

# HOUSE BILL REPORT

## ESSB 5428

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**As Reported by House Committee On:**  
Environment & Energy

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

**Brief Description:** Concerning the application of the state environmental policy act to temporary shelters and transitional encampments.

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

**Brief History:**

**Committee Activity:**

Environment & Energy: 2/17/22, 2/24/22 [DPA].

**Brief Summary of Engrossed Substitute Bill**  
**(As Amended By Committee)**

- Exempts permit actions to site certain temporary shelters or transitional encampments from the requirements of the State Environmental Policy Act.

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### HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

**Majority Report:** Do pass as amended. Signed by 7 members: Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Berry, Harris-Talley, Ramel, Shewmake and Slatter.

**Minority Report:** Without recommendation. Signed by 6 members: Representatives Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Abbarno, Boehnke, Fey and Goehner.

**Staff:** Jacob Lipson (786-7196).

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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.*

## **Background:**

### State Environmental Policy Act.

The State Environmental Policy Act (SEPA) 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. If an initial review of the checklist and supporting documents results in a determination that the government decision has a probable significant adverse environmental impact (threshold determination), the proposal 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.

### State Environmental Policy Act Exemptions.

Under SEPA laws and in SEPA rules adopted by the Department of Ecology (Ecology), certain projects or activities are exempt from SEPA requirements.

#### State Environmental Policy Act laws:

- exempt specified actions undertaken during a state of emergency declared by the Governor, including emergency cloud seeding and the licensing-exempt weather modification and control activities undertaken during a water supply shortage or state of emergency related to a lack of precipitation; and
- require Ecology to adopt rules relating to actions exempt from SEPA in emergency situations.

#### State Environmental Policy Act rules:

- exempt certain minor new construction, including the construction or location of single-family residential projects and multifamily residential projects with less than four units;
- provide authority for cities, counties, and towns to increase the minor new construction exemption threshold to up to 30 single-family or 60 multifamily units in Urban Growth Areas (UGAs) in counties fully planning under the Growth Management Act (GMA) or up to 20 single-family residential units and 25 multifamily units in other areas;
- exempt certain land-use decisions, such as for an exempt project or certain rezones associated with exempt projects; and
- exempt emergency actions that must be undertaken to avoid an imminent threat to public health or safety, to prevent an imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation.

### State of Emergency Declarations by Local Governments.

Political subdivisions of Washington have the authority to 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. Political subdivisions may enter into contracts and incur obligations necessary to combat disasters, protect health and safety, and may provide for emergency assistance without regard to time-consuming procedures and formalities prescribed by law, including budget law, the appropriation and expenditure of funds, public work provisions, and contracting requirements.

Additional, separate emergency management authorities are also provided to local governments under state law. Cities with a population of over 300,000 have authority to maintain an emergency fund from which to expend money, by an ordinance approved by two-thirds of council members, to meet obligations or expenses from happenings that could not have been anticipated, including fire, flood, and other specified events. Smaller cities and towns may also spend money, through the adoption of an ordinance approved by two thirds of council members, on similar unanticipated happenings of an emergency. Counties may spend money upon the happening of an emergency upon a unanimous vote of county commissioners to adopt an emergency resolution.

At least three cities (Seattle, Olympia, and Tacoma) and two counties (King and Jefferson) in Washington have issued determinations of an emergency related to persons experiencing homelessness within the past few years. Under a statutory authority that is 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.

### Growth Management Act.

The GMA is the comprehensive land-use planning framework for counties and cities in Washington. The GMA directs jurisdictions that fully plan under the GMA (planning jurisdictions) to adopt internally consistent comprehensive land-use plans that are generalized, coordinated land-use policy statements of the governing body. Comprehensive plans must address specified planning elements, each of which is a subset of a comprehensive plan. Counties that fully plan under the GMA must also designate UGAs. Urban Growth Areas are areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature. Planning jurisdictions must include, within their UGAs, sufficient areas and densities to accommodate projected urban growth for the succeeding 20-year period.

