

HOUSE BILL REPORT

HB 2113

As Reported by House Committee On:

Housing
Appropriations

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

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 History:

Committee Activity:

Housing: 1/15/24, 1/23/24 [DPS];

Appropriations: 2/1/24, 2/3/24 [DP2S(w/o sub HOUS)].

Brief Summary of Second Substitute Bill

- Requires a city or county planning under the Growth Management Act (GMA) to submit any housing development regulations to the Department of Commerce (Commerce) for a determination of compliance within six months after a comprehensive plan update.
- Prohibits a city or county planning under the GMA from denying an affordable or moderate-income housing development unless the city or county has received a final determination of housing development regulation compliance from Commerce, or certain other conditions are met.

HOUSE 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: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Peterson, Chair; Alvarado, Vice Chair; Leavitt, Vice Chair; Klicker, Ranking Minority Member; Connors, Assistant Ranking Minority Member; Barkis, Bateman, Chopp, Entenman, Reed and Taylor.

Minority Report: Without recommendation. Signed by 2 members: Representatives Hutchins and Low.

Staff: Martha Wehling (786-7067).

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 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 Substitute Bill:

Mandatory Housing Development Regulation Review Process.

Within six months after its comprehensive plan update is due, a city or county planning under the GMA must submit any housing development regulations to the Department of

Commerce (Commerce) for a determination of compliance. The housing development regulations do not take effect until Commerce issues a final decision determining compliance.

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

- the housing planning goal under the GMA;
- the housing element requirements under the GMA;
- certain requirements related to transitional housing, permanent supportive housing, and emergency shelters;
- any relevant rules adopted by Commerce;
- any relevant State Environmental Policy Act (SEPA) requirements; or
- the county's or city's comprehensive plan, including the housing element.

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

"Housing development regulations" are defined as any development regulations related to the GMA housing element requirements including, but not limited to, regulations related to permanent supportive housing, emergency housing and shelters, middle housing, accessory dwelling units, and any zoning maps and districts.

Optional Housing Element Approval Process.

A city or county planning under the GMA may submit its housing element to Commerce for approval. If submitted to Commerce for approval, the housing element takes effect when approved by Commerce.

Commerce must approve a housing element unless it determines that the housing element is not consistent with any of the following:

- the housing planning goal under the GMA;
- the housing element requirements under the GMA;
- certain requirements related to transitional housing, permanent supportive housing, and emergency shelters;
- any relevant rules adopted by Commerce;
- any relevant SEPA requirements; or
- the county's or city's comprehensive plan or future land use map.

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 development regulation compliance or housing element approval, a city or county must notify Commerce in writing that it intends to apply and must submit the proposed housing development regulations or

housing element for review. Commerce must review the proposed housing development regulations or housing element and advise the city or county on the actions necessary to receive a determination of compliance or approval.

Application Procedures.

Within 10 days of taking final action to adopt housing development regulations, a city or county must submit its application for a determination of compliance to Commerce. Within 10 days of taking final action to adopt a housing element, a city or county may submit its application for approval to Commerce. The application must include at least the following:

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

Review or Approval Procedures.

Within 180 days of receiving an application, Commerce must strive to issue a final decision on housing development regulation compliance or housing element approval. 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 development regulation compliance or housing element approval may be appealed 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 compliance or approval is clearly erroneous. Such a petition must be filed within 60 days after Commerce publishes its final decision in the WSR or on its website, whichever is later.

The adoption of any housing development regulations may not be appealed until Commerce issues a final decision on compliance. For the purpose of GMHB appeals, the date of publication for any housing development regulations, or housing element if submitted to Commerce for approval, is the date that Commerce publishes its final decision determining housing development regulation compliance or housing element approval in the WSR or on its website, whichever is later.

Local Government Compliance List.

