

HOUSE BILL REPORT

ESSB 5728

*As Reported By House Committee on:
Environmental Affairs*

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

Brief Description: Requiring that threshold determination must be completed within fifteen to thirty days.

Sponsor(s): Senate Committee on Environment & Natural Resources (originally sponsored by Senators Amondson, Vognild, Owen, Bauer, Stratton, McCaslin, West and Johnson).

Brief History:

Reported by House Committee on:
Environmental Affairs, February 28, 1992, DPA.

**HOUSE COMMITTEE ON
ENVIRONMENTAL AFFAIRS**

Majority Report: *Do pass as amended.* Signed by 11 members: Representatives Rust, Chair; Valle, Vice Chair; Horn, Ranking Minority Member; Edmondson, Assistant Ranking Minority Member; Bray; G. Fisher; J. Kohl; Neher; D. Sommers; Sprenkle; and Van Luven.

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

Staff: Harry Reinert (786-7110).

Background:

The 1971 Legislature adopted the State Environmental Policy Act (SEPA). One of the central elements of SEPA is the preparation of a statement of the environmental impact of a "major action significantly affecting the quality of the environment." This statement has come to be known as an Environmental Impact Statement (EIS). SEPA imposes on the responsible government official the duty to prepare the EIS.

In order to assist governmental entities responsible for determining whether an EIS is necessary, rules adopted by the Department of Ecology provide for a threshold determination procedure. The rules require a threshold determination for any action that is not categorically exempt. To assist in this determination, the rules also

provide for the use of an environmental checklist. The rules require the responsible official to attempt to complete a threshold determination within 15 days. The rules recognize that complex proposals, those where additional information is needed, and those accompanied by an inaccurate checklist may require additional time. An applicant may request the responsible official to select a date for making the threshold determination and notify the applicant of the date in writing.

The rules also require the responsible agency to consider a number of factors in making the threshold determination. The agency must review the environmental checklist and independently evaluate the applicant's responses. The agency must also determine if the proposal is likely to have a probable significant adverse environmental impact, based on this information. The agency must consider any mitigation measures that will be implemented as part of the proposal.

The agency may determine that it needs additional information to make the threshold determination. In this case it may conduct additional studies on its own or it may request the applicant to submit additional information.

There are three possible results from a threshold determination analysis. The first is a determination that there is no probable significant adverse environmental impacts from the proposal. In this case, the agency issues a determination of nonsignificance (DNS).

A second alternative is the issuance of a mitigated determination of nonsignificance. A mitigated DNS involves an interaction between the applicant and the agency before the threshold determination is made. An applicant may request an agency to notify the applicant if a determination of significance (DS) is likely. If the agency indicates that a DS is likely, the applicant may modify its proposal to reduce the adverse impacts. If the agency determines that, with the modifications, there will be no probable significant adverse environmental impact, a mitigated DNS is issued.

The third possible outcome of the threshold determination is a determination of significance. The DS must include a discussion of the main issues that an EIS should consider. The DS also begins the process of narrowing the scope of the EIS through refinement of the probable significant adverse environmental impacts.

A threshold determination is a final action of the responsible agency and may be appealed by any interested person.

Summary of Amended Bill:

The responsible official must make a threshold determination within 90 days after a completed application and supporting documentation have been submitted. The applicant may request an additional 30 days for the threshold determination. The governmental entity responsible for the threshold determination must adopt standards for determining when an application and supporting documentation are complete.

The time limits do not apply to an agency that has adopted procedures to combine SEPA procedures with other planning requirements.

Amended Bill Compared to Engrossed Substitute Bill: The Engrossed Substitute Senate Bill requires a threshold determination under SEPA to be completed within 60 days. If the threshold determination is not completed as required, a declaration of nonsignificance is automatically issued. If a declaration of nonsignificance is automatically issued, it is not subject to administrative or judicial review. An applicant may consent to an extension of the 60 day limit for a threshold determination. The amended bill allows 90 days after a completed application has been submitted for the responsible official to complete the threshold determination. The amendment does not address the failure of the responsible official to meet the time limits and does not prohibit appeals. The amendment also delays the effective date to September 1, 1992.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill takes effect September 1, 1992.

Testimony For: Local governments are not always responsive in handling the threshold determination. There is no reason why this should not be completed within a reasonable period of time. For a developer who has borrowed money to finance a project, any lengthy delay is costly. It is better to know that an environmental impact statement is going to be required than to not hear any response.

Testimony Against: (Engrossed Substitute Senate Bill) There may be some problems in some local governments in responding to permit applications in a timely manner. There is no evidence that this is a common problem. It would be better

to find out where the problems are and what the causes are before making such a significant change to SEPA. It may be that the problems are localized to areas of the state that have undergone significant growth and are having trouble keeping up with the pace of permit applications.

Witnesses: Jeff Parsons, National Audubon Society (con); Bruce Wishart, Sierra Club (con); Glen Hudson, Association of Washington Realtors (pro); John Robinnett, Association of Washington Realtors (pro); Rebecca Herzfeld, City of Seattle (con); Bob Mack, Association of Cities (con); Michelle McFadden, King County (con); Ann Dold, King County (con); Tom Bjorgen, Washington Association of Prosecuting Attorneys (con); Craig Lassiter, Snohomish County (con); John Woodring, Washington Association of Realtors (pro); Joan Thomas, Washington Environmental Council (con); Darlene Madenwald, Washington Environmental Council (con); Dick Ducharme, Building Industry Association of Washington (pro); and Representative Heavey (pro).