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### **Summary of Amended Bill:**

Until August 1, 2032, a lead agency taking a permit action to site a temporary shelter or transitional encampment (facility) is exempt from compliance with State Environmental

Policy Act (SEPA) review requirements if 15 conditions are met. Temporary shelters are defined as uses sited in a new or existing structure or modular structure that provides temporary quarters for sleeping and shelter and may include common food preparation, shower, or other facilities. Transitional encampments are defined as uses having tents, modular structures, vehicles, or similar shelters that provide temporary quarters for sleeping and shelter, including common food preparation, shower, or other commonly used facilities that are separate from the sleeping shelters. In order to be exempt from SEPA review requirements:

- the facility must be used for people experiencing homelessness, must include no more than 200 beds, and must not require erecting a new permanent structure;
- the permit for the facility must include a condition that the facility be used on the site for no more than five years. Permit actions to extend or reissue a permit are not exempt from SEPA;
- the facility must be located in a jurisdiction that has declared a state of emergency on homelessness that is in effect at the time of the permit action;
- the facility operator must establish a community advisory committee that creates a process to accept and address community complaints;
- the jurisdiction must determine whether to allow drugs or alcohol by facility occupants based on an analysis of the needs and population served by the facility;
- the permit for the facility must require the facility to comply with water quality regulations;
- the facility host or operator must have developed a disengagement plan for cleanup of the facility, a medical waste disposal plan for the facility, and a solid waste management plan for the facility;
- the jurisdiction must make available employment, mental health, and drug counseling services to persons residing at the facility;
- if the jurisdiction is a county planning under the Growth Management Act, the facility must be located within a designated Urban Growth Area; and
- the jurisdiction acting as lead agency must notify and receive written approval from another city or county that would provide public services to a sited facility, if any cities or counties would be obligated to provide services under an interlocal agreement.

If a facility is located within a quarter of a mile of another county, city, or town:

- written notice must be provided by the permit applicant or facility operator to the jurisdiction's mayor or executive authority prior to submitting a permit application; and
- the jurisdiction may identify a representative to serve on the community advisory committee created by the facility operator.

This exemption is in addition to the SEPA exemption provided in rules adopted by the Department of Ecology governing certain actions by lead agencies taken in an emergency.

#### **Amended Bill Compared to Engrossed Substitute Bill:**

The striking amendment:

- requires the 5-year limitation on the siting of a facility to be a condition of the permit issued to the facility in order for the exemption from the State Environmental Policy Act (SEPA) to apply, and does not exempt from SEPA any extensions or reissuances of a permit to a facility that remains on site for longer than five years;
- requires compliance with local water quality permits by a facility to be a condition of the permit issued to the facility;
- specifies that, in order for the SEPA review exemption to apply, a facility must comply with wastewater and stormwater regulations, in addition to erosion, drainage control, and other water quality regulations of the jurisdiction and be consistent with state and federal water quality permits;
- specifies that the lead agency under SEPA must be the local jurisdiction that has declared a state of emergency related to homelessness in order for the SEPA exemption to apply;
- requires a declaration of homelessness-related emergency to be in effect at the time of the permit action in order for the SEPA exemption to apply;
- eliminates the requirement that jurisdictions employing the SEPA exemption make available and require that mental health, employment, and drug counseling services be provided at the facility, and instead requires jurisdictions to make available mental health, employment, and drug counseling services to persons residing at the facility;
- requires a lead agency to notify and receive written approval from another city or county that would provide public services to a facility, in order for the permit action to be eligible for the exemption from SEPA review;
- requires facilities to be located within a designated Urban Growth Area, if the lead agency is a county planning under the Growth Management Act;
- specifies that SEPA exemption for permit actions related to the siting of facilities is in addition to exemptions adopted by administrative rule related to actions that are exempt from SEPA in situations of emergency and does not limit or change those other SEPA exemptions; and
- expires in 2033 the section establishing the temporary SEPA exemption lasting until August 1, 2032.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) The homelessness crisis has become more dire in recent years. Creating a State Environmental Policy Act (SEPA) exemption for temporary shelters is a stopgap solution to

help stabilize those living on the streets, provide them the basic amenities of life, and connect them with longer-term services. The process for siting temporary shelters and facilities can be slow. Creating this SEPA exemption will give local governments a tool to more quickly site temporary housing. The challenges with informal camping of homeless individuals merit an exemption from SEPA in order to better provide civic order and reduce environmental impacts.

(Opposed) None.

**Persons Testifying:** Senator Joe Nguyen, prime sponsor; Elsa Brown, City of Seattle; and Cynthia Stewart, League of Women Voters of Washington.

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