HOUSE BILL REPORT
ESSB 5235

As Passed House - Amended:
April 7, 2021

Title: An act relating to increasing housing unit inventory by removing arbitrary limits on housing options.

Brief Description: Increasing housing unit inventory by removing arbitrary limits on housing options.

Sponsors: Senate Committee on Housing & Local Government (originally sponsored by Senators Liias, Das, Nguyen, Nobles, Saldaña and Wilson, C.).

Brief History:

Committee Activity:

Local Government: 3/10/21, 3/19/21 [DPA].

Floor Activity:

Passed House: 4/7/21, 57-40.

Brief Summary of Engrossed Substitute Bill
(As Amended By House)

- Prohibits a county or city planning under the Growth Management Act from imposing owner-occupancy requirements on a lot containing an accessory dwelling unit after the first year of occupancy following permitting unless an accessory dwelling unit on the lot is being offered for short-term rental or the county or city makes findings showing the need for a longer period of owner-occupancy restrictions within a limited geographic area after a public process.
- Requires such counties and cities to provide a hardship exemption from owner-occupancy requirements applicable to lots containing an accessory dwelling unit, with certain circumstances that qualify as a hardship enumerated, and specifies that counties and cities that have not provided for a hardship exemption by the applicable deadline may not

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impose an owner-occupancy requirement except in limited circumstances.

- Allows cities and counties to encourage the use of accessory dwelling units for long-term through the imposition or waiver of fees, taxes, or other regulations, conditioned on the requirement that, if incentives for the development or construction of accessory dwelling units are offered, the incentives must be conditioned on the units being subject to an effective binding commitment or covenant that they will not be used for short-term rental and the county or city has a program to audit compliance with such commitments or covenants.
- Requires such counties and cities to adopt the required regulations within two years of the county's or city's next required comprehensive plan review under the Growth Management Act, and provides that the regulations will take effect and preempt any contrary regulations if not adopted by the deadline.
- Prohibits cities and counties from regulating or limiting the number of unrelated people who can occupy a house or other dwelling unit, outside of occupant limits on group living arrangements regulated under state law, limits on short-term rentals, and generally applicable health and safety regulations and limits based on occupant load per square foot established in an ordinance or applicable building code.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass as amended. Signed by 7 members: Representatives Pollet, Chair; Duerr, Vice Chair; Goehner, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Berg, Robertson and Senn.

Staff: Kellen Wright (786-7134).

Background:

The Growth Management Act (GMA) requires that certain counties, and the cities within those counties, engage in planning for future population growth. Counties that have a population of 50,000 or more and, prior to May 16, 1995, had its population grow by 10 percent or more, or, after May 16, 1995, by 17 percent or more in the prior 10 years are covered by the GMA. Generally, so too is any county that experiences population growth of 20 percent. Counties that do not meet the standards for automatic inclusion in the GMA may nonetheless choose to be included. Currently, 18 counties are required to fully plan, 10 have chosen to fully plan, and 11 are not subject to the full GMA planning requirements.

The centerpiece of the planning process is the comprehensive plan, which must contain certain elements and must be guided by 13 goals established by the Legislature. Comprehensive plans are required to be reviewed and, if necessary, revised every eight years to ensure that the plan and regulations comply with the requirements of the GMA. These eight-year review deadlines are staggered for different counties. Four counties have a current deadline of June 30, 2024; 10 have a deadline of June 30, 2025; 10 have a deadline of June 30, 2026; and 15 have a deadline of June 30, 2027.

An accessory dwelling unit (ADU) is a residential living unit providing complete, independent living facilities and permanent provisions for sleeping, cooking, sanitation, and living on the same lot as a single-family house, duplex, triplex, townhome, or other housing unit. As of July 1, 2021, cities located in counties planning under the GMA are prohibited from requiring the provision of off-street parking for ADUs within a quarter mile of 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. Many cities require that at least one of the units on a lot containing an ADU be occupied by the owner of the property.

