

# HOUSE BILL REPORT

## HB 1809

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**As Reported by House Committee On:**  
Community Development, Housing & Tribal Affairs

**Title:** An act relating to protecting the state's cultural resources.

**Brief Description:** Protecting the state's cultural resources.

**Sponsors:** Representatives McCoy, Appleton, Ryu, Moscoso, Fitzgibbon, Dunshee, Pollet and Santos.

**Brief History:**

**Committee Activity:**

Community Development, Housing & Tribal Affairs: 2/19/13, 2/20/13 [DP].

**Brief Summary of Bill**

- Makes decisions on certain project and nonproject actions subject to the cultural resource requirements of the State Environmental Policy Act environmental checklist.
- Makes decisions exempt from the cultural resource requirements if the branch of government has: (1) a data-sharing agreement with the Department of Archaeology and Historic Preservation; (2) either a local ordinance protecting archaeological and historic properties or a cultural resource management plan; and (3) a written consultation agreement approved by affected federally recognized tribes.

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**HOUSE COMMITTEE ON COMMUNITY DEVELOPMENT, HOUSING & TRIBAL AFFAIRS**

**Majority Report:** Do pass. Signed by 8 members: Representatives McCoy, Chair; Appleton, Vice Chair; Angel, Ranking Minority Member; Johnson, Assistant Ranking Minority Member; Haler, Ryu, Santos and Sawyer.

**Minority Report:** Do not pass. Signed by 1 member: Representative Pike.

**Staff:** Jill Reinmuth (786-7134).

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*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.*

## **Background:**

### State Environmental Policy Act.

The State Environmental Policy Act (SEPA) requires state agencies and local governments to prepare an environmental impact statement (EIS) if proposed legislation or other major action may have a probable significant adverse impact on the environment. If it appears a probable significant adverse environmental impact may result, the proposal may be altered or its probable significant adverse impact mitigated. If this cannot be accomplished, an EIS is prepared. The responsible agency official has authority to make the threshold determination whether an EIS must be prepared.

Except for development projects that are exempt from the SEPA requirements, the SEPA generally requires a project applicant to submit an environmental checklist. The environmental checklist includes questions about the potential impacts of the project on the built environment and the natural environment, as well as questions about historic and cultural preservation. In particular, the project applicant must provide information about:

- any places or objects listed on, or proposed for national, state, or local preservation registers known to be on or next to the site;
- any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site; and
- any proposed measures to reduce or control impacts.

The checklist is reviewed by the SEPA lead agency (one of the agencies with permitting authority for the project) to determine whether the project is likely to have a significant adverse environmental impact. The lead agency also will review the checklist to determine if the applicant has identified mitigation sufficient to reduce environmental impacts.

After the checklist is reviewed, the lead agency issues its threshold determination. If a lead agency determines that a project is not likely to have a significant adverse environmental impact, or if mitigation sufficient to reduce these impacts has been identified, the lead agency issues a determination of nonsignificance (DNS) or a mitigated DNS (MDNS), which includes mitigation conditions for the project. Alternatively, a lead agency issues a determination of significance (DS) if it determines that a project is likely to have a significant adverse environmental impact or mitigation cannot be identified to reduce these impacts. The DS triggers the requirement to prepare an EIS. The EIS is scoped to address only the matters determined to have a probable significant adverse environmental impact.

Categorical exemptions are identified in both statute and in rule. Project and nonproject actions determined to be categorically exempt are not subject to SEPA's environmental review or EIS requirements.

### Recent Legislation and Rulemaking.

In 2012 legislation was enacted that identified new categorical exemptions in statute, and directed the Department of Ecology (DOE) to adopt others in rule.

*Infill Exemption.* A city or county planning under the Growth Management Act was authorized to establish a new categorical exemption from the SEPA for project action related to certain commercial developments up to 65,000 square feet, not including retail development. Among other requirements, the development must be proposed to fill in an urban growth area where current density and intensity of use is lower than called for in the comprehensive plan.

*Nonproject Exemptions.* Other new categorical exemptions from the SEPA for certain nonproject actions were established. These nonproject actions included amendments to development regulations required to ensure consistency with an adopted comprehensive plan or a shoreline master program, or to provide increased environmental protection. They also included amendments to technical codes adopted to ensure consistency with state law.

