the growing homelessness problem in the state. We need more money in the system to meet unmet needs. Regarding the buildable lands sections, the question is to what extent the state should step into a regional dispute. Section 2 deals with ports and the use of industrial lands but ports are more concerned with the preservation of industrial lands. Commerce supports the extension of the document fee but would like to see it made permanent. Commerce has concerns about the following language: "sufficient capacity of land suitable for development" because this may allow cities and counties to expand UGAs even when there is no evidence to support such expansions. We would like to eliminate the sunset date on the document fee to provide a permanent funding source for homeless housing projects. We acknowledge there has been a history of controversy over funding sources for homeless housing and services. The document recording fee pays for 62 percent of homelessness programs. We need an opportunity to examine our current plans and programs to identify keys for success. Cities need local sources for affordable housing.

Persons Testifying (Local Government): PRO: Bill Clarke, WA Realtors; Steve Gano, Building Industry Assoc. of WA; Ron Main, Master Builders of King and Snohomish Counties; Bill Hinkle, RHA.

CON: Bryce Yadon, Futurewise; Dan Cardwell, Pierce County; Laura Berg, WA State Assoc. of Counties; Gordon White, Department of Ecology.

OTHER: Carl Schroeder, Assoc. of WA Cities; Sean Eagan, The Northwest Seaport Alliance; Dave Andersen, WA Department of Commerce; Nick Federici, WA Low Income Housing Alliance; Brian Enslow, Sidewalk; Penny Sweet, Kirkland City Council.

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

Staff Summary of Public Testimony on Proposed Second Substitute (Ways & Means): PRO: This bill combines a number of topics that will address the housing crisis. The bill would require that the buildable lands reports that counties do now are actually meaningful. The plans would take market realities into account. The REET would act as temporary funding for homelessness until cities could use their sales tax. If you're going to spend money on planning, that planning should be more realistic. The water-sewer document fee exemption needs to be fixed, the current language does not treat all areas of the state the same.

OTHER: The six largest counties on the west side do a buildable lands review to inform their comprehensive plan updates. This report is costly to produce. The bill would expand what the report requires, and requires other parts of the state to do one. If this isn't funded, it would come out of criminal justice dollars. It is smart to look at regulatory issues with market rate housing. Measurements need to be quantifiable and attainable, and paid for. Document recording fees fund a significant portion of local rent assistance programs. We would like to see the recording fees increased. The document recording fee is 60 percent of the operating budget of Sidewalk.

Persons Testifying (Ways & Means): PRO: Bill Clarke, WA Realtors; Jan Himebaugh, BIAW; Ron Main, Master Builders of King/Snohomish Counties; Joe Daniels, WA ST Assn.

of Water/Sewer Districts.

OTHER: Laura Berg, WA State Assoc. of Counties; Brian Enslow, Sidewalk; Phil Owen, Sidewalk; Carl Schroeder, Association of Washington Cities.

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