

SENATE BILL REPORT

ESSB 6061

As Passed Senate, February 7, 2024

Title: An act relating to exemptions for housing development under the state environmental policy act.

Brief Description: Concerning exemptions for housing development under the state environmental policy act.

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

Brief History:

Committee Activity: Local Government, Land Use & Tribal Affairs: 1/16/24, 1/30/24 [DPS, w/oRec].

Floor Activity: Passed Senate: 2/7/24, 27-21.

Brief Summary of Engrossed First Substitute Bill

- Expands the criteria that must be satisfied prior to adoption of the housing development categorical exemption to include that the city or county has determined that the proposed development is capable of being connected to an established sewer system at the time of construction.
- Requires the environmental analysis to include documentation that protection of cultural resources have been adequately addressed for the development exempted.
- Requires a city or county to take action to establish the housing development categorical exemption by the date of the jurisdiction's next required implementation progress report or five years after the jurisdiction's next comprehensive plan review.

SENATE COMMITTEE ON LOCAL GOVERNMENT, LAND USE & TRIBAL AFFAIRS

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. 6061 be substituted therefor, and the substitute bill do pass.

Signed by Senators Lovelett, Chair; Salomon, Vice Chair; Kauffman.

Minority Report: That it be referred without recommendation.

Signed by Senators Torres, Ranking Member; Short.

Staff: Karen Epps (786-7424)

Background: 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—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.

Before adopting the categorical exemption jurisdictions must satisfy the following criteria:

- the proposed development must be consistent with all development regulations implementing an applicable comprehensive plan under the Growth Management Act (GMA) adopted by the jurisdiction in which the development is proposed, with the exception of any development regulation inconsistent with applicable provisions of the GMA; and
- the city or county has prepared an environmental analysis that considers the proposed use or density and intensity of use in the area proposed for exemption and analyzes multimodal transportation impacts.

Before finalizing the environmental analysis the local government must provide a minimum of 60 days' notice to affected tribes, relevant state agencies, other jurisdictions that may be impacted, and the public and address any probable adverse impacts.

The environmental analysis must include documentation that the requirements for environmental analysis, protection, and mitigation for impacts to elements of the environment have been adequately addressed for the development exempted. The city or

county must document its consultation with the Washington Department of Transportation on impacts to state-owned transportation facilities including consideration of whether mitigation is necessary for impacts to transportation facilities. The categorical exemption is effective 30 days after the requirements of the environmental analysis are completed by a local government.

Until September 30, 2025, all project actions that propose to develop one or more residential housing or middle housing units within a city west of the crest of the Cascade Mountains with a population of 700,000 or more are categorically exempt from SEPA. After September 30, 2025, project actions that propose to develop one or more residential housing or middle housing units within the city may utilize the categorical exemption in the manner provided for cities and counties generally.

Summary of Engrossed First Substitute Bill: The housing development categorical exemption is moved to a new section. The criteria that must be satisfied prior to adoption of the categorical exemption is expanded to include that the city or county has determined that the proposed development is capable of being connected to an established sewer system at the time of construction.

The environmental analysis must include documentation that requirements for analysis and protection of cultural resources, and required mitigation for impacts to cultural resources have been adequately addressed for the development exempted.

A city or county must take action to establish the housing development categorical exemption by the date of the jurisdiction's next required implementation progress report or five years after the jurisdiction's next comprehensive plan review.

After September 30, 2025, project actions that propose to develop one or more residential housing or middle housing units within the city must utilize the housing development categorical exemption.

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: There was a bill last year that essentially categorically exempted all of the UGAs from anything more than a comprehensive plan level SEPA analysis and took away the right for appeal. There are some inherent challenges to implementing this, so the provisions need to be constrained to

municipal-level sewer and water availability. It left an unmet challenge around what happens if a local planning department is unable to complete this work during a comprehensive plan update and if they cannot, who is liable for making sure that work got done. WSDOT has some concerns because as an agency, they have challenges tracking the comprehensive plan update processes at once. There are smaller jurisdictions that will not have the ability to do this level of SEPA analysis or the ability to complete this work in a timely fashion.

CON: There is concern about WSDOT and transportation elements of this bill. There is concern about requiring local government to incorporate state facilities in concurrency plan.

OTHER: There is support for the language dealing with sewer but may need technical amendments in terms of timing. The language related to the appeal is unclear, but it is important the work get done and there may need to be additional time to complete that work. The bill would give WSDOT the ability to demand that local governments require specific mitigation which could be inconsistent with GMA and transportation planning. There is some confusion about the structure of last year's bill and for clarity it would be helpful to remove the mandatory section from the optional section. There needs to be more discussion about timing and liability issues. This bill would mandate WSDOT impacts to be addressed more so than any other environmental or related impact under SEPA. There needs to be clarification about whether this is a mandatory or optional process under SEPA. There needs to be clarification of what is protected from appeal.

Persons Testifying: PRO: Senator Liz Lovelett, Prime Sponsor.

CON: Jan Himebaugh, Building Industry Association of Washington.

OTHER: Carl Schroeder, Association of Washington Cities; Scott Hazlegrove, Master Builders Association of King & Snohomish Counties; Bryce Yadon, Futurewise .

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