

# SENATE BILL REPORT

## SSB 5235

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As Passed Senate, February 27, 2023

**Title:** An act relating to accessory dwelling units.

**Brief Description:** Concerning accessory dwelling units.

**Sponsors:** Senate Committee on Local Government, Land Use & Tribal Affairs (originally sponsored by Senators Shewmake, Frame, Lovelett, Nguyen, Pedersen and Salomon).

**Brief History:**

**Committee Activity:** Local Government, Land Use & Tribal Affairs: 1/26/23, 2/09/23 [DPS].

**Floor Activity:** Passed Senate: 2/27/23, 42-6.

### Brief Summary of First Substitute Bill

- Requires cities and counties fully planning under the Growth Management Act to allow for the construction of accessory dwelling units (ADUs) within urban growth areas (UGAs), and prohibits such cities and counties from imposing certain ADU regulations, by the time of their next comprehensive plan update.
- Authorizes cities and counties to adopt ordinances, development regulations, or other measures that waive, defer, or reduce fees and taxes or offer other incentives for the construction or development of ADUs that are subject to certain binding commitments or covenants.
- Prohibits restrictive covenants or deed restrictions created after the effective date of the bill from prohibiting the construction, development or use of ADUs within UGAs.

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**SENATE COMMITTEE ON LOCAL GOVERNMENT, LAND USE & TRIBAL AFFAIRS**

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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.*

**Majority Report:** That Substitute Senate Bill No. 5235 be substituted therefor, and the substitute bill do pass.

Signed by Senators Lovelett, Chair; Salomon, Vice Chair; Torres, Ranking Member; Kauffman and Short.

**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.

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. Each city in a county must be included in a UGA. 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. 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.

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 consider the role of accessory dwelling units in meeting housing needs.

Accessory Dwelling Units. Any county fully planning under the GMA, city with a population of over 20,000, or county with a population of over 125,000 must have accessory dwelling unit (ADU) provisions incorporated in their development regulations, zoning regulations, or official controls. These provisions must be consistent with a 1993 report from the Department of Community, Trade, and Economic Development that provided recommendations to encourage the development and placement of ADUs in areas zoned for single-family residential use. However, local communities have some flexibility to adapt these recommendations to local needs and preferences.

As of July 1, 2021, fully planning cities under the GMA may not require the provision of

off-street parking for ADUs within a quarter mile 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 ADU.

An ADU is a residential living unit providing independent living facilities and permanent provisions for sleeping, cooking, sanitation, and living on the same lot as a single-family home, duplex, triplex, townhome, or other housing unit. A short-term rental is a lodging use, outside of a hotel, motel, or bed and breakfast, in which a room is offered for a fee for fewer than consecutive nights.

**Summary of First Substitute Bill:** Cities and counties fully planning under the GMA must allow for the construction of ADUs within UGAs. When regulating ADUs, such cities and counties may not:

- impose a limit on ADUs that would allow fewer than one attached and one detached ADU on a lot over 4500 square feet in a residential zone, unless the lot is otherwise zoned to allow:
  1. at least two dwelling units, in which case at least one additional attached or detached ADU must be allowed; or
  2. at least three dwelling units;
- impose a limit on ADUs that would allow fewer than one attached and one detached ADU on a lot less than 4500 square feet in a residential zone, unless the lot is otherwise zoned to allow at least two dwelling units;
- impose a prohibition on the sale of a condominium unit independently of a principal unit based solely on the condominium unit initially being built as an ADU, as long as the condominium unit has independent utilities;
- impose any owner-occupancy requirements on a lot containing an ADU, unless:
  1. an ADU on the lot is offered or used for short-term rental; or
  2. the city or county administers a general program, begun prior to December 31, 2022, offering the waiver or reduction of impact fees and costs associated with ADU construction, if the units are offered at or below 80 percent of the area median income;
- require the provision of off-street parking for an ADU within 0.25 miles of a major transit stop, unless the city or county makes a determination, supported by evidence, that the ADU is in an area that would make on-street parking infeasible or unsafe for the dwelling unit;
- apply other development regulations to the construction of ADUs that are more restrictive than the regulations on single-family or other residential developments.

Cities and counties may apply certain regulations to ADUs, including:

- generally applicable development regulations;
- public health, safety, building code, and environmental permitting requirements that would be applicable to a principal unit;
- a prohibition on the construction of ADUs on lots not connected to or served by public sewers; and

- a prohibition or restriction on the construction of ADUs in residential zones with a density of one dwelling unit per acre or less and that are within areas designated as wetlands, fish and wildlife habitats, floodplains, or geologically hazardous areas.

Cities and counties may adopt ordinances, development regulations, and other official controls that waive or defer fees, including impact fees, defer the payment of taxes, or waive specific regulations to incentivize the development or construction of ADUs. Such units are subject to effective binding commitments or covenants that the units will not be regularly offered for short-term rental. Fully planning cities and counties must comply with these new ADU requirements by the time of their next comprehensive plan update after July 1, 2021. Such new requirements apply and take effect, and any contrary development regulations are preempted and superseded, after this deadline. A restrictive covenant or deed restriction created after the effective date of the act may not prohibit the construction, development, or use of an ADU within a UGA. A city or county that issues a permit for the construction of an ADU may not be held civilly liable on the basis that the construction would violate the restrictive covenant or deed restriction that was created after the effective date of the act.

**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 on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: ADUs are a piece of the puzzle to build more affordable housing and fit into existing neighborhoods very well. These can be part of that gentle density, and if this gets rolled into a larger missing middle bill that is fine. This policy will allow for a couple more options and was worked on last year. This is a good bill.

OTHER: There are concerns with the prescriptive nature of the bill. The requirement for two units on every lot is the primary challenge. This would remove the discretion of cities to make this determination. Local elected officials have authority to make land use decisions in their communities. They do so after robust public participation. They are the elected officials closest to their communities and those decisions should stay local. Section five of the bill is confusing. This bill should be very explicit that these are allowed in the urban growth boundary and only in the urban growth boundary.

**Persons Testifying:** PRO: Senator Sharon Shewmake, Prime Sponsor.

OTHER: Paul Jewell, Washington State Association of Counties; Carl Schroeder,

Association of Washington Cities; Bryce Yadon, Futurewise.

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