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

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

The list may also include information indicating:

- whether a city or county has submitted its housing element for approval; and
- whether Commerce has issued a final decision on the application for housing element approval, 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 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 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, the GMHB, or a court of competent jurisdiction determining that its housing development regulations are in compliance;
- the denial of the affordable or moderate-income housing development is required to comply with specific state or federal law;
- the affordable or moderate-income 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;
- the affordable or moderate-income 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; or
- the county or city has adopted an impact fee exemption for low-income housing and the conditions for approval of the affordable or moderate-income housing development were adopted before the complete land use or building permit application was submitted.

For the purposes of the builder's remedy, an "affordable or moderate-income 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.

For any housing development regulations required to be submitted to Commerce, and for any housing element submitted to Commerce for approval, a county or city meets its comprehensive plan update deadlines if it receives Commerce's final determination of compliance or approval within six months after its 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 any housing development regulations or housing element necessary to receive a determination of compliance or an approval decision from Commerce.

Eligibility for Certain Infrastructure Funding.

Counties and cities that demonstrate substantial progress towards compliance with the comprehensive plan update deadlines for housing development regulations, and the housing element if submitted to Commerce for approval, are eligible for grants or loans for certain public works projects.

A county or city demonstrates substantial progress towards compliance with its comprehensive plan update deadline for housing development regulations, and for the housing element if submitted to Commerce for approval, 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.

A county or city is eligible for these grants or loans until Commerce, the GMHB, or a court of competent jurisdiction issues a final decision determining that the county's or city's housing development regulations, or the housing element if submitted to Commerce for approval, are not in compliance with the relevant laws and regulations. Only those counties and cities that have received a final decision determining housing development regulation compliance may receive preference for these grants or loans.

State Environmental Policy Act 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 development regulation review process.

Short Title.

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

Substitute Bill Compared to Original Bill:

As compared to the original bill, the substitute bill makes a number of changes:

- It requires a city or county planning under the GMA to submit any housing development regulations to Commerce for a determination of compliance within six months after a comprehensive plan update, but makes it optional for a city or county to submit its housing element to Commerce for approval.
- It defines "housing development regulations" as any development regulations related to the housing element requirements including, but not limited to, regulations related to permanent supportive housing, emergency shelters, middle housing, accessory dwelling units, and any zoning maps and districts.
- It adds certain requirements to the list of laws and regulations that Commerce must review for consistency with the housing development regulations, and the housing element if submitted to Commerce for approval, including the comprehensive plan and certain requirements related to transitional housing, emergency shelters, and permanent supportive housing.
- It changes the term "affordable housing development" for the purposes of the builder's remedy to the term "affordable or moderate-income housing development."
- It removes the public health and safety study as a reason that a city or county might be able to deny an affordable or moderate-income housing development.
- It adds the adoption of a low-income housing impact fee exemption as a reason that a city or county might be able to deny an affordable or moderate-income housing development.
- It provides that appeals of Commerce's decision on any housing development regulations or housing element must be filed with the GMHB within 60 days after Commerce publishes its final decision in the WSR or on Commerce's website, whichever is later.
- It specifies that a county or city is eligible for certain infrastructure funding until Commerce, the GMHB, or a court of competent jurisdiction issues a final decision determining noncompliance.
- It provides that a county or city meets its comprehensive plan update deadlines for the housing element and housing development regulations if it receives Commerce's final approval decision within six months after a comprehensive plan update is due, rather than six months after its next comprehensive plan update is due.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Addressing the state's housing crisis requires urgency. A quarter of a million

homes are needed to keep up with the state's housing needs, and it will take five years to close the housing gap. Washington is either at the bottom or second from the bottom in the nation in housing stock. The state also has a continuing homelessness and shelter crisis. At this moment, over 20,000 Washingtonians are living on our streets. There needs to be more permanent supportive housing, but there are difficulties siting these projects. Washington needs to do better.

This bill adds teeth to the housing element in the GMA. It holds local governments accountable for compliance with the housing element. The enforcement component of this bill allows developers to focus on building more homes. This bill will also help guide local governments. By having the state determine compliance, this bill will help jurisdictions know what works and what does not work.

