

SENATE BILL REPORT

ESHB 2474

As of February 20, 2024

Title: An act relating to compliance with siting requirements for transitional housing, permanent supportive housing, indoor emergency shelters, and indoor emergency housing.

Brief Description: Concerning compliance with siting requirements for transitional housing, permanent supportive housing, indoor emergency shelters, and indoor emergency housing.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Peterson, Alvarado, Gregerson, Berry, Leavitt, Fosse, Macri, Nance, Chopp and Bateman).

Brief History: Passed House: 2/12/24, 55-42.

Committee Activity: Local Government, Land Use & Tribal Affairs: 2/20/24.

Brief Summary of Bill

- Requires the Department of Commerce (Commerce) to facilitate the resolution of disputes between a city or code city and a project applicant or developer of permanent supportive housing, transitional housing, indoor emergency housing, or indoor emergency shelters.
- Authorizes Commerce to issue a finding of noncompliance if dispute resolution is unsuccessful and the city or code city has denied a project permit or development agreement, or enacted a zoning ordinance or development regulations, that prevents the siting of permanent supportive housing, transitional housing, indoor emergency housing, or indoor emergency shelters.
- Directs the state treasurer to withhold certain revenues from a city if Commerce issues a finding of noncompliance and the city or code city fails to issue a project permit or modify its zoning ordinance and development regulations.

SENATE COMMITTEE ON LOCAL GOVERNMENT, LAND USE & TRIBAL

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.

AFFAIRS

Staff: Maggie Douglas (786-7279)

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.

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. Comprehensive plans must be reviewed and, if necessary, revised every ten years to ensure that it complies with the GMA. When developing their comprehensive plans, counties and cities must consider various goals set forth in statute.

Mandatory Housing Element. Comprehensive plans must include a housing element that ensures the vitality and character of established residential neighborhoods. The housing element must include the following:

- an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth, as provided by Commerce;
- a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing;
- identification of sufficient capacity of land for various housing;
- adequate provisions for existing and projected needs of all economic segments of the community;
- identification of local policies and regulations that result in racially disparate impacts, displacement, and exclusion of housing;
- identification and implementation of policies and regulations to address and begin to undo racially disparate impacts, displacement, and exclusion of housing;
- identification of neighborhoods that may be at higher risk of displacement from market forces; and
- establishment of antidisplacement policies.

Transitional Housing and Permanent Supportive Housing. A city or code city may not prohibit transitional housing or permanent supportive housing in any zone that residential dwelling units or hotels are allowed. A city or code city may not prohibit indoor emergency shelters or indoor emergency housing in any zones that hotels are allowed, unless the city or code city has adopted an ordinance authorizing indoor emergency shelters and indoor

emergency housing in a majority of zones within a one mile proximity to transit.

A city or code city may impose, by ordinance, reasonable occupancy, spacing, and intensity of use requirements on permanent supportive housing, transitional housing, indoor emergency housing, and indoor emergency shelters for public health and safety purposes. Requirements may not prevent the siting of a sufficient number of permanent supportive housing, transitional housing, indoor emergency housing, and indoor emergency shelters necessary to accommodate each city or code city's projected need for such housing and shelter under the mandatory housing element included in its comprehensive plan.

Summary of Bill: The Department of Commerce (Commerce) must provide services to facilitate the timely resolution of disputes between a city or code city and:

- an applicant seeking a project permit or development agreement to site or construct permanent supportive housing, transitional housing, indoor emergency housing, or indoor emergency shelters; or
- a developer for permanent supportive housing, transitional housing, indoor emergency housing, or indoor emergency shelters that alleges a zoning ordinance or development regulations adopted by the city or code city prevents the siting of housing or shelters, in violation with current law, or, if applicable, the mandatory housing element of its comprehensive plan.

A city or code city and the applicant or developer may request Commerce to provide facilitation services to resolve issues of concern with a proposed development of permanent supportive housing, transitional housing, indoor emergency housing, or indoor emergency shelters.

If the dispute resolution process is unsuccessful, the city or code city must submit the following information to Commerce for review:

- the project permit application;
- any development agreement;
- the zoning ordinance and related development regulations; and
- any other relevant documents, including:
 1. a statement of the reason for any denial, rescission, or conditions of approval;
 2. the requirements necessary to fulfill the development agreement or development regulations; or
 3. how the adopted ordinance and development regulations comply with current law.

