

HOUSE BILL REPORT

ESHB 1293

As Passed House:
February 28, 2023

Title: An act relating to streamlining development regulations.

Brief Description: Streamlining development regulations.

Sponsors: House Committee on Housing (originally sponsored by Representatives Klicker, Leavitt, Barkis, Jacobsen, Waters, Chapman, Reed and Graham).

Brief History:

Committee Activity:

Housing: 1/30/23, 2/7/23 [DPS].

Floor Activity:

Passed House: 2/28/23, 94-3.

Brief Summary of Engrossed Substitute Bill

- Requires counties and cities planning under the Growth Management Act to apply only clear and objective design review standards to the exterior of new development that does not include residential housing.
- Establishes a categorical exemption from the State Environmental Policy Act for residential housing units within an urban growth area.

HOUSE COMMITTEE ON HOUSING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Peterson, Chair; Alvarado, Vice Chair; Leavitt, Vice Chair; Klicker, Ranking Minority Member; Connors, Assistant Ranking Minority Member; Barkis, Bateman, Chopp, Hutchins, Low, Reed and Taylor.

Staff: Serena Dolly (786-7150).

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.

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 a wide 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 referred to as fully planning under the GMA.

Counties that fully plan under the GMA must designate urban growth areas (UGA), 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. Fully planning jurisdictions must include within their UGAs sufficient areas and densities to accommodate projected urban growth for the succeeding 20-year period.

Project Review.

Before developing land, a developer must obtain permits from the local government that allow the development. These permits can include land use permits, environmental permits, building permits, and others, and are known as project permits. All counties and cities, including those not planning under the GMA, are required to combine the environmental review process with the project permit review process.

When a fully planning county or city is reviewing a project, its comprehensive plan and development regulations must serve as the basis for the project permit review. In determining if a proposed project is consistent with the comprehensive plan and development regulations, the county or city must consider the type of land use, the level of development or density proposed, and the availability of infrastructure needed to service the development.

Fully planning counties and cities must comply with additional project permit processing requirements, including establishing an integrated or consolidated permit process that:

- provides for a written determination of completion to an applicant within 28 days of receipt of the application;
- provides for notice of the application to the public, and to relevant departments and agencies, within 14 days of the determination of completeness;
- provides for an optional consolidated process for reviewing two or more project permit applications relating to a proposed project as part of a single process, with a designated permit coordinator for all of the project permits and allowing no more than one open-record hearing and one closed-record appeal on the project;
- allows any required open-record hearing or public meeting on the project to be combined with any other public meeting or hearing that may be held on the project by another agency;
- provides for a single report containing all of the decisions made on all project permits included in the consolidated process, as well as any recommendations on project

- permits that do not require an open-record predecision hearing and any mitigation required under the State Environmental Policy Act (SEPA);
- requires no more than one consolidated open-record hearing on appeal if the local government allows appeals; and
 - requires a notice of decision on the project permit within 120 days, unless the county or city has adopted a longer time period after making written findings that a longer time period is required to process a specific application or project type.

Counties and cities that do not plan under the GMA may choose to incorporate some or all of the integrated or consolidated permit process into their permitting processes.

In addition, counties and cities are encouraged to adopt project review provisions to provide prompt, coordinated review and ensure accountability to applicants and the public, including expedited review for project permit applications for projects that are consistent with adopted development regulations and within the capacity of systemwide infrastructure improvements. Local governments also must adopt procedures to monitor and enforce permit decisions and conditions and may require preapplication conferences or a public meeting by rule, ordinance, or resolution.

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. A design element is an optional element of a comprehensive plan, and many jurisdictions have included design elements in their comprehensive plans.

State Environmental Policy Act.

The 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.

Counties and cities planning fully under the GMA may establish categorical exemptions from SEPA requirements 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, counties and cities may exempt government action related to development that is new residential development, mixed-use development, or commercial development up to 65,000 square feet 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 Engrossed Substitute Bill:

Project Review.

During project review, counties and cities may only require preapplication conferences or a public meeting where otherwise required by state law. In addition, counties and cities are encouraged to adopt project review provisions that ensure an objective review and expedite project permit applications for projects that include dwelling units that are affordable to low-income and moderate-income households.

Design Review.

Beginning six months after its next required periodic comprehensive plan update, a fully planning city or county may apply only clear and objective regulations to the exterior design of new development that does not include any residential units, except for designated landmarks or historic districts established under a local preservation ordinance. For the design review process, a clear and objective 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.

Any design review process must be conducted concurrently, or otherwise logically integrated, with the consolidated review and decision process for project permits, and design review process may not include more than one public meeting.

State Environmental Policy Act Exemption.

All project actions to develop one or more residential housing units within a UGA are categorically exempt from SEPA if:

- the proposed development is consistent with all development regulations implementing the jurisdiction's comprehensive plan;
- the city or county's comprehensive plan was previously subjected to an EIS, or the city or county has an EIS that considers the proposed use or density and intensity of use in the area and fully addresses the transportation impacts; and
- the proposed development is located in an area that does not have existing or anticipated transportation system safety or operational deficiencies.

Counties and cities must consult with the Washington State Department of Transportation to determine if anticipated transportation system safety or operation deficiencies exist in connection with a proposed project.

The categorical exemption applies in a city or county beginning six months after its next required periodic comprehensive plan update.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Since the inception of the GMA, development rules and regulations have compounded. This has created difficulty in some areas, especially related to affordable housing. This bill streamlines housing permit processing. It will reduce housing development costs. The goal is not to prohibit design review but to ensure it is objective. Housing is subject to multiple SEPA reviews. This bill allows an exemption from additional SEPA review if the project is consistent with prior environmental reviews. The bill does not prohibit SEPA challenges, just requires them to be handled earlier when the local jurisdiction is adopting or amending their comprehensive plan.

(Opposed) None.

(Other) The bill has some technical issues. The provisions related to the SEPA exemption are in the wrong statute. Not all comprehensive plans are subject to environmental review. Clarification is needed for the objective design review standards. The restriction on meetings raises concerns.

Persons Testifying: (In support) Representative Mark Klicker, prime sponsor; Bill Stauffacher, Building Industry Association of Washington; and Bill Clarke, Washington Realtors.

(Other) Carl Schroeder, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: None.