Local governments regulate the residential use of property in various ways. One way is by limiting the occupancy of a household or dwelling unit by ordinance. These ordinances often distinguish between occupation by "family" and occupation by "unrelated persons." The number of family members that occupy a household or dwelling unit is generally not restricted, and the United States Supreme Court has found some limitations on the number of family members who can share a dwelling to be unconstitutional. In contrast, the number of unrelated persons living together is often restricted. Such restrictions are permissible, as long as they do not conflict with the Federal Fair Housing Act or any state laws regulating certain group living arrangements. For example, certain restrictions on group homes for persons with disabilities may be prohibited by the Fair Housing Act or the Washington Housing Policy Act.

Summary of Amended Bill:

Counties and cities fully planning under the GMA may not impose or enforce an owner-occupancy requirement on any housing or dwelling unit on a lot containing an ADU after the first year of occupancy following permitting unless an ADU on the lot is being offered for rent for periods of less than 30 days or the county or city makes findings showing the need for a longer period of owner-occupancy restrictions within a limited geographic area after holding at least two public hearings on the matter and directly addressing community feedback in the final development regulation or ordinance adopted.

Additionally, counties and cities that impose an owner-occupancy requirement on lots containing an ADU must provide for a hardship exemption from these requirements. Such an exemption must allow an owner to offer the ADU or primary residence on the lot for rent for periods of 30 days or longer as if a unit on the property were owner-occupied. The hardship exemption would apply when an owner no longer occupies the primary residence

due to age; illness; financial hardship from the loss of a spouse, domestic partner, or co-owner; disability status; military deployment; or other such reason that would make the owner-occupancy requirement an undue hardship on the owner. Cities and counties must develop a process for reviewing hardship applications.

Counties and cities that impose owner-occupancy requirements and fail to adopt the hardship exemption as required may not impose owner-occupancy requirements on lots containing ADUs until the exemption has been adopted, unless the owner of the lot offers an ADU in the state for short-term rental, or owns more than three ADUs within the county.

Counties and cities may encourage the use of ADUs for long-term housing through the imposition of fees or taxes, or the waiver of fees, taxes, or regulations. Incentives for ADUs, however, may only be offered if the county or city ensures that the ADUs are subject to binding commitments or covenants that they will not be regularly offered for short-term rental, and the city or county has a program to audit compliance with the commitments or covenants.

Counties and cities must conform their regulations and official controls with the requirements related to ADUs within two years of the county's or city's next applicable deadline for the review of its comprehensive plan after July 1, 2021. If a city or county has failed to adopt the requirements by the deadline, the requirements apply, take effect, and preempt any contrary regulations.

Except for occupant limits on group living arrangements regulated under state law or on short-term rentals, and limitations based on occupant load per square foot or generally applicable health and safety regulations established in an ordinance or applicable building code, cities and counties cannot regulate or limit the number of unrelated people who may occupy a house or other dwelling unit.

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) Accessory dwelling units are an increasingly popular housing choice that many in the Puget Sound are looking for, and have an important part to play in overall housing supply. There needs to be more housing choices and flexibility. An ADU can fit into an existing neighborhood and is an affordable housing option, as most are rented for below-market rate. They allow homeowners to make some extra income to help cover the rising cost of home ownership, while also allowing flexibility for family members who want