If Commerce finds that the final decision on the project permit application, a developer agreement, or another permitting process violates current law, or, if applicable, the mandatory housing element of its comprehensive plan, Commerce must reverse the final decision and return it to the city or code city for approval, modification, or further proceedings.

If Commerce finds that a zoning ordinance or development regulations adopted by the city or code city prevents the siting of housing or shelter in violation of current law, or, if applicable, the mandatory housing element of its comprehensive plan, Commerce must issue a determination of noncompliance.

The final decision issued by Commerce may be appealed as a land use decision under the Land Use Petition Act or the Growth Management Hearings Board.

Commerce must notify the state treasurer if a city or code city fails to:

- issue a project permit application, development agreement, or another permit or process decision within 30 days of a determination of noncompliance; or
- amend its zoning ordinances and related development regulations to comply with current law, and, if applicable, the mandatory housing element of its comprehensive plan, within 30 days of a determination of noncompliance.

Upon notification, the state treasurer must withhold the following revenues from distribution to the city or code city:

- the motor vehicle fuel tax revenue;
- the transportation improvement account;
- the rural arterial trust account;
- the local retail sales and use tax revenue;
- the liquor profit tax revenue; and
- the liquor excise tax revenue.

The state treasurer must resume distributions of revenues when the city or code city issues the project permit application or amends its zoning ordinance and related development regulations.

An applicant submitting a project permit application, development agreement, or other documents for permanent supportive housing, transitional housing, indoor emergency housing, or indoor emergency shelters may submit a copy of the documents to Commerce. An applicant may request a review of any denial, rescission, or conditions for approval by a city or code city.

Commerce may adopt any rules necessary to implement the provisions of the bill. These provisions expire July 1, 2029.

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: PRO: This bill is in response to cities that have denied or rescinded permits for affordable housing developments. This bill establishes a dispute resolution process to resolve complaints from developers and providers of affordable housing when a city has denied or rescinded a permit, and that decision is contrary to state law. In these situations, the Department of Commerce would provide arbitration for all parties. This is something the agency already does for disputes between tribal and local governments engaging in local planning decisions. Some developers and providers are experiencing significant pushback from cities when trying to get a permit for their affordable housing developments, and this typically looks like applying local codes or zoning ordinances in inappropriate ways. Providers are currently hiring private legal counsel to try to address the conflict with the city, but the costs of doing so are unsustainable for nonprofits and developers operating on thin profit margins. Affordable housing is an acute need in the state and it is imperative to make sure that all cities are following the housing and land use planning laws. Cities that are planning under the GMA will include an updated housing element in their comprehensive plans that will address some of the affordable housing needs in their jurisdiction, so the bill will expire after all jurisdictions have completed their comprehensive plan reviews and revisions. The existing process is hampering the ability for the region and state to meet the most pressing housing needs facing low income communities, seniors, veterans, and others with disabilities out of homelessness. The bill establishes a plan to immediately address the most critical affordable housing, permanent supportive housing, transitional housing, and emergency shelters needs.

CON: Cities can support the idea of targeted dispute resolution within the bill, but the provisions that allow Commerce to determine whether local zoning ordinances and permit decisions are appropriate would have a chilling effect on voluntary negotiations. It is concerning that Commerce could obligate a city to make certain land use planning decisions that might not be best suited for their community. It is also concerning that the bill amends the current judicial process for permitting appeals and places the responsibilities with Commerce. Many of these issues will be addressed through the housing element requirements included as part of the upcoming comprehensive plan reviews and revisions. This bill feels like a retaliation bill after the events that happened in Kenmore, when the city rejected the supportive housing development.

OTHER: This bill could use some friendly amendments. Some communities do not have the capacity to support people in recovery that need shelter. The bill should include a provision that says if a community has a "no sit no lie" policy, the jurisdiction must have a treatment facility and emergency shelters. People experiencing homelessness should be able to recover in places that they are not being gawked at. There are times that this kind of dispute resolution process included in the bill are important and critical in order to meet local housing needs.

Persons Testifying: PRO: Representative Strom Peterson, Prime Sponsor; Jon Culver; Bryce Yadon, Futurewise; Michael White, King County; Elizabeth Murphy, Plymouth Housing; Jon Grant, Low Income Housing Institute (LIHI); Corina Pfeil.

CON: Salim Nice, Mayor, City Mercer Island; David Baker; Dale Walker; John Hendrickson; Autumn Meadows; GEOFFREY CHISM; Simone Barron; Sean Beavers, 50th and roosevelt; Carl Schroeder, Association of Washington Cities; Heidi Dean.

OTHER: Joe Kunzler.

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