

HOUSE BILL REPORT

SSB 5235

As Reported by House Committee On:
Housing

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:

Housing: 3/13/23, 3/27/23 [DPA].

Brief Summary of Substitute Bill
(As Amended By Committee)

- Requires fully planning cities and counties to allow for the construction of accessory dwelling units (ADUs) in urban growth areas (UGAs).
- Prohibits certain ADU regulations within UGAs.
- Allows cities and counties to offer incentives for the construction or development of ADUs.

HOUSE COMMITTEE ON HOUSING

Majority Report: Do pass as amended. Signed by 11 members: Representatives Peterson, Chair; Alvarado, Vice Chair; Leavitt, Vice Chair; Klicker, Ranking Minority Member; Barkis, Bateman, Chopp, Entenman, Low, Reed and Taylor.

Minority Report: Without recommendation. Signed by 2 members: Representatives Connors, Assistant Ranking Minority Member; Hutchins.

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 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. The UGAs must include 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 mandatory elements, including a housing element. The housing element must ensure the vitality and character of established residential neighborhoods and, among other requirements, consider the role of ADUs in meeting housing needs.

Accessory Dwelling Units.

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. An attached ADU is a dwelling unit located within or attached to another housing unit. A detached ADU is separate and detached from another housing unit.

Cities with more than 20,000 people, counties with more than 125,000 people, and counties that are required to plan under the GMA are required to incorporate in their development and zoning regulations recommendations made in 1993 by the then Department of Community, Trade, and Economic Development, now the Department of Commerce (Commerce), for the development and placement of accessory apartments.

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.

Summary of Amended Bill:

By their next comprehensive plan update after July 1, 2021, fully planning cities and counties must ensure local development regulations allow for the construction of ADUs within UGAs. City and county ADU regulations may not include:

- a limit on ADUs of fewer than one attached and one detached ADU on a residential lot with a total square footage of more than 4,500 square feet, 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;
- a limit on ADUs of fewer than one attached or one detached ADU on a lot zoned for residential use with a total square footage of less than 4,500 square feet, unless the lot is otherwise zoned to allow at least two dwelling units;
- any prohibition of the sale of a condominium unit independently of a principal unit based solely on the grounds that the condominium unit was originally built as an ADU, if the condominium has independent utilities;
- 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;
- off-street parking requirements 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 ADU; or
- other development regulations for the construction of ADUs that are more restrictive than regulations for 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, including regulations to protect ground and surface waters from on-site wastewater, that would be applicable to a principal unit;
- a prohibition on the construction of ADUs on lots that are 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 that are within areas designated as wetlands, fish and wildlife habitats, floodplains, or geologically hazardous areas.

Cities and counties may offer incentives to encourage the development or construction of ADUs, including waiving or deferring fees, deferring the payment of taxes, or waiving

specific regulations, if the units are subject to binding commitments or covenants that they will not be regularly offered for short-term rental.

Except for restrictive covenants or deed restrictions created to protect public health and safety or to protect ground and surface waters from on-site wastewater, a restrictive covenant or deed restriction created after the effective date of the act for property located within a UGA may not impose any restriction or prohibition on the construction, development, or use of an ADU that city or county would be prohibited from imposing. A city or county issuing a permit for the construction of an ADU may not be held civilly liable on the basis that the construction of the ADU would violate a restrictive covenant or deed restriction that was created after the effective date of the act.

Amended Bill Compared to Substitute Bill:

The amended bill provides an exception to the prohibition against covenants or deed restrictions that prohibit or restrict the construction, development, or use of an accessory dwelling unit if the prohibition is necessary to protect public health and safety or to protect ground and surface waters from on-site wastewater. The amended bill also removes the prohibition against the covenants and deed restrictions from the growth management statutes and includes it in the statutes governing common interest communities.

Appropriation: None.

Fiscal Note: Available.

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) Accessory dwelling units are a part of the solution to the state's housing crisis. This bill will allow individual homeowners to help with the housing crisis. Builders are supportive of easing the restrictions and regulations on ADUs.

(Opposed) This bill is proscriptive in nature and takes away local control. While changes have been made to the bill and the timing does not make it an unfunded mandate, the bill preempts local parking decisions and treats all lots of a certain size in the same manner. Some counties have many short-term rentals, and this bill would prohibit them from retaining owner-occupancy requirements. This is a one-size fits all policy that is not workable for all counties.

(Other) While this bill is less proscriptive on cities, ADUs should be regulated at the local level. This bill raises concerns about an ADU's physical proximity to onsite sewage and the

maximum amount of permeable surfaces a lot may have. Cities should be allowed to require ADUs to meet certain design standards, such as matching the design style of the main house and requiring heights that do not exceed that of the main house. The bill needs to be aligned with any middle housing legislation and not require ADUs in addition to middle housing. The parking requirements should match what is in the middle housing bill. Site-specific parking considerations should be allowed. On-site parking restrictions can be a real issue on narrow streets. Some cities have adopted Commerce's best practices and are looking at ways to increase ADUs. Cities can make these changes given money and time. However, owner-occupancy requirements are impossible to enforce. Any population density resulting from more ADUs should be part of the population calculation for a city's GMA requirements. None of the land use bills should be applied until a city fails to meet their population requirements. Implementation of the requirements should be extended until six months after a city's next comprehensive plan update to allow for the adoption of new development regulations.

Persons Testifying: (In support) Senator Sharon Shewmake, prime sponsor; Brent Ludeman, Building Industry Association of Washington; and Alex Hur, Master Builders Association of King and Snohomish Counties.

(Opposed) Paul Jewell, Washington State Association of Counties.

(Other) Briahna Murray, Cities of Redmond, Bellevue, Pasco, Spokane Valley; Kristen Holdsworth, City of Kent; Carl Schroeder, Association of Washington Cities; and Vivian Olson.

Persons Signed In To Testify But Not Testifying: None.