
Environment Committee

HB 1013

Brief Description: Reducing overlap between the state environmental policy act and other laws.

Sponsors: Representatives Shea, Taylor, Short, McCaslin, Buys, Haler, Young and Pike.

Brief Summary of Bill

- Alters the requirements for analysis and mitigation under the State Environmental Policy Act (SEPA) for actions that are addressed by development regulations, plans, and other legal authorities.
- Requires, rather than authorizes, SEPA lead agencies to identify elements of the environment addressed by questions on the SEPA checklist that are adequately covered by other legal authorities.
- Authorizes SEPA lead agencies to ignore adequately covered elements of the environment during SEPA analysis and to delete adequately covered SEPA checklist questions, and prohibits appeals on the basis of impacts to adequately covered elements of the environment.
- Directs appeals courts to expedite appeals of certain land use and planning decisions.

Hearing Date: 1/17/17

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Background:

State Environmental Policy Act (SEPA).

The State Environmental Policy Act establishes a review process for state and local governments to identify environmental impacts that may result 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.

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.

A lead agency may authorize a project applicant to identify SEPA checklist questions that are adequately covered by other legal authorities, including development regulations, adopted ordinances, or land use plans. However, lead agencies are not authorized to delete or ignore identified checklist questions, and must consider an action's impact on the particular element of the environment in question. Appeal authority under SEPA is not affected by a lead agency's designation of a checklist question as adequately covered by other legal authorities.

Government decisions that are identified after initial review as having significant adverse environmental impacts (threshold determination) must undergo a more comprehensive environmental analysis in the form of an environmental impact statement (EIS). Under SEPA, a government agency is designated as the lead agency, and in that role is assigned responsibility for complying with SEPA's procedural requirements, including making a threshold determination and preparing the EIS when one is required.

The lead agency may condition a proposal by requiring mitigation for identified adverse environmental impacts or may deny a government decision on the basis of significant adverse impacts that cannot reasonably be sufficiently mitigated.

Government decisions can be appealed under the SEPA on procedural grounds related to a threshold determination of significance, or on substantive grounds related to an agency's decision to deny or condition a project approval upon the completion of mitigation. Appeals of SEPA procedural and substantive determinations must be linked to appeals of the related governmental actions.

Growth Management Act (GMA).

The GMA is the comprehensive land use planning framework for counties and cities in Washington. The GMA establishes land use designation and environmental protection requirements for all Washington counties and cities, and a significantly wider array of planning duties for the 29 counties, and the cities within, that are obligated by mandate or choice to satisfy all planning requirements of the GMA. The GMA directs jurisdictions that fully plan under the GMA to adopt internally consistent comprehensive land use plans that are generalized, coordinated land use policy statements of the governing body. Comprehensive plans, which are the frameworks of county and city planning actions, are implemented through locally-adopted development regulations.

Appeals of GMA Matters.

A seven-member Growth Management Hearings Board (GMHB) is established under the GMA. Requests for review to the Board must be initiated by filing a petition that includes a detailed statement of issues presented for resolution. The Board may hear and determine only petitions alleging specific issues, including that state agency, county, or city planning under the GMA is not in compliance with requirements of the GMA, or applicable provisions of the Shoreline Management Act (SMA) or the SEPA.

Alternatively, under the GMA, a superior court may directly review a petition for review filed with the Board. Most matters that are subject to GMHB review are eligible for direct review by a

superior court, with the exception of challenges to population projections by the Office of Financial Management used for planning purposes. All parties to the proceeding before the Board must agree to direct review by the superior court. Appeals from a final judgment of the superior court must be made to the court of appeals or Washington Supreme Court. The superior court must render its decision within 180 days of receiving the certificate of agreement.

Land Use Petition Act.

With limited exceptions, the Land Use Petition Act (LUPA) is the exclusive means of judicial review of land use decisions. The term "land use decision" is defined in the LUPA. It means a final determination by a county, city, or incorporated town's body or officer with the highest level of authority, including those with authority to hear appeals, to make a determination on:

- applications for a project permit or other governmental approval;
- an interpretative or declaratory decision regarding the application to a specific property of zoning, ordinances, or rules; and
- the enforcement of ordinances regulating the improvement, development, modification, maintenance, or use of real property.

