

---

## