

SENATE BILL REPORT

SB 5412

As Reported by Senate Committee On:
Local Government, Land Use & Tribal Affairs, February 7, 2023
Transportation, February 23, 2023

Title: An act relating to reducing local governments' land use permitting workloads, by ensuring objective and timely design review for housing and other land use proposals within cities and counties and allowing proposed housing within urban growth boundaries to rely on environmental reviews completed at the comprehensive planning level.

Brief Description: Reducing local governments' land use permitting workloads.

Sponsors: Senators Salomon, Liias, Kuderer, Lovelett, Mullet and Pedersen.

Brief History:

Committee Activity: Local Government, Land Use & Tribal Affairs: 1/26/23, 2/07/23 [DPS, w/oRec].

Transportation: 2/20/23, 2/23/23 [DP2S, DNP, w/oRec].

Brief Summary of Second Substitute Bill

- Establishes that counties and cities planning under the Growth Management Act may apply only clear and objective development regulations governing the exterior design of certain new development in a design review process.
- Categorically exempts project actions from the State Environmental Policy Act that propose to develop one or more residential housing units within the incorporated areas in an urban growth area, or middle housing within the unincorporated areas in an urban growth area, if the proposed projects do not have transportation system safety or operational deficiencies.
- Requires cities and counties to consult with the Washington State Department of Transportation to determine if transportation system

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safety or operational deficiencies exist in connection with a proposed project.

SENATE COMMITTEE ON LOCAL GOVERNMENT, LAND USE & TRIBAL AFFAIRS

Majority Report: That Substitute Senate Bill No. 5412 be substituted therefor, and the substitute bill do pass.

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

Minority Report: That it be referred without recommendation.

Signed by Senator Kauffman.

Staff: Karen Epps (786-7424)

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: That Second Substitute Senate Bill No. 5412 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Liias, Chair; Lovick, Vice Chair; Shewmake, Vice Chair; King, Ranking Member; Holy, Assistant Ranking Member; Cleveland, Kauffman, Lovelett, Nobles, Randall, Valdez and Wilson, C..

Minority Report: Do not pass.

Signed by Senator Padden.

Minority Report: That it be referred without recommendation.

Signed by Senators MacEwen and Wilson, J..

Staff: Kelly Simpson (786-7403)

Background: Growth Management Act. The Growth Management Act (GMA) is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, the GMA establishes numerous planning requirements for counties and cities obligated by mandate or choice to fully plan under the GMA—planning jurisdictions—and a reduced number of directives for all other counties and cities. Twenty-eight of Washington's 39 counties, and the cities within those counties, are planning jurisdictions.

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.

Design Review. Design review is a formally adopted local government process by which projects are reviewed for compliance with design standards for the type of use adopted through local ordinance. Design review focuses on the appearance of new construction, site planning, and items such as landscaping, signage, and other aesthetic issues.

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. The SEPA environmental review process involves a project proponent or the lead agency completing an environmental checklist to identify and evaluate probable environmental impacts. Government decisions that the SEPA checklist process identifies as having significant adverse environmental impacts must then undergo a more comprehensive environmental analysis in the form of 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—Infill Development. Counties and cities planning fully under the GMA may establish categorical exemptions from the requirements of SEPA to accommodate infill development. Locally authorized categorical exemptions may differ from the categorical exemptions established by the Department of Ecology by rule.

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 applicable comprehensive plan;
- the action would not clearly exceed the density or intensity of use called for in the goals and policies of the applicable 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 applicable regulations, comprehensive plans, ordinances, or other local, state, and federal laws and rules; and
- the applicable comprehensive plan was previously subjected to environmental analysis through an EIS according to SEPA.

Summary of Bill (Second Substitute): Design Review. Counties and cities planning under the GMA may apply only clear and objective development regulations governing the

exterior design of new development in a design review process, except for structures listed on the Washington Heritage Register or the National Register of Historic Places. For the design review process, a clear and objective development regulation:

- must include one or more ascertainable guidelines, standards, or criterion by which an applicant can determine whether a given building design is permissible under that development regulation; and
- may not result in a reduction in density, height, bulk, or scale below the generally applicable development regulations for a development proposal in the applicable zone.

A design review process must be conducted concurrently, or otherwise logically integrated, with the consolidated review and decision process for project permits, and no design review process may include more than one public meeting.

State Environmental Policy Act—Categorical Exemptions—Housing Development. The infill development categorical exemption is expanded to include housing development. All project actions that propose to develop one or more residential housing units within the incorporated areas in an urban growth area or middle housing within the unincorporated areas in an urban growth area, and that meet certain criteria are categorically exempt from SEPA. The categorical exemption applies to proposed projects that do not have existing or anticipated transportation system safety or operational deficiencies. A city or county must consult with the Washington State Department of Transportation (WSDOT) to determine if anticipated transportation system safety or operation deficiencies exist in connection with a proposed project.

The project action is eligible for categorical exemption only if it meets the following criteria:

- the proposed development is consistent with all development regulations implementing an applicable comprehensive plan adopted by the jurisdiction in which the development is proposed, with the exception of any development regulation that is inconsistent with applicable provisions of the GMA; and
- the city or county's applicable comprehensive plan was previously subjected to environmental analysis under the SEPA prior to adoption.

For this housing development categorical exemption, middle housing is defined to mean fourplexes, attached and detached accessory dwelling units, cottage housing, stacked flats, townhouses with more than four units, and courtyard apartments.

Locally authorized categorical exemptions for housing development may differ from the categorical exemptions established by the Department of Ecology by rule.

EFFECT OF CHANGES MADE BY TRANSPORTATION COMMITTEE (Second Substitute):

- Removes inconsistent language regarding the requirement that proposed projects have no transportation system deficiencies in order to qualify for the categorical SEPA exemption.

EFFECT OF CHANGES MADE BY LOCAL GOVERNMENT, LAND USE & TRIBAL AFFAIRS COMMITTEE (First Substitute):

- Provides that a clear and objective development regulation for a design review process may not result in a reduction in density, height, bulk, or scale below the generally applicable development regulations for a development proposal in the applicable zone.
- Establishes that the categorical exemption for housing development in UGAs applies to proposed projects that do not have existing or anticipated transportation system safety or operational deficiencies including all modes where a plan to correct these deficiencies does not exist consistent with the comprehensive plan.
- Requires a city or county to consult with WSDOT to determine if anticipated transportation system safety or operation deficiencies exist in connection with a proposed project.
- Changes the criteria that must be met for a project action to be eligible for a housing development in the UGA categorical exemption to be:
 1. the proposed development is consistent with all development regulations implementing an applicable comprehensive plan adopted by the jurisdiction in which the development is proposed, with the exception of any development regulation that is inconsistent with applicable provisions of the GMA; and
 2. the city or county's applicable comprehensive plan was previously subjected to environmental analysis under the SEPA prior to adoption.

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 (Local Government, Land Use & Tribal Affairs): *The committee recommended a different version of the bill than what was heard.* PRO: This is a housing affordability, housing supply bill. Currently, there is a two-step process that can slow down housing and make it more expensive. When a comprehensive plan is done, anyone can appeal to make sure any environmental questions were addressed and adequately solved. Once a builder is developing housing, there can be an appeal right before development is about to happen for the same reason at the lot level. The bill will create objective standards for design review that can be applied and is fairer. Urban communities do an extensive EIS on their comprehensive plan, which looks at the

densities allowed both within cities and outside cities within the UGA. This bill aligns with that work and allows local development to occur consistent with that EIS. The objective design standards in this bill will help eliminate delays. Design standards can add months to the timeline of a project and this bill will help limit delays. The bill will encourage more participation by all entities at the planning level and will provide a full environmental review to consider all factors.

OTHER: It is critical that WSDOT retain the ability to review significant development proposals to avoid introducing safety challenges and ensure access and travel needs are met with multi modal transportation. SEPA is one of the only tools WSDOT has at the project level to determine if mitigation is necessary to address safety and operational impacts to the state highway system.

Persons Testifying (Local Government, Land Use & Tribal Affairs): PRO: Senator Jesse Salomon, Prime Sponsor; Josie Cummings, Building Industry Association of Washington; Scott Hazlegrove, Master Builders Association of King & Snohomish Counties; Carl Schroeder, Association of Washington Cities; Bryce Yadon, Futurewise.

OTHER: Kerri Woehler, Washington State Department of Transportation.

Persons Signed In To Testify But Not Testifying (Local Government, Land Use & Tribal Affairs): No one.

Staff Summary of Public Testimony on First Substitute (Transportation): *The committee recommended a different version of the bill than what was heard.* PRO: The bill requires a SEPA review at the front end of the development process. Including WSDOT at the front end makes sense. The bill resolves a number of overlaps in the permitting process. At the front end of the land use process, communities come together to adopt a general land use plan. This bill moves the SEPA process to the planning level rather than at the permitting process level. Consultation already exists between local governments and WSDOT in the planning process. The bill contains regulatory reform regarding the design review process. There is a need to increase affordable housing. This bill provides a more efficient permitting process that increases housing density. The WSDOT consulting provision is a useful provision.

Persons Testifying (Transportation): PRO: Cynthia Stewart, League of Women Voters of WA; Josie Cummings, Building Industry Association of Washington; Bryce Yadon, Futurewise; Scott Hazlegrove, Master Builders Association of King & Snohomish Counties; Carl Schroeder, Association of Washington Cities.

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