

HOUSE BILL REPORT

E2SHB 1952

As Passed House:
March 5, 2011

Title: An act relating to streamlining the state environmental policy act process.

Brief Description: Streamlining the state environmental policy act process.

Sponsors: House Committee on General Government Appropriations & Oversight (originally sponsored by Representatives Upthegrove, Short, Fagan and McCune).

Brief History:

Committee Activity:

Environment: 2/17/11 [DPS];

General Government Appropriations & Oversight: 2/18/11, 2/21/11 [DP2S(w/o sub ENVI)].

Floor Activity:

Passed House: 3/5/11, 95-2.

Brief Summary of Engrossed Second Substitute Bill

- Creates certain statutory categorical exemptions under the State Environmental Policy Act (SEPA) that expire on December 31, 2012.
- Requires the Department of Ecology (DOE) to initiate rule-making activities concerning the temporary categorical exemptions and exemption levels created by the bill.
- Requires the DOE to provide reports to the Legislature concerning its rule-making activities, including progress and outcomes.
- Creates additional statutory categorical exemptions under the SEPA related to farmers markets, temporary food vendors, and certain utility-related activities.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Upthegrove, Chair; Short, Ranking Minority Member; Harris, Assistant Ranking Minority Member; Crouse, Jacks, Jinkins, Morris, Moscoso, Nealey, Pearson, Takko and Taylor.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 2 members: Representatives Fitzgibbon and Tharinger.

Staff: Courtney Barnes (786-7194).

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS & OVERSIGHT

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Environment. Signed by 10 members: Representatives Miloscia, Vice Chair; McCune, Ranking Minority Member; Taylor, Assistant Ranking Minority Member; Ahern, Armstrong, Blake, Moscoso, Pedersen, Van De Wege and Wilcox.

Minority Report: Do not pass. Signed by 3 members: Representatives Hudgins, Chair; Fitzgibbon and Ladenburg.

Staff: Owen Rowe (786-7391).

Background:

The State Environmental Policy Act (SEPA) applies to decisions by every state and local agency within Washington. One agency is usually identified as the lead agency for a specific proposal. The lead agency is responsible for identifying and evaluating the potential adverse environmental impacts of a proposal. Some minor projects do not require an environmental review, so the lead agency will first decide if environmental review is needed. If the proposed project is the type of project that is "categorically exempt" from the SEPA review process, no further environmental review is required.

Categorical exemptions are identified in both the Revised Code of Washington and the Washington Administrative Code (WAC). By statute, the Department of Ecology (DOE) may adopt categorical exemptions by rule for the types of actions that are not major actions significantly affecting the quality of the environment. An action that is categorically exempt under the rules adopted by the DOE may not be conditioned or denied.

Summary of Engrossed Second Substitute Bill:

Temporary Categorical Exemptions.

Categorical exemptions are created in statute temporarily for the following types of activities:

- construction or location of single-family residential developments;
- construction or location of multifamily residential developments;
- construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure (excluding feed lots);
- construction of an office, school, commercial, recreational, service, or storage building, and associated parking;
- construction of a parking lot; and
- any landfill or excavation.

The activities listed above are categorically exempt from the requirements of the SEPA; however, the exemption levels depend on whether the activity takes place within or outside an urban growth area. The exemptions for multifamily residential developments and certain parking lots do not apply if the action is located outside an urban growth area.

These provisions in the bill creating the statutory categorical exemptions listed above expire on December 31, 2012.

Categorical Exemptions Adopted by a City or County.

A city or county may adopt exemption levels consistent with those created in the bill.

As part of adopting the exemption levels, a city or county is required to confirm, by ordinance or resolution, that adequate environmental analysis, protection, and mitigation for the adverse environmental impacts are provided by applicable local, state, or federal regulations. If the confirmation relies in part on the existing regulations of another agency with jurisdiction, the city or county is required to:

- provide written notice to that agency;
- consider agency comments; and
- condition project approval on compliance with all applicable regulations.

The ordinance or resolution adopted by a city or county may:

- establish lower exemption levels for specific geographic areas within the city or county; and
- specify varying exemption levels for the elements of the natural or built environment.

If a proposed action is located in more than one city or county, the lower of the agencies' adopted exemption controls regardless of which agency is the lead agency.

Rule-making Activities by the DOE.

The DOE is required to initiate rule making to adopt categorical exemptions and exemption levels consistent with the temporary categorical exemptions and exemption levels created in the bill. All rules adopted by the DOE must be adopted and effective by December 31, 2012.

If the DOE determines that a lower exemption level is demonstrably necessary to achieve the goals of the SEPA, the DOE may adopt exemption levels that are lower than those created by the bill. The exemption levels adopted by the DOE may also be higher than the exemption levels created by the bill.

