
Housing Committee

HB 2113

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

Sponsors: Representatives Bateman, Macri, Peterson, Alvarado, Leavitt, Bronoske, Ramel, Fitzgibbon, Berry, Reed, Ormsby, Taylor, Gregerson, Street, Mena, Tharinger, Berg, Lekanoff, Riccelli and Cortes.

Brief Summary of Bill

- Requires a city or county planning under the Growth Management Act (GMA) to submit its housing element and any related development regulations to the Department of Commerce (Commerce) for a determination of housing element compliance.
- Prohibits a city or county planning under the GMA from denying an affordable housing development unless the city or county has received a final determination of housing element compliance from Commerce, or certain other conditions are met.

Hearing Date: 1/15/24

Staff: Audrey Vasek (786-7383).

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

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those counties, that are required or have chosen to plan under the GMA.

Counties that plan under the GMA must designate urban growth areas (UGAs), within which urban growth must be encouraged and outside of which growth may occur only if it is not urban in nature. Each city in a planning county must be included in a UGA, and UGAs must include sufficient areas and densities to accommodate projected urban growth for the succeeding 20-year period.

Comprehensive Plans.

The GMA also directs cities and counties planning under the GMA 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 in the GMA.

A comprehensive plan must be reviewed and, if necessary, revised every 10 years to ensure that it complies with the GMA. Comprehensive plan update deadlines for each county are specified in the GMA. Amendments to a comprehensive plan may occur no more frequently than once per year unless certain exceptions apply.

When developing comprehensive plans, counties and cities must consider specific planning goals related to certain subjects, such as urban growth, reduction of sprawl, transportation, and housing. Each comprehensive plan must include certain mandatory elements, including elements related to land use, housing, capital facilities, utilities, rural areas, transportation, economic development, parks and recreation, and climate change and resiliency.

Housing Element.

A comprehensive plan must include a housing element that ensures the vitality and character of established residential neighborhoods. The housing element must include the following information:

- an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth, including units for low-income housing, emergency housing and shelter, and permanent supportive housing;
- a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single family residences and, within UGA boundaries, moderate density housing options such as duplexes, triplexes, and townhomes;
- identification of sufficient land for housing, including government-assisted housing, low-income housing, manufactured housing, multifamily housing, group homes, foster care facilities, emergency housing and shelters, permanent supportive housing, and within UGA boundaries, duplexes, triplexes, and townhomes;
- adequate provisions for existing and projected needs of all economic segments of the community;
- identification of local policies and regulations that result in, and policies to address and undo, racially disparate impacts, displacement, and exclusion in housing; and

- identification of areas that may be at higher risk of displacement and identification of anti-displacement policies.

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.

Growth Management Hearings Board.

The Growth Management Hearings Board (GMHB) is a quasi-judicial board that hears petitions and resolves disputes concerning the GMA. If the GMHB finds that a city or county is out of compliance with the GMA, it must give the city or county a reasonable time, not to exceed six months in a normal case, to come into compliance. The GMHB will then hold another hearing to determine whether the city or county has achieved compliance. If the city or county is still out of compliance, the Governor is authorized to impose certain sanctions. These sanctions can include the withholding of tax revenue until compliance is achieved.

Summary of Bill:

Determination of Housing Element Compliance.

A city or county planning under the GMA must submit its housing element and any related development regulations to the Department of Commerce (Commerce) for a determination of housing element compliance. The housing element and any related development regulations do not take effect until Commerce issues a final decision determining compliance.

Commerce must issue a determination of housing element compliance unless it determines that the housing element or related development regulations are not consistent with any of the following:

- the housing planning goal under the GMA;
- the housing element requirements under the GMA;
- any rules adopted by Commerce that are applicable to the housing element; or
- the State Environmental Policy Act (SEPA).

Within six months of the effective date of the bill, Commerce must publish a defined set of minimum objective standards for compliance.

Notice of Intent to Apply.

At least 120 days before applying for a determination of housing element compliance, a city or county must notify Commerce in writing that it intends to apply and must submit the proposed housing element and any related development regulations for review. Commerce must review the proposed housing element and any related development regulations and advise the city or county on the actions necessary to receive a determination of compliance.

Application Procedures.

Within 10 days of taking final action to adopt a housing element and any related development regulations, a city or county must submit its application to Commerce. The application must include at least the following:

- a cover letter requesting a determination of housing element compliance;
- a copy of the ordinance or resolution adopting the housing element and any related development regulations;
- a statement explaining how the adopted housing element and any related development regulations comply with the GMA; and
- a copy of the record at any public meetings or hearings at which action was taken on the housing element and any related development regulations.

Review Procedures.

Within 180 days of receiving an application, Commerce must strive to issue a final decision on housing element compliance. Commerce must issue its final decision in a written statement that includes findings of fact and conclusions. 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.

Appeals.

Commerce's final decision on housing element compliance may be appealed to the GMHB through the standard process for filing a petition with the GMHB. The GMHB is authorized to hear and determine any petition alleging that Commerce's final decision on housing element compliance is clearly erroneous. Such a petition must be filed within 60 days after Commerce publishes its final decision on housing element compliance in the WSR.

For the purpose of GMHB appeals, the date of publication for a housing element and any related development regulations is the date that Commerce publishes its final decision determining housing element compliance in the WSR.

Housing Element Compliance List.

Commerce must publish and regularly update a local government housing element compliance list, publicly available on its website, that indicates:

- whether a city or county planning under the GMA has applied for a determination of housing element compliance; and
- whether Commerce has issued a final decision on housing element compliance for that city or county, the date the decision was issued, and the status or outcome of any appeals.

Builder's Remedy.

A city or county planning under the GMA may not deny an affordable housing development, or approve an affordable housing development with conditions that have a substantial adverse impact on the viability or degree of 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 related development regulations are in compliance;
- The city or county submits to Commerce an empirical study that demonstrates, and Commerce certifies, that the affordable housing development would have an adverse impact on public health and safety;
- The denial of the affordable housing development is required to comply with specific state or federal law;
- The affordable housing development or proposed development site is outside an urban growth area, in a critical area, critical area buffer, or an area where residential uses are not allowed by the shoreline master program; or
- The affordable housing development or proposed development site is in an area where neither the local jurisdiction's comprehensive plan nor zoning ordinance permits residential or mixed uses.

For the purposes of the builder's remedy, an "affordable housing development" is defined as a residential housing development where:

- 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.

Comprehensive Plan Update Deadlines and Amendments.

A county or city meets its comprehensive plan update deadlines for the housing element and any related development regulations if it receives Commerce's final decision determining housing element compliance within six months after its next comprehensive plan update is due.

Amendments to comprehensive plans may be considered more frequently than once per year as needed for the adoption or amendment of a housing element and any related development regulations.

Eligibility for Certain Infrastructure Funding.

Counties or cities that demonstrate substantial progress towards compliance with the comprehensive plan update deadlines for a housing element and any related development regulations are eligible for grants or loans for certain public works projects. However, only those counties or cities that have received a final decision determining housing element compliance may receive preference for these grants or loans.

A city or county demonstrates substantial progress towards compliance with its comprehensive

plan update deadline for the housing element and any related development regulations if it satisfies the requirements related to notice of intent to apply and the application procedures, but Commerce has not yet issued a final decision on the application.

SEPA Appeals Exemption for Nonproject Actions.

Adoption 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 SEPA.

Rulemaking Authority.

Commerce may adopt any rules necessary to implement the housing element compliance requirements.

Short Title.

The bill may be known and cited as the Housing Accountability Act.

Appropriation: None.

Fiscal Note: Requested on January 9, 2024.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.