The Legislature has made great progress on housing bills, but there needs to be a way to assess how things are going on the ground if a local government does not follow through. This bill is not a radical proposal. California, Oregon, and British Columbia have mandatory upzones and enforcement mechanisms similar to the builder's remedy in this bill.

Despite the passage of housing element legislation several years ago, providers are struggling to find ways to provide housing. There is currently very little support from the state if developments are being stalled by local regulations, and there is currently very little ability to appeal local regulations. The current process has not served the state well.

Currently, if a city is out of compliance with the GMA, citizens can go to the GMHB and challenge an ordinance, but this process can take up to four years or more. This bill creates a quicker process for there to be repercussions if cities and counties are not complying with the law.

Over the past 30 years of the GMA, the enforcement mechanism has been through private non-governmental organizations. This bill continues that, but changes who has first review of accountability. Under this bill, the state has first review. If cities or others don't agree with Commerce's determination, then they can still appeal through the existing process.

Every development is like a camel laden with straws that need to be overcome, such as zoning, design review, and other requirements. Rather than measuring and reviewing each straw, the state needs a holistic view of the entire load that the camel carries to ensure that the entire burden is manageable.

This bill is about people being able to put down roots in their communities and not have to commute long distances. This bill will help develop housing for people in deep poverty. This bill helps with focusing transit and density in cities. This bill will help make housing more affordable for everyone in the state.

(Opposed) This bill is a significant shift in how the GMA works, changing it from bottom-

up to top-down. It sidelines the public process. The GMA relies on community input, but this bill imposes a top-down approach that overrides community input and conflicts with the rest of the GMA's approach to local control and public engagement. This bill imposes a one-size-fits-all approach that fails to recognize the unique needs of local jurisdictions.

This bill makes the state a partner in writing local government comprehensive plans but does not require the state to participate in the many local government meetings spent on developing the comprehensive plans. The bill does require the state to review the record, but this is not the same.

By requiring local governments to submit the housing element for approval, this bill is very different than the rest of the GMA. For example, the Shoreline Master Program is very technical and science based, which is why it makes sense for that piece to have Department of Ecology review. The housing element is different.

This bill assumes that cities are not following the law. This bill should focus on the specific areas where more work on compliance is needed.

The timelines in the bill are not far enough out for local jurisdictions to comply. The bill should have a delayed effective date, otherwise local jurisdictions will be put in limbo while Commerce is making its decisions.

Persons Testifying: (In support) Representative Jessica Bateman, prime sponsor; Joe Kunzler; Ryan Donohue, Habitat for Humanity Seattle—King and Kittitas Counties; Dan Bertolet, Sightline Institute; Alex Hur, Master Builders Association of King and Snohomish Counties; Melanie Smith, Seattle and King County Coalition on Homelessness; Bill Stauffacher, Building Industry Association of Washington; Dan Wise, Catholic Community Services; Morgan Irwin, Association of Washington Business; Michele Thomas, Washington Low Income Housing Alliance; Benjamin Maritz; Lindsey Grad, SEIU Healthcare 1199NW; and Bryce Yadon.

(Opposed) Carl Schroeder, Association of Washington Cities; Salim Nice, City Mercer Island; Paul Jewell, Washington State Association of Counties; and Briahna Murray, City of Bellevue.

Persons Signed In To Testify But Not Testifying: Matt Hutchins; and McKenzie Darr, NAIOP—Washington.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Housing. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Callan, Chopp, Davis, Fitzgibbon, Lekanoff, Pollet,

Riccelli, Ryu, Senn, Simmons, Slatter, Springer, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 7 members: Representatives Corry, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Couture, Assistant Ranking Minority Member; Dye, Rude, Sandlin and Schmick.

Minority Report: Without recommendation. Signed by 3 members: Representatives Connors, Assistant Ranking Minority Member; Harris and Wilcox.

