

HOUSE BILL REPORT

ESSB 5466

As Reported by House Committee On:
Housing

Title: An act relating to promoting transit-oriented development.

Brief Description: Promoting transit-oriented development.

Sponsors: Senate Committee on Transportation (originally sponsored by Senators Liias, Gildon, Kuderer, Lovelett, MacEwen, Mullet, Braun, Billig, Dhingra, Frame, Hunt, Kauffman, Nguyen, Nobles, Pedersen, Saldaña, Salomon, Shewmake, Stanford, Valdez, Van De Wege and Wilson, C.; by request of Office of the Governor).

Brief History:

Committee Activity:

Housing: 3/16/23, 3/28/23 [DPA].

Brief Summary of Engrossed Substitute Bill
(As Amended By Committee)

- Establishes that cities planning under the Growth Management Act (GMA) may not enact or enforce any new development regulation within a station area that prohibits the siting of multifamily residential housing on parcels where any other residential use is permissible, with some exceptions.
- Prohibits cities planning under the GMA from enacting or enforcing any new development regulation within a station area that imposes a maximum floor area ratio of less than the transit-oriented density or imposes a maximum residential density.
- Prohibits cities planning under the GMA from requiring off-street parking as a condition of permitting development within a station area, with some exceptions.
- Requires the Department of Commerce to establish a grant program to finance affordable housing projects within station areas and to provide

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.

technical assistance to cities implementing transit-oriented development regulations.

- Expands the categorical exemption for infill development.

HOUSE COMMITTEE ON HOUSING

Majority Report: Do pass as amended. Signed by 8 members: Representatives Peterson, Chair; Alvarado, Vice Chair; Leavitt, Vice Chair; Bateman, Chopp, Entenman, Reed and Taylor.

Minority Report: Do not pass. Signed by 4 members: Representatives Klicker, Ranking Minority Member; Connors, Assistant Ranking Minority Member; Hutchins and Low.

Minority Report: Without recommendation. Signed by 1 member: Representative Barkis.

Staff: Serena Dolly (786-7150).

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 are required to designate urban growth areas (UGA) within their boundaries sufficient to accommodate a planned 20-year population projection range provided by the Office of Financial Management. Each city located within a planning county must be included within a UGA. Urban growth must be encouraged within the UGAs, and only growth that is not urban in nature can occur outside of the UGAs. Each UGA must permit urban densities and include greenbelt and open space areas.

Comprehensive Plans.

The GMA directs fully planning jurisdictions to adopt internally consistent, comprehensive land use plans that are generalized, coordinated land use policy statements of the governing body. 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.

The GMA also establishes 14 goals in a nonprioritized list to guide the development of comprehensive plans and development regulations of counties and cities that plan under the GMA. The transportation goal encourages efficient multimodal transportation systems based on regional priorities and coordinated with county and city transportation plans. The housing element must ensure the vitality and character of established residential neighborhoods. Among other things, the housing element must include:

- an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth;
- adequate provisions for existing and projected needs of all economic segments of the community;
- identification and implementation of policies and regulations to address and begin to undo racially disparate impacts, displacement, and exclusion of housing caused by local policies, plans, and actions; and
- establishment of antidisplacement policies.

Fully planning cities are encouraged to take an array of specified planning actions to increase residential building capacity. This may include, for example:

- authorizing a development in one or more areas of certain size that include at least one train station served by commuter rail or light rail with an average of at least 50 residential units per acre that require no more than an average of one on-stop parking space per two bedrooms in the portions of multifamily zones located within the area; or
- authorizing a development in one or more areas of certain size and population that include at least one bus stop served by a scheduled bus service of at least four times per hour for 12 or more hours per day with an average of at least 25 residential units per acre that require no more than an average of one on-site parking space per two bedrooms in portions of the multifamily zones located within the area.

Limits on Minimum Residential Parking Requirements.

For housing units that are affordable to very low-income or extremely low-income individuals, and are located within 0.25 miles of a transit stop that receives transit service at least two times per hour for 12 or more hours per day, minimum residential parking requirements may be no greater than one parking space per bedroom or 0.75 of a parking space per unit. For market rate multifamily housing units that are located within 0.25 miles of a transit stop that receives transit service from at least one route that provides service at least four times per hour for 12 or more hours per day, minimum residential parking requirements may be no greater than one parking space per bedroom or 0.75 of a parking space per unit. Cities and counties may establish a requirement for more than one parking space per bedroom for market rate multifamily housing, if the jurisdiction has determined a particular housing unit to be in an area with a lack of access to street parking capacity, physical space impediments, or other reasons supported by evidence that would make on-street parking infeasible for the unit. Fully planning cities under the GMA may not require the provision of off-street parking for accessory dwelling units within 0.25 miles of a major transit stop, such as a high-capacity transportation system stop, a rail stop, or certain bus

stops, unless the city determines that on-street parking is infeasible for the accessory dwelling unit.

State Environmental Policy Act.

The 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. Government decisions identified as having significant adverse environmental impacts must then undertake an environmental impact statement (EIS). Under SEPA, certain nonproject actions are categorically exempt from threshold determinations and EISs in rule. Examples of categorical exemptions include various kinds of minor new construction and minor land use decisions.

State Environmental Policy Act Categorical Exemptions for Infill Development.

Counties and cities fully planning under the GMA may establish categorical exemptions from SEPA to accommodate infill development. Under the infill development categorical exemption, cities and counties may adopt categorical exemptions to exempt government action related to development that is new residential development, mixed-use development, or commercial development up to 65,000 square feet, proposed to fill in a UGA when:

- current density and intensity of the use in the area is roughly equal to or lower than called for in the goals and policies of the comprehensive plan;
- the action would not clearly exceed the density or intensity of use called for in the goals and policies of the comprehensive plan;
- the local government considers the specific probable adverse environmental impact of the proposed action and determines that those specific impacts are adequately addressed by other regulations, comprehensive plans, ordinances, or other local, state, and federal laws and rules; and
- the comprehensive plan was previously subjected to environmental analysis through an EIS.

Summary of Amended Bill:

Development Regulations Within a Station Area.

Fully planning cities may not enact or enforce any new development regulation within a station area that prohibits the siting of multifamily residential housing on parcels where any other residential use is permissible. Fully planning cities also may not enact any new development regulation within a station area that:

- imposes a maximum floor area ratio (FAR) less than the transit-oriented density for any use otherwise permitted;
- imposes a maximum residential density, measured in residential units per acre or other metric of land area; or
- renders a parcel impracticable to build a usable structure for permitted uses at the transit-oriented density or FAR except for: (1) development standards contained in a

shoreline master program or critical area ordinance; or (2) any parcel that is nonconforming with local subdivision standards or is a designated landmark or within a historic district established under a local preservation ordinance.

A station area is comprised of all parcels within a UGA that are fully or partially within:

- 0.5 miles walking distance of a stop on a high-capacity transportation system, a commuter rail stop, or a stop on rail or fixed guideway systems, including transitways; and
- 0.25 miles walking distance of a stop on a bus rapid transit route.

A FAR is a measure of transit-oriented development intensity equal to building square footage divided by the developable property square footage. The transit-oriented density for parcels within 0.5 miles walking distance of a stop on a high-capacity transportation system, a commuter rail stop, or a stop on rail or fixed guideway systems is at least 3.0 FAR and for parcels within 0.25 miles walking distance of a stop on a bus rapid transit route is at least 2.5 FAR.

Within any station area, a density bonus of 1.5 FAR must be allowed for affordable housing for households with incomes at or below 60 percent area median income and for permanent supportive housing. Residential units with at least three bedrooms in multifamily housing must not be counted toward FAR limits.

As an alternative, cities may designate parts of a station area to enact or enforce FARs that are more or less than the transit-oriented density if the following conditions are met:

- the average maximum FAR of all buildable land within a station area is no less than the applicable transit-oriented density; and
- no part of a station area is subject to a maximum FAR that is less than 0.5.

Except in zones where a development capacity greater than or equal to the applicable transit-oriented density is authorized by June 30, 2023, at least 20 percent of all residential units constructed within a station area must be affordable to households with an income at or below 60 percent of area median income for at least 50 years.

If a city has enacted a development regulation that imposes a maximum FAR of less than the transit-oriented density or a maximum residential density within a station area, the city must enforce and apply the development regulation consistent with this act instead. Fully planning cities must comply with the transit-oriented development requirements, and collaborate with tribes as outlined under the GMA, six months after their next periodic comprehensive plan update, and following the completion of any transit stop that would create a new station area, at each implementation progress report.

The requirements for transit-oriented development regulations do not:

- alter, displace, or limit industrial uses or industrial areas within the UGA; or
- limit the amount of affordable housing provided through local mandatory housing

affordability programs.

Substantially Similar Local Actions.

The Department of Commerce (Commerce) may approve subarea plans and implementing regulations adopted by cities prior to January 1, 2023, as substantially similar to the transit-oriented development requirements. In evaluating the plans and regulations, Commerce may consider whether: (a) the regulations will result in an amount of affordable housing that is at least equivalent to the amount of affordable housing that would result if the transit-oriented development requirements were adopted; (b) the jurisdiction offers a way to exceed maximum heights to achieve buildings that exceed 100 feet; and (c) new detached single-family residences are prohibited on average within 0.25 miles of light rail stations. Commerce must establish by rule any standards or procedures necessary to make a determination of what constitutes a substantially similar plan or regulation. Local actions approved by Commerce as substantially similar are exempt from appeals under SEPA, but Commerce's final decision may be appealed to the Growth Management Hearings Board.

Antidisplacement Measures.

By October 1, 2023, Commerce must develop, or contract for the development of, a statewide displacement risk map that identifies areas where residents and businesses are at a greater risk of displacement. Commerce must certify an extension from the transit-oriented development requirements for areas at greater risk of displacement. In addition, cities may implement alternative FARs for areas at greater risk of displacement.

Parking.

Fully planning cities may not require off-street parking as a condition of permitting development within a station area, except for off-street parking that is permanently marked for the exclusive use of individuals with disabilities. The prohibition against off-street parking requirements does not apply:

- if the city provides Commerce with an empirical study prepared by a credentialed transportation or land use planning expert that clearly demonstrates, and Commerce finds and certifies, that the limits on off-street parking in a defined area will be significantly less safe for vehicle drivers or passengers, pedestrians, or bicyclists than if the jurisdiction's parking requirements were applied to the same location without increased transit-oriented development and density requirements; or
- to any portion of a city within a 1-mile radius of a commercial airport with at least 9 million annual enplanements.

Commerce must develop guidance to assist cities on items to include in the parking study. If a project permit application within a station area does not provide off-street parking, the proposed absence of parking may not be treated as a basis for issuance of a determination of significance pursuant to SEPA.

Minimum residential parking requirements for affordable housing units, housing units for seniors or persons with disabilities, and market rate multifamily housing units, in close

proximity of certain transit stops, are removed.

Transit-Oriented Development Technical Assistance and Grant Programs.

The Washington State Department of Transportation (WSDOT) must create a new division within its agency or expand an existing division within its agency to mediate or help resolve disputes between the WSDOT, local governments, and project proponents regarding land use decisions and processing development permit applications.

Commerce, in consultation with the WSDOT, must establish and administer a competitive grant to assist in the financing of housing projects within station areas. State agencies, local governments, and nonprofit or for-profit housing developers are eligible to receive grant awards, and grant awards may be used for project capital costs and infrastructure costs and to address gaps in project financing that would prevent ongoing or complete project construction.

Eligible housing projects must meet the following requirements:

- be within a station area;
- comply with the applicable transit-oriented density;
- produce at least 100 units of rental, shelter, or permanent supportive housing or at least 30 units of owner-occupied housing; and
- include a covenant on the property requiring all units to remain affordable for at least 50 years to households with incomes at or below 60 percent of area median income for rental, shelter, or permanent supportive housing projects or to households with incomes at or below 80 percent of area median income for homeownership projects.

Commerce must also prioritize eligible projects by occupancy date, with a target occupancy date of December 31, 2025, and consider certain criteria when prioritizing projects, such as those that:

- have a high concentration of units affordable to households with incomes at or below 50 percent area median income;
- do not include costs related to land acquisition;
- abide by antidisplacement measures, if appropriate; or
- include units with additional bedrooms or are intended for occupancy by families with multiple dependents.

The Transit-Oriented Development Housing Partnership Account is created in the custody of the State Treasurer, and only the Director of Commerce may authorize expenditures from the account. Account revenue may include gifts, donations, or other private contributions. Expenditures may only be used for the competitive grant program to finance housing projects in station areas, including technical assistance by Commerce to eligible entities.

If funds are appropriated to the Growth Management Planning and Environmental Review Fund, Commerce may award grants to cities to facilitate transit-oriented development including:

- to pay for the costs associated with EISs, planned action ordinances, subarea plans, the use of other tools under the GMA or SEPA, and local code adoption and implementation; and
- to only fund efforts that address environmental impacts and consequences, alternatives, and mitigation measures to allow the analysis to be adopted by applicants for development permits within the geographic area analyzed in the plan.

In consultation with the WSDOT, Commerce must prioritize applications for grants to facilitate transit-oriented development that maximize certain policy objectives in the area covered by a proposal, such as:

- the total number of housing units authorized for new development in station areas;
- proximity and quality of transit access;
- plans that exceed applicable transit-oriented densities for station area;
- plans in areas that eliminate on-site parking requirements; and
- existence or establishment of incentive zoning, inclusionary housing, or other tools to promote low-income housing in the area.

State Environmental Policy Act.

The categorical exemption for infill development is expanded to include a project action that:

- is related to a proposed development that would fill in a station area;
- is related to a proposed multifamily residential development, mixed-use development, or commercial development; and
- is not inconsistent with the applicable comprehensive plan, and does not clearly exceed the density or intensity of use called for in the goals and policies of the applicable comprehensive plan.

A categorical exemption for sustainable transit-oriented development applies even if it differs from the categorical exemptions adopted by Department of Ecology rules.

Common Interest Communities.

Governing documents and declarations of common interest communities, including those such as condominiums and homeowner associations, within cities that adopt development regulations related to maximum FARs and maximum residential density provisions, may not prohibit construction or development of multifamily housing or transit-oriented density within a station area or require off-street parking that is inconsistent or in conflict with the parking provisions within a station area.

Amended Bill Compared to Engrossed Substitute Bill:

The striking amendment transfers responsibilities for providing technical assistance, awarding grants, and providing compliance review of transit-oriented development regulations from the WSDOT to Commerce.

The striking amendment modifies the grant program for the financing of housing projects by:

- requiring it to fund projects within station areas instead of rapid transit corridors;
- limiting grants to properties with a covenant requiring all units to remain affordable for at least 50 years for households with incomes at or below 60 percent of area median income for rental, shelter, or permanent supportive housing projects or at or below 80 percent of area median income for homeownership projects; and
- requiring projects to include at least 100 units of rental, shelter, or permanent supportive housing or at least 30 units of owner-occupied housing.

The striking amendment modifies the definition of "station area" to mean all parcels within a UGA that are fully or partially within:

- 0.5 mile walking distance of a stop on a high-capacity transportation system funded or expanded under chapter 81.104 RCW, a commuter rail stop, or a stop on rail or fixed guideway systems, including transitways; and
- 0.25 mile walking distance of a stop on a bus rapid transit route.

It also removes the definitions for "station hub," "major transit stop," and "major transit station" and all requirements and provisions related to those definitions.

The striking amendment modifies the definition of "stop" to include any existing stop or any stop funded for development prior to the earlier of a city's deadline to complete its next periodic comprehensive plan update or its deadline to complete its implementation progress report.

The striking amendment modifies the definition of "floor area ratio" by specifying it is a measure of transit-oriented development intensity and clarifying that developable property excludes lots with critical areas, or their buffers, and lots used for public facilities.

The striking amendment also modifies the definition of "transit-oriented density" to mean a FAR of:

- at least 3.0 within 0.5 mile walking distance of a stop on a high-capacity transportation system funded or expanded, a commuter rail stop, or a stop on rail or fixed guideway systems, including transitways; and
- at least 2.5 within 0.25 mile walking distance of a stop on a bus rapid transit route.

The striking amendment adds a requirement that at least 20 percent of all residential units constructed within a station area to be affordable to households with an income at or below 60 percent of area median income for at least 50 years, except in zones where a development capacity greater than or equal to the applicable transit-oriented density is authorized by June 30, 2023.

The striking amendment modifies provisions allowing for an increased density bonus by:

- removing the 50 percent density bonus for affordable housing, permanent supportive

- housing, and long-term inpatient care;
- allowing an additional 1.5 FAR in any building within a station area in which all units are affordable for households with incomes at or below 60 percent area median income for at least 50 years or for permanent supportive housing; and
- removing provisions allowing child care facilities and small businesses to be excluded from the FAR calculation.

The striking amendment specifies that if a city has enacted or expands an affordable housing incentive program in an area that must comply with the transit-oriented density regulations, that program governs to the extent it varies from the density bonus requirements.

The striking amendment modifies the exemption from transit-oriented development regulations for historic places by exempting any parcel that is a designated landmark or within a historic district established under a local preservation ordinance.

The striking amendment specifies that a city must comply with the new transit-oriented development requirements six months after its next periodic comprehensive plan update and, following the completion or funding of any transit stop that would create a new station area within the jurisdiction, at each five-year implementation progress report, instead of requiring a city to comply by the time of its next comprehensive plan update.

The striking amendment allows Commerce to approve subarea plans and implementing regulations adopted by cities prior to January 1, 2023, as substantially similar to the transit-oriented development requirements.

The striking amendment directs Commerce to develop, or contract for the development of, a statewide displacement risk map that identifies areas where residents and businesses are at a greater risk of displacement and requires Commerce to provide an extension from the transit-oriented density requirements for areas at greater risk of displacement. It also allows cities to implement alternative FARs for areas at greater risk of displacement.

The striking amendment modifies the exception to the prohibition against off-street parking requirements by:

- allowing cities to impose off-street parking requirements within a station area if the city provides Commerce with an empirical study prepared by a credentialed transportation or land use planning expert that clearly demonstrates, and Commerce finds and certifies, that the limits on off-street parking in a defined area will be significantly less safe for vehicle drivers or passengers, pedestrians, or bicyclists than if the jurisdiction's parking requirements were applied to the same location without increased transit-oriented development and density requirements; and
- exempting from the prohibition against off-street parking any portion of a city within a one-mile radius of a commercial airport with at least 9 million annual enplanements.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 29, 2023.

Effective Date of Amended 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) This bill will help focus high-density housing around transit and provide resources to cities, including grants and technical assistance. The bill is intended to be flexible for local governments while setting the density standards around transit that the state wants. The state and transit agencies have made significant investments in transit. Transit-oriented development can leverage these investments and link them to housing policy and density. Transit-oriented development is a significant benefit for people who do not or cannot drive, and people who are forced to drive should be given the opportunity to use transit. People who do not want neighbors should not live in cities next to transit.

Cities have parking minimums that do not reflect demand. Parking spaces take square footage that could be used for residential units. Off-street parking minimums are prohibitively costly, and parking stalls are adding extraordinary costs and prohibiting affordable housing. The bill does not prohibit development from including parking. Instead, it allows developers the flexibility in deciding how much is needed based on market demands.

This bill will help the state meet climate targets; a clear link exists between transit-oriented densities and decreased emissions. This bill also will help address employers' concerns about being able to attract workers and the ability of workers to live near jobs.

(Opposed) The bill creates unregulated areas where communities may not enforce land use and developmental regulations. The bill makes no provisions for infrastructure, and some communities have single-lane roads and limited municipal water supply. Land use decisions about off-street parking requirements are best made at the local level. Most households have cars, and if residential development does not include parking, local governments may have to. This shifts the cost of parking investments to the public.

(Other) Cities support the goal of increased density around transit investments, but this bill goes beyond the scope of transit-oriented development and creates density beyond what is being envisioned. The FARs are set too high. Some cities are undertaking extensive efforts to increase housing supply, affordable housing, and housing options, and while supportive of the goals of transit-oriented development and increased density, cities want that local work to be able to continue. This approach instead mandates a one-size-fits-all approach. Some cities also have used grants from Commerce to plan for station areas. If this bill passes, that work and funding will be completely wasted. Other cities have implemented a

number of the policies in the bill, including removing height restrictions and off-street parking requirements, but development has still been slow. Cities also have no control over bus routes, which are decided by transit agencies and may not be coordinated with land use decisions. The bill requires high density where transit does not currently exist and will not exist for more than a decade. The inability for cities to impose off-street parking requirements will create problems. Even in Seattle, 81 percent of households have cars. The bill needs to provide grants or other funding to help pay for the local infrastructure needed to support transit-oriented densities. The bill needs to add affordability provisions, antidisplacement measures, and homeownership opportunities. It will create displacement in both rental housing and homeownership. Increasing density alone will not create affordable housing.

Persons Testifying: (In support) Senator Marko Liias, prime sponsor; Joe Kunzler; Cynthia Stewart, League of Women Voters of Washington; Ryan Donohue, Habitat for Humanity Seattle-King and Kittitas Counties; Leah Missik, Climate Solutions; Angela Rozmyn, Natural and Built Environments; Michael Leach, Move Redmond; Alex Hur, Master Builders Association of King and Snohomish Counties; Dave Andersen, Washington Department of Commerce; Brian Lagerberg, Washington State Department of Transportation; Noha Mahgoub, Office of Governor Jay Inslee; Greg Hanon, NAIOP; Lars Erickson, Seattle Metropolitan Chamber of Commerce; Mike Ennis, Association of Washington Business; Jesse Simpson, Housing Development Consortium; Michael Seiwerath, SouthEast Effective Development Seattle; Dan Bertolet, Sightline Institute; Karen Taylor, Transit Riders Union; Neil Strege, Washington Roundtable; Bill Clarke, Amazon and Washington Realtors; Bryce Yadon, Futurewise; and Shaun Scott, Statewide Poverty Action Network.

(Opposed) Paul Jewell, Washington State Association of Counties; and Steven Miller, Cowan Miller and Lederman and Beaux Arts Planning Commission.

(Other) Bill Helbig, City of Spokane Valley; Salim Nice, City of Mercer Island; Kristen Holdsworth; Emil King, City of Bellevue; Carl Schroeder, Association of Washington Cities; Michele Thomas, Washington Low Income Housing Alliance; Sonja Hallum, City of Tacoma; and Shelly Helder, Cities of Lakewood, Issaquah, Mountlake Terrace and Lake Forest Park.

Persons Signed In To Testify But Not Testifying: None.