independence while still remaining in the community. This is a common sense solution to address housing with no cost to the government. By 2030 there will be an additional housing shortage for people who want more accessible housing and are on a fixed income. Accessory dwelling units can help create housing in neighborhoods with exclusionary zoning and can help seniors age in place. These benefits may not be realized because of current arbitrary restrictions. Restrictions on the use of ADUs disincentivize them, and turn people away from owning homes with ADUs or keep ADUs idle. Owner-occupancy requirements are a barrier for ADUs, as owners may avoiding building ADUs in case their circumstances change. Currently at least 89 cities have owner-occupancy restrictions. They are akin to making an apartment building owner live in the apartment building. Owner-occupancy is not required for other types of housing, and should not be required for ADUs. The septic system and other limitations do not change whether an owner is living there or not. Current regulations are driving some to build unlicensed ADUs because of the onerous restrictions. This bill will help more ADUs get built and will address the housing affordability crisis. Both Oregon and California have passed reforms that have led to more ADUs, and this bill is a good first step toward reform. When Seattle worked on its reforms, the environmental impact statement found that ADUs would reduce the likelihood of teardowns in neighborhoods with high risk of displacement. Concerns with short-term rentals can be addressed directly with regulations rather than using owner-occupancy requirements with ADUs. A lot of the concern about ADUs is about preventing people from living in neighborhoods. Arbitrary limits on unrelated occupancy should be removed as they bar the use of a cheaper housing options just because there is no familial relation. Floor area limits better address concerns with overcrowding. Limits like those on ADUs and on unrelated occupancy discriminate against renters and limit the freedom of owners. A person's designation as a renter or owner is not an indication of quality. These restrictions limit the options of those without access to capital, and financial lending for ADUs is difficult. There needs to be more housing across the state, and for new innovative approaches. Housing supply and affordability are economic as well as climate-justice issues. They keep people away from jobs and force them to commute with negative consequences. Compact, walkable communities are the solution for economic and climate issues.

(Opposed) The element related to ending restrictions on unrelated persons is good, and has been refined since prior proposals. There are at least 119 cities that have ADU ordinances, and most reflect a model ordinance from the Department of Commerce in the 1990s, which included owner-occupancy requirements. Owner-occupancy restrictions can be used to build support for ADUs in existing neighborhoods. The bill seems to prohibit owner-occupancy restrictions on either primary units or ADUs, which could address some of the concerns. It is unclear whether prior regulations are grandfathered in. The impacts of the bill are unclear, and ADU construction might not be contemplated by zoning. Additional affordable housing options are good, but there are multiple technical issues with the bill: some cities do not have an R-9 zoning designation; it is unclear what regulations would be grandfathered in; and it does not address private covenants on real property, which can often contain the same restriction limiting ADUs more than current regulations. The bill

could allow people to form limited liability companies to evade the limit on ADU ownership, and the bill would allow developments to build subdivisions with ADUs without having to meet State Environmental Policy Act restrictions or to pay the necessary impact fees because they could be considered single-family homes with additional living space. This bill allows numerous ADUs to be owned by the same person across jurisdictions, and allows many people to live in the same house without requiring sufficient means of egress for all of them. The GMA establishes a framework, and allows cities flexibility, as cities have different needs and requirements. We should allow cities and counties to follow the normal process. This bill is not about ADUs or owner-occupancy, but about those who are impatient with normal planning process, and these changes could have unintended consequences. Local control should not be taken away.

(Other) This bill has been worked to address concerns about health and sanitary concerns related to occupancy limits. There are still concerns over the ADU provisions, as many jurisdictions have just updated their ordinances and have owner-occupancy restrictions. Cities want to retain local control, and different cities have come to different decisions regarding ADUs and owner-occupancy. The bill should be revised to address technical concerns, including the R-8 designation, and whether the owner-occupancy policies that are implicated are those on ADUs or on primary residences as well. The cap on ADUs could be thwarted by an owner creating limited liability companies, and could be difficult for cities to track. The connection with short-term rentals and what happens when cities do not have short-term rental policies should also be considered. The Senate's amendments might allow new housing to be constructed as de facto duplexes right away.

Persons Testifying: (In support) Senator Liias, prime sponsor; Erich Armbruster, Ashworth Homes and Master Builders Association; Troy Schmeil, Sapphire Homes and Master Builders Association; Nisma Gabobe, Sightline Institute; Vlad Gutman-Britten, Washington State Labor Council and Climate Solutions; Mallory Van Abbema, Housing Development Consortium of Seattle-King County; Bryce Yadon, Futurewise; and Cathleen MacCaul, AARP Washington.

(Opposed) Pamela Johnston; Scott Hugill, City of Mountlake Terrace; and Carl Schroeder, Association of Washington Cities.

(Other) Briahna Murray, Cities of Issaquah, Lake Forest Park, Kenmore, Spokane Valley, and Kent.

Persons Signed In To Testify But Not Testifying: None.