A petition for review under the LUPA is commenced with the timely filing of a petition in superior court within 21 days of the date the land use decision is issued. Superior courts provide expedited review of land use decisions appealed under LUPA, and must set matters for hearing within sixty days of the deadline for a local jurisdiction's record submission. The superior court may affirm or reverse a land use decision, or remand it for modification or further proceedings by the local jurisdiction.

Integration of SEPA, GMA, and other Local Planning Laws.

Currently, certain activities subject to GMA regulations are exempt from some aspects of the SEPA review processes. Under SEPA, counties, cities and towns which have adopted a GMA comprehensive plan may deem, after review of the SEPA environmental checklist for a proposed action, that the GMA plan adequately provides analysis and mitigation of environmental impacts, and may allow the proposed action to proceed without additional review. If a city, county, or town determines that its comprehensive plans, development regulations, or subarea plans adequately address a project's environmental impacts, additional mitigation for those impacts may not be imposed under SEPA.

A comprehensive plan, development regulation, or subarea plan is considered to adequately address an impact if the local government has avoided or mitigated environmental impacts through the SEPA and GMA planning processes or has designated certain development standards, levels of service, land use designations, or land use planning as acceptable under the GMA.

Timelines of Court of Appeals and Supreme Court Proceedings.

The Washington State Supreme Court adopts Rules of Appellate Procedure (RAPS), which establish judicial review processes for the Supreme Court and Courts of Appeals. RAPS establishes several logistical deadlines for court proceedings, including:

- requiring notices of appeal to be filed 30 days after the entry of a trial court decision;
- timelines for the filing of briefs, reply briefs, and briefs of Amicus Curiae in both civil and criminal cases; and
- procedures for the scheduling of oral argument.

The RAPS generally supersedes all statutes and rules covering Supreme Court and Court of Appeals procedures. However, RAPS also allows the Legislature adopt statutes that control over conflicting RAPS by specifically citing to the conflicting court rule. When the Legislature enacts a statute that controls over a conflicting RAPS, the Supreme Court retains discretion to subsequently amend its RAPS to supersede the statute.

Summary of Bill:

SEPA Checklist.

The option for lead agencies to identify SEPA checklist questions that are adequately covered by other legal authorities is made mandatory. SEPA checklist questions must be identified as adequately covered by another legal authority where that legal authority directly addresses, avoids, or mitigates a probable significant adverse environmental impact to a particular element of the environment. For SEPA checklist questions that have been identified by a lead agency as being adequately covered by another legal authority:

- the lead agency is not required to consider the impacts of an action to the environmental element in question;
- the lead agency may delete the checklist question; and
- the government action is made exempt from appeal the basis of inadequate analysis or mitigation of environmental impacts to the adequately covered element of the environment.

A government action may not be conditioned or denied on the basis of an impact to an element of the environment that the lead agency has identified as being adequately covered by a locally adopted ordinance, development regulation, land use plan, or other legal authority.

SEPA Integration with Other Local Government Planning.

Counties, cities and towns must determine that a development regulation, comprehensive plan, or subarea plan element that directly addresses, avoids, or mitigates an environmental impact of a project action provides sufficient analysis of and mitigation for the project action, unless there is an express provision that the plan, ordinance, or resolution is not intended to provide analysis and mitigation of environmental impacts under SEPA. The existing standard for when a local regulation or plan is deemed to adequately address an environmental impact under SEPA is eliminated.

A project consistent with a subarea element of a GMA comprehensive plan is not subject to SEPA analysis and review, so long as:

- the subarea element itself was subject to SEPA review;

- the local government has adopted an ordinance establishing development regulations to address environmental impacts of projects performed consistent with the subarea plan; and
- the project adheres to those development regulations.

Expedited Appeals.

Appeals courts must provide expedited review of:

- superior court land use decisions under LUPA;
- GMA and SMA planning decisions for which a Superior Court previously accepted direct review; and
- superior court decisions involving SEPA together with appeals of Superior Court land use decisions under LUPA and of Superior Court GMA and SMA planning decisions.

For these expedited appeals, briefs must be filed within 90 days of the notice of appeal, and oral argument, if held, must be set within 120 days of filing of the notice of appeal. These expedited appeals timelines are declared to supersede conflicting provisions in RAPS related to the timing of the filing notices of appeal, the filing of briefs, and the scheduling of oral arguments.

Appropriation: None.

Fiscal Note: Available.

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