The DOE is required to provide two reports to the Legislature concerning the rule-making activities initiated under the bill. The first report, due December 31, 2011, requires the DOE to report on the progress of its rule making. The second report, due December 31, 2012, requires the DOE to report on the outcome of its rule making, including the rationale used by the DOE in determining exemption levels.

Other Categorical Exemptions.

Temporary farmers markets or mobile food vendors on previously developed sites covering up to 30,000 square feet are categorically exempt from the requirements of the SEPA.

The bill creates categorical exemptions for certain types of utility-related actions including:

- installing electric facilities, lines, equipment, or appurtenances, not including substations, with an associated voltage of 115,000 volts or fewer;
- building over existing distribution lines with transmission lines of 115,000 volts or more; and
- placing electric facilities, lines, equipment, or appurtenances underground.

The utility-related exemptions do not apply to installation, construction, or alteration on lands covered by water.

Unlike the temporary categorical exemptions created in the bill, the exemptions for temporary farmers markets, mobile food vendors, and utility-related actions do not have an expiration date.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Environment):

(In support – from testimony on HB 1713, identical except for the title) The bill is designed to facilitate local economic development and reduce regulatory burdens without compromising environmental protection. The bill makes modest changes to categorical exemptions that are currently identified in the WAC. The bill is about SEPA reform and streamlining the permitting process. The bill was developed by local governments to save time and money for both private and public projects. The SEPA needs to be updated to reflect how land use planning and development regulations have developed over time.

The bill has broad application and addresses jurisdictions that are both fully and partially planning. Many cities and counties will benefit from the changes made by the bill. The residential construction industry has suffered in the current economy. The bill makes reasonable reforms to help the construction industry, which is already regulated by the Growth Management Act. Currently, in many cases the SEPA is a duplicative process. The bill will prevent this duplication.

(In support with concerns) The bill makes great additions, but a clarification is necessary. In particular, the categorical exemptions related to short plats and subdivisions need to be amended to clarify that all aspects of the subdivision or short plat are exempt.

(With concerns) The objectives of the bill are good, but the exemption levels created by the bill are radically different than those currently permitted in the WAC. As drafted, the bill could create backsliding in environmental protection. The bill should be amended to achieve

the objectives of the bill without compromising environmental protection. The categorical exemption levels should be raised, but not all jurisdictions have come into compliance with land use regulations. The exemption levels created by the bill are too drastic and further negotiation is necessary.

(Opposed) The bill does not create small exemptions. In some cases, the bill quadruples the categorical exemptions permitted under the WAC. The SEPA is still necessary to protect the environment. The bill is applicable to many types of projects that have significant environmental impacts. The exemptions are too broad and effectively gut the SEPA. The SEPA works well and should not be gutted.

Staff Summary of Public Testimony (General Government Appropriations & Oversight):

(In support) This bill is the outcome of discussions by city and county planners over several years. This bill will save applicants and local governments money, while protecting the environment and focusing the SEPA on those projects that need an environmental review. The process behind this bill began over six months ago, during the Governor's Transforming Washington budget process that challenged participants to think of ideas that could save the public and private sectors money. This bill is a work in progress; please keep it moving forward.

(Opposed) This bill dramatically increases the number of categorical exemptions under the SEPA. Originally, these exemptions were meant for projects that had no environmental impact. The size of projects that are exempt are increasing tenfold under this bill. There is value in a SEPA review even when the process results in a determination of non-significance. This bill could lead to increased litigation by avoiding the mitigation that is part of a SEPA review. The safeguards under the SEPA need to remain in place. It is hard to gauge a fiscal impact on bad land-use planning. The SEPA enables a holistic and regional view of a given project's impact. The DOE is the proper agency to set exemptions under the SEPA, not the Legislature. Do not gut the SEPA process.

Persons Testifying (Environment): (In support) Representative Uptegrove, prime sponsor; Chris McCabe and George Kresovich, Association of Washington Business; Martin Snell, Washington State Association of County and Regional Planning Directors; Kamuron Gurol, City of Sammamish; Scott Hildebrand, Master Builders Association of King and Snohomish Counties; Kurt Wilson, Soundbuilt Homes; Mike Nykiem; and Bob Johnson, Lewis County.

(In support with concerns) Hans Korve.

(With concerns) Tom Clingman, Department of Ecology; Cliff Portman, City of Seattle; and Faith Lumsden, Office of Regulatory Assistance.

(Opposed) Bruce Wishart, People for Puget Sound; April Putney, Futurewise; and Arthur West.

Persons Testifying (General Government Appropriations & Oversight): (In support) Scott Merriman, Association of Counties; Dave Williams, Association of Washington Cities; and Chris McCabe, Association of Washington Business.

(Opposed) Bruce Wishart, People for Puget Sound; and Arthur West.

Persons Signed In To Testify But Not Testifying (Environment): Linda Berry-Maraist, Debra Munguia, and Jeanette McKague.

Persons Signed In To Testify But Not Testifying (General Government Appropriations & Oversight): None.