*Rule-based Exemptions.* By December 31, 2012, the DOE was required to increase the existing maximum threshold levels for specified categories of project actions, such as the construction or location of residential developments, the construction of certain agricultural structures and commercial buildings, and land filling or excavation activities. The DOE was also required to establish maximum exemption levels for action types that vary based on the location of the project, such as whether the project is proposed to occur in or out of an urban growth area. By December 31, 2013, the DOE is required to update, but not decrease, the maximum threshold levels for all other project actions. The DOE is also required to create categorical exemptions for minor code amendments that do not lessen environmental protection.

For both phases of rulemaking, the DOE is required to convene an advisory committee to assist in updating the thresholds. The advisory committee is also convened to ensure that state agencies, tribes, and other interested parties can receive notice about projects of interest through notice under the SEPA and means other than the SEPA. The advisory committee consists of members representing, at minimum, the following: state agencies and local governments; business interests; environmental interests; agricultural interests; cultural resources interests; and tribal governments.

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### **Summary of Bill:**

Decisions on certain proposed project and nonproject actions are made subject to the cultural resource requirements of the State Environmental Policy Act (SEPA) environmental checklist. These actions are ones made categorically exempt from the SEPA pursuant to recent legislation and rulemaking, and others made exempt pursuant to statutes enacted and rules adopted on or after July 1, 2012.

Decisions on these actions are not subject to the cultural resource requirements if the branch of government has:

- a data-sharing agreement with the Department of Archeology and Historic Preservation (DAHP);
- either a local ordinance protecting archaeological and historic properties or a DAHP-approved cultural resource management plan; and

- a written consultation agreement approved by affected federally recognized tribes.
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**Appropriation:** None.

**Fiscal Note:** Preliminary 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) There are a number of laws that require protection of cultural resources. But notice of proposed actions is critically important. Notice enables tribes and others to work with developers so that cultural resources are protected. They can work to protect cultural resources while still meeting the goals and objectives of landowners.

Consultation agreements with tribes ensure that counties and cities have the correct contact persons and access to information no one else has. Consultation saves time and money and avoids delays and litigation. It is not onerous.

Data-sharing agreements with the Department of Archaeology and Historic Preservation (DAHP) are also important. It is easy to use the DAHP's database to make sure there are not archeological sites there.

In the past, there have been incidents when counties and cities permitted projects, but failed to consult with tribes. Archeological sites were damaged or disturbed, and civil fines and criminal penalties resulted. There is also a real cost to the state and the taxpayers. Specific examples include the City of Blaine, the City of Oak Harbor, and Skamania County.

Once projects are exempt from the State Environmental Policy Act (SEPA), tribes and others do not receive notice of proposed actions. The raised SEPA thresholds may give the false impression that there are no cultural resources in an area, but that is not true. Counties and other governmental entities that currently give notice do so voluntarily. Notification and community involvement can prevent huge problems.

Archaeology and history are very important. It is the connection to thousands of years of heritage, cultural identity, and spiritual identity. It is important to psychological well-being. Archeological sites and objects testify to the incredible connection of the tribes with centuries past. These cultural resources must be protected, and laws passed, observed, and enforced to achieve this. Future generations have the right to the connection to the past.

(Opposed) This bill is premature. Legislation in 2012 directed a stakeholder group to meet to talk about the SEPA reforms. Phase 1 has concluded and it looked at categorical exemptions. Phase 2 has just started and it will focus on notice of projects that are exempt. The top item on the group's agenda is to review information on preservation of cultural and historic resources and notice.

This bill is not the right way to go about giving notice. The legislation came from local government and business interested in eliminating unnecessary paperwork while protecting environmental and cultural resources. The Legislature told stakeholders to ensure that notice would be provided to cultural resource interests and tribal governments in Phase 2.

This bill directs that notice be provided through the SEPA. But the SEPA is a bad notice tool as well as an expensive one. There are better ways to provide notice.

**Persons Testifying:** (In support) Dawn Vyvyan and David Powell, Yakama Nation; Allyson Brooks, Department of Archeology and Historic Preservation; Michael Groesch, Washington Trust for Historic Preservation; Steve Robinson, Stillaguamish Tribe; Bibianna Ancheta and Darkfeather Ancheta, Tulalip Tribe; and Mike Morhan, Samish Tribe and Quinault Tribe.

(Opposed) Laura Merrill, Washington State Association of Counties; Carl Schroeder, Association of Washington Cities; and Brandon Housekeeper, Association of Washington Business.

**Persons Signed In To Testify But Not Testifying:** None.