

# SENATE BILL REPORT

## ESSB 5428

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As Passed Senate, February 8, 2022

**Title:** An act relating to the application of the state environmental policy act to temporary shelters and transitional encampments.

**Brief Description:**

**Sponsors:** Senate Committee on Housing & Local Government (originally sponsored by Senators Nguyen, Darneille, Das, Kuderer, Lovelett, Nobles, Saldaña and Wellman).

**Brief History:**

**Committee Activity:** Housing & Local Government: 2/09/21, 2/11/21 [DPS, DNP, w/oRec].

**Floor Activity:** Passed Senate: 2/8/22, 41-8.

**Brief Summary of Engrossed First Substitute Bill**

- Exempts permit actions to site a temporary shelter or transitional encampment for people experiencing homelessness from State Environmental Policy Act requirements when certain conditions are met.

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### SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

**Majority Report:** That Substitute Senate Bill No. 5428 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kuderer, Chair; Das, Vice Chair; Fortunato, Ranking Member; Cleveland and Lovelett.

**Minority Report:** Do not pass.

Signed by Senators Gildon, Assistant Ranking Member; Short, Assistant Ranking Member; Warnick.

**Minority Report:** That it be referred without recommendation.

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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 part of the legislation nor does it constitute a statement of legislative intent.*

Signed by Senator Salomon.

**Staff:** Brandon Popovac (786-7465)

**Background:** The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify environmental impacts resulting 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).

Projects which undergo a SEPA review may be required to mitigate significant adverse environmental impacts in order to receive approval from the government entity performing the SEPA analysis. Project proponents may also choose to mitigate environmental impacts identified in the environmental checklist to receive a determination the project does not have significant environmental impacts, and therefore can avoid the process of completing an EIS for the project.

Political subdivisions of Washington may declare emergencies or disasters, which are events or sets of circumstances which demand immediate action to preserve public health, protect life, protect public property, or provide relief to any stricken community. At least three cities—Seattle, Olympia, and Tacoma—and one county—King—in Washington have issued determinations of an emergency related to persons experiencing homelessness within the past few years. Under a statutory authority distinct from the statutory authority which authorizes local governments to declare an emergency, the Board of Health of at least one county—Thurston—has also declared homelessness to be a public health crisis.

**Summary of Engrossed First Substitute Bill:** Until August 1, 2032, permit actions to site a temporary shelter or transitional encampment are exempt from compliance with SEPA if the facility:

- is used for people experiencing homelessness;
- includes no more than 200 beds based on a one person per each bed ratio;
- is used on the site for no more than five years;
- does not involve a new permanent structure; and
- complies with any local drainage, erosion control, and other water quality regulations and is consistent with any applicable national pollutant discharge elimination system permit or issued waste disposal permit.

The facility operator must perform the following for such permit actions to be exempt from compliance with SEPA:

- provide written notice of the facility's size, location, and services to the mayor or executive of any town, city, or county within .25 miles of the proposed facility

location at least 14 calendar days before a permit application for the facility is submitted;

- establish a community advisory committee that provides input on facility operations and a process to accept and address complaints from the community, and includes one representative from any city, town, or county within .25 miles of the facility, upon request, and a facility operator representative who must attend all committee meetings and provide the committee with quarterly reports on facility operations; and
- develop a solid waste management program, a medical waste disposal plan, and a disengagement plan for cleanup for the facility.

The local jurisdiction within which the facility is sited must perform the following for such permit actions to be exempt from compliance with SEPA:

- have declared a state of emergency on homelessness;
- have determined the allowance of drugs or alcohol by facility occupants based on an analysis of the needs and population served by the facility; and
- make available and require employment, mental health, and drug counseling services at the facility.

Temporary shelter is defined as any use sited in a new or existing structure or modular structure that provides temporary quarters for sleeping and shelter. Transitional encampment is defined as any use having tents, modular structures, or similar shelters, including vehicles used for shelter, providing temporary quarters for sleeping and shelter. Both facilities may have common food preparation, shower, or other commonly used facilities that support the facility.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony on Proposed Substitute:** *The committee recommended a different version of the bill than what was heard.* PRO: A previous version of this bill passed out of the Senate but did not pass out of the House. Tiny homes and temporary shelters are not a silver bullet solution but a tool in the toolkit to help address the current homelessness crisis, especially when shelters are at capacity during the winter months. A SEPA exemption can prevent up to six months of delays before the facility can be erected. A facility would still have to adhere to local ordinances or building codes around public health and safety. An amendment is required to apply the SEPA exemption within jurisdictions that have declared homelessness as an emergency. Camp Second Chance is a great example of a transitional shelter, with many residents having transitioned to permanent housing and some learning new skills and trades. The bill represents an

important assist to local jurisdictions in helping address homelessness. SEPA review does not aid but hinders development of such facilities. Public notice and hearing requirements are also in place to adequately vet such facilities. Some jurisdictions also provide advance notice to residents and businesses, like operational plans and points of contact. SEPA is a real barrier and often restricts the size of the facility. The SEPA appeals process bogs down the timeline and the appeals are often not grounded in environmental policy.

CON: Although not opposed to these types of encampments there are concerns regarding public health and safety issues and the ability to condition such facilities appropriately with SEPA. While some local jurisdictions have regulations and ordinances to address these facilities, many others do not. Some jurisdictions' regulations are not well equipped to address encampments. Other concerns around solid waste exist and the potential for major cleanup efforts. More SEPA qualifications are needed, including environmental health, human consumption plans, and infrastructure requirements. The bill needs to ensure that the SEPA exemptions are optional for jurisdictions. Updating codes to meet public health needs is too burdensome and unnecessary when SEPA can address specific projects like these facilities.

**Persons Testifying:** PRO: Senator Joe Nguyen, Prime Sponsor; Mike Podowski, City of Seattle.

CON: Paul Jewell, Washington State Association of Counties.

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