Staff: Jackie Kauble (786-7125).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Housing:

The House Appropriations Committee recommends:

- specifying that the Department of Commerce (Commerce) will review future, not existing, housing development regulations and housing elements, and Commerce's decision will remain in effect until the county or city modifies the development regulation or housing element;
- specifying that the 60-day appeal period for a housing development regulation begins when Commerce publishes its determination of compliance;
- removing the requirement that each county or city provide proposed housing development regulations or a proposed housing element with its notification of intent to apply to Commerce for compliance or approval review;
- requiring that each county or city ensure that developers of affordable or moderate-income housing developments provide affordable units for 50 years, and that each county or city ensure compliance through periodic audits or another mechanism;
- specifying that a city or county housing element is in compliance with the Growth Management Act if its application for determination of compliance or housing element approval is submitted to Commerce within 10 days of the jurisdiction's final action to adopt housing development regulations or a housing element; and
- adding a null and void clause, making the act null and void unless funded in the omnibus appropriations act, referencing the act by bill or chapter number, by June 30, 2024.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) Housing continues to be one of the greatest challenges facing our state. The Legislature has made great progress on bills to allow more housing, including those for middle housing, accessory dwelling units, and Growth Management Act (GMA) reform, and, most recently, the lot-splitting bill. However, more needs to be done and we now need to take the next steps to make sure this work is actually put into place and that jurisdictions are held accountable and doing their fair share in producing housing. Other states and countries have passed legislation that includes developing housing targets, monitoring production, and establishing consequences for noncompliance. The fiscal implications of this bill are modest for a policy that will generate more housing options, economic activity, and tax revenue for Washington. Employer communities support policies that generate more housing now and in the future so they can attract workers, serve more customers, and grow their businesses. While the policy is not exactly the same, there is a similar process in Washington modeled under the Shoreline Management Act in which jurisdictions work closely with the Department of Ecology and others in developing and adopting their plan. Bills like this one will help us not only build more homes but build more homeowners as well and is the next step for states who are serious about ending housing shortages.

(Opposed) This would be a major change in the way that Washington does growth management. This would delay all of the good work that the Legislature has done by at least six months. There are 218 cities that plan under the GMA who are dealing with 15 interrelated goals and balancing many competing interests. The Department of Commerce (Commerce) plans to have eight full-time equivalent staff across the state approving and deciding whether those decisions are appropriate. There are only 10 annual trips anticipated into the communities of 218 cities where they will ultimately be deciding whether the locally-elected decision-makers and community have made the right decisions without any context to judge those balancing decisions. This bill proposes a top-down approach that is removed from the local context and community input, eroding the public trust and disregarding the valuable insights that residents offer. The success of the GMA hinges on robust public support. This proposal also introduces redundancy into the process as the GMA already mandates comprehensive planning, including for housing, land use, and critical areas. By requiring additional compliance checks and bureaucratic processes, this bill duplicates efforts and creates confusion and inefficiency.

(Other) The amendments in the policy committee did not go far enough to address concerns. The way the language is drafted now presents many technical and process-oriented concerns. The largest concern is that upon the effective date of the bill, all housing development regulations will no longer be effective until Commerce has approved those regulations, unraveling all housing development codes immediately. The content of this bill is very similar to House Bill 2474, which is also before this committee. Since both seem to have the same purpose while using two very different processes, the differences of the bills should be reconciled if both are advanced.

Persons Testifying: (In support) Ryan Donohue, Habitat for Humanity Seattle-King and Kittitas Counties; Bryce Yadon, Futurewise; Lilly Hayward, Seattle Metropolitan Chamber

of Commerce; and Dan Bertolet, Sightline Institute.

(Opposed) Salim Nice; and Carl Schroeder, Association of Washington Cities.

(Other) Briahna Murray, City of Bellevue.

Persons Signed In To Testify But Not Testifying: None.