

# SENATE BILL REPORT

## SB 5818

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As of January 20, 2022

**Title:** An act relating to promoting housing construction in cities through amendments to and limiting appeals under the state environmental policy act and growth management act.

**Brief Description:** Promoting housing construction in cities through amendments to and limiting appeals under the state environmental policy act and growth management act.

**Sponsors:** Senators Salomon, Lias, Kuderer, Saldaña and Short.

**Brief History:**

**Committee Activity:** Housing & Local Government: 1/20/22.

**Brief Summary of Bill**

- Exempts a fully planning city's mandatory housing element actions and adopted housing action plan strategies, and permanently exempts optional residential building capacity actions, from review and appeal under the State Environmental Policy Act (SEPA).
- Exempts a fully planning city's adopted housing action plan strategies, and permanently exempts optional residential building capacity actions, from review and legal challenge under the Growth Management Act.
- Exempts certain project actions from appeal under SEPA on the basis of or impacts to the aesthetics element of the environment if the project is subject to design review at the local government level.
- Directs the Department of Ecology to modify maximum thresholds in certain SEPA categorical exemptions through expedited rulemaking.

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### SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

**Staff:** Brandon Popovac (786-7465)

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*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.*

**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. These jurisdictions are sometimes said to be fully planning under the GMA.

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. Planning jurisdictions must include within their UGAs sufficient areas and densities to accommodate projected urban growth for the succeeding 20-year period.

The GMA also 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.

Comprehensive Plan—Mandatory Housing Element. The comprehensive plan of a fully planning county or city must consist of a map or maps and descriptive text covering objectives, principles, and standards used to develop the plan. The plan must be an internally consistent document and all elements must be consistent with the future land-use map. Each comprehensive plan must include a plan, scheme, or design for certain enumerated elements, including a mandatory housing element. The housing element must ensure the vitality and character of established residential neighborhoods and, among other requirements:

- include an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth, including emergency housing, emergency shelters, and permanent supportive housing;
- include a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including middle housing options;
- identify sufficient capacity of land for all housing types;
- identify and implement policies and regulations to address and begin to undo racially disparate impacts, displacement, and exclusion in housing; and
- identify areas at higher risk of displacement from market forces that occur with changes to zoning development regulations and capital investments.

Planning Actions and Housing Action Plans. Fully planning cities are encouraged to take an array of specified planning actions to increase residential building capacity. Specified planning actions include, for example:

- authorizing middle housing types on parcels in one or more zoning districts that permit single-family residences unless unfeasible to do so;
- authorizing cluster zoning or lot size averaging in all zoning districts that permit single-family residences;
- adopting increases in categorical exemptions to the State Environmental Policy Act (SEPA) for residential or mixed-use development;
- adopting a form-based code in one or more zoning districts that permit residential uses;
- authorizing a duplex on each corner lot within all zoning districts that permit single-family residences;
- authorizing accessory dwelling units in one or more zoning districts in which they are currently prohibited;
- adopting ordinances authorizing administrative review of preliminary plats; and
- allowing off-street parking to compensate for lack of on-street parking when private roads are utilized or a parking demand study shows that less parking is required.

In general, ordinances and other nonproject actions taken to implement these specified planning actions, if adopted by April 1, 2023, are not subject to administrative or judicial appeal under SEPA or legal challenge under the GMA.

Fully planning cities may adopt a housing action plan to encourage construction of additional affordable and market rate housing in a greater variety of housing types and at prices accessible to a greater variety of incomes, including strategies aimed at the for-profit single-family home market. The housing action plan should, for example:

- quantify existing and projected housing needs for all income levels;
- develop strategies to increase the supply of housing, and variety of housing types, needed to serve the housing needs for all income levels;
- consider strategies to minimize displacement of low-income residents resulting from redevelopment; and
- review and evaluate the current mandatory housing element under the comprehensive plan, including an evaluation of success in attaining planned housing types and units, achievement of goals and policies, and implementation of the schedule of programs and actions.

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.

The information collected through the SEPA review process may be used to condition a proposal mitigating environmental impacts or to deny a proposal when significant adverse environmental impacts are identified. Any appeal brought under SEPA must be linked to a specific governmental action.

State Environmental Policy Act—Exemption from Appeal Based on the Transportation Element of the Environment. A project action pertaining to residential, multifamily, or mixed-use development evaluated under SEPA by a city, county, or town planning fully under the GMA is exempt from appeals under SEPA based on the evaluation of or impacts to transportation elements of the environment, so long as the project does not present significant adverse impacts to state highways as determined by the Department of Transportation (DOT) and the project meets certain additional criteria.

