

HOUSE BILL REPORT

ESB 6762

As Reported by House Committee On:
Ecology & Parks

Title: An act relating to compliance with the state environmental policy act.

Brief Description: Regarding compliance with the state environmental policy act in the consideration of cumulative impacts and the assumption of lead agency status when the same agency is the sponsor of the project.

Sponsors: Senators Fraser, Haugen and Kline.

Brief History:

Committee Activity:

Ecology & Parks: 2/19/10, 2/23/10 [DPA].

**Brief Summary of Engrossed Bill
(As Amended by House)**

- Requires proposals that are closely related to be evaluated within the same environmental impact statement.
- Requires all environmental reviews to address cumulative impacts of the proposal.
- Requires multiple agencies involved in a proposal to identify a lead agency.

HOUSE COMMITTEE ON ECOLOGY & PARKS

Majority Report: Do pass as amended. Signed by 8 members: Representatives Upthegrove, Chair; Rolfes, Vice Chair; Chase, Dickerson, Dunshee, Eddy, Hudgins and Morris.

Minority Report: Do not pass. Signed by 7 members: Representatives Short, Ranking Minority Member; Finn, Kretz, Kristiansen, Orcutt, Shea and Taylor.

Staff: Leslie Ryan-Connelly (786-7166).

Background:

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.

The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify possible environmental impacts that may result from governmental actions, including the issuance of permits or the adoption of or amendment to land use plans and regulations. Any governmental action may be conditioned or denied pursuant to the SEPA, provided the conditions or denials are based upon policies identified by the responsible governmental authority and incorporated into formally designated regulations, plans, or codes.

Local governments and state agencies must prepare an Environmental Impact Statement (EIS) for legislation and other major actions that significantly affect the quality of the environment. The EIS must include detailed information about the environmental impact of the proposed action, any short or long term adverse environmental effects that cannot be avoided if the proposal is implemented, and alternatives, including mitigation, to the proposed action. The responsible official of the government agency reviewing the proposed action makes a threshold determination of the environmental impacts of the proposed action.

The Department of Ecology (DOE) adopts rules related to implementing the SEPA. The rules identify a *responsible official* as the person responsible for complying with the SEPA requirements, preparing the EIS, and making the determination of the environmental impacts. The rules further identify a *lead agency* as the main agency responsible for complying with the SEPA requirements. The SEPA rules instruct that environmental review is to include analysis of the direct, indirect, and cumulative impacts of a proposed action. Phased environmental review is allowed as designated by the Department of Ecology.

Summary of Amended Bill:

For multiple proposed actions that cannot or will not proceed without simultaneous implementation, environmental review for the proposed actions must be conducted within the same environmental documentation. Similarly, for a larger proposed action that will be implemented in parts, environmental review must include the larger proposed action and all its parts within the same environmental documentation. Phased environmental review of a proposed action may be allowed.

The scope of significant environmental impacts that must be included in the environmental review of a proposed action is expanded to include a review of cumulative impacts.

When an agency is the lead agency for environmental review of its own project, the government agency staff carrying out the environmental review requirements of the SEPA should be different from the staff proposing the action.

Amended Bill Compared to Engrossed Bill:

The amended bill provides for the DOE to allow for phased environmental review of a proposed project. The requirement to designate a lead agency is removed. The amended bill also clarifies that when an agency is the lead agency for its own project, the staff conducting

the environmental review should be different from the staff developing the project, but assigning separate staff is not required.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill does not change any existing SEPA policy. The bill puts into statute case law and current administrative code. The amendment is a technical amendment and clarifies that assigning different staff for the environmental review is encouraged but not required. The bill is important because agencies can have a narrow focus when conducting environmental review of their own projects. It is important to look at the cumulative effects of a project and impacts of a project in the future. It is important for the statutes and the administrative code to be consistent to avoid any legal conflicts.

(With concerns) The bill will help resolve consistencies to reduce issues ending up in court. A technical amendment changing the requirement to have different agency staff conduct environmental review and encouraging it when feasible would help those agencies that do not have a lot of staff.

(Opposed) None.

Persons Testifying: (In support) Senator Fraser, prime sponsor; and Senator Haugen.

(With concerns) Johan Hellman, Washington Public Ports Association.

Persons Signed In To Testify But Not Testifying: None.