State Environmental Policy Act—Rule-Based Categorical Exemptions. Under SEPA, certain nonproject actions are categorically exempt from threshold determinations and environmental impact statement in rule. Examples of categorical exemptions include various kinds of minor new construction and minor land use decisions.

Appeal of Land Use Decisions. Reasonable attorneys' fees and costs must be awarded to the prevailing party or substantially prevailing party on appeal before the court of appeals or the supreme court of a decision by a county, city, or town to issue, condition, or deny a development permit involving a site-specific rezone, zoning, plat, conditional use, variance, shoreline permit, building permit, site plan, or similar land use approval or decision. The county, city, or town whose decision is on appeal is considered a prevailing party if its decision is upheld at superior court and on appeal.

**Summary of Bill:** Growth Management Act—Exemption from Review and Appeal. Any action taken by a fully planning city to amend its comprehensive plans or adopt or modify ordinances to implement certain planning actions to increase residential building capacity is clarified as exempt from both review and legal challenge under the GMA. The exemption is made permanent and includes the implementation of strategies adopted within a housing action plan.

State Environmental Policy Act—Exemption from Review and Appeal. Any nonproject action taken by a fully planning city to implement certain optional planning actions to increase residential building capacity is clarified as exempt from environmental and judicial review, as well as administrative and judicial appeal, under SEPA. The exemption is made permanent and includes the implementation of strategies adopted within a housing action plan.

Any adopted ordinance or amended development regulation of a fully planning city to implement any of the required actions under the mandatory housing element of its comprehensive plan is exempt from environmental and judicial review and administrative and judicial appeal under SEPA.

The exemption from appeal under SEPA for any project action related to a residential, multifamily, or mixed-use development on the basis of or impacts to the transportation elements of the environment is clarified as only applying if DOT has not found the project

will present significant adverse impacts to the state-owned transportation system. Any project action related to a residential, multifamily, or mixed-use development is exempt from appeal under SEPA on the basis of or impacts to the aesthetics element of the environment if the project is subject to adopted design review requirements at the local government level. "Design review" is defined as 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.

State Environmental Policy Act—Categorical Exemptions. The Department of Ecology must undergo expedited rulemaking to modify rule-based categorical exemptions to SEPA, specifically:

- add four attached single-family residential units to the current exemption for certain types of construction;
- create a new exemption level for single-family residential project types with a total square footage of fewer than 1500 square feet in incorporated UGAs of at least 100 units;
- apply the existing exemption level for single-family residential project types in incorporated UGAs to single-family residential types with a total square footage of 1500 square feet or more in incorporated UGAs; and
- increase the exemption level for multifamily residential project types in incorporated UGAs from 60 units to 200 units.

Appeal of Land Use Decisions. Reasonable attorneys' fees must be awarded to the prevailing party or substantially prevailing party at trial or on appeal before the court of appeals or the supreme court of a decision by a county, city, or town to issue, condition, or deny a development permit involving a project-specific affordable housing development.

**Appropriation:** None.

**Fiscal Note:** Requested on January 14, 2022.

**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: The bill decreases barriers to increasing housing supply. It represents a follow-up effort to previous legislation in E2SHB 1923 in 2019 by locking in certain residential capacity incentives. Sometimes environmental laws are weaponized against increased growth, and often neighborhood groups sue on projects to strategically delay them. This causes much needed urban housing to get pushed out to suburban areas, creating more sprawl and commuting. The bill specifically targets the development of smaller homes by providing rule-based exemptions to projects with homes under 1500 square feet. The increase of categorical exemptions for multifamily projects in the UGA is appreciated, as is the transportation and aesthetics element SEPA exemption for

project actions. Major project delays often cause increased costs and incomplete projects. Many investors are forced to give up on financing projects due to environmental appeals and associated legal fees. Attorney's fees are already allowed under the appellate level but would be extended at the trial level too. Permitting costs should also be addressed in the bill. There are concerns about the attorney's fee provision and lack of definition of project-specific affordable housing development. The bill should also make the current authority for local governments to provide a SEPA exemption for certain infill development a requirement.

OTHER: Overall, the intent of the bill works. Concerns remain regarding the attorney's fees portion. There is a need to fine tune and perfect language on exemption appeals for mandatory housing element actions. The bill does a good job of removing existing barriers on increased housing and construction in areas where transportation services could be provided. DOT would lose the ability to review rule-based categorical exemptions to assess multi-modal transportation impacts under the bill as written.

**Persons Testifying:** PRO: Senator Jesse Salomon, Prime Sponsor; Ian Morrison, NAIOP Washington State; Scott Hazlegrove, Master Builders Assn. of King & Snohomish Counties; Jan Himebaugh, Building Industry Association of Washington.

OTHER: Bryce Yadon, Futurewise; Kerri Woehler, Washington State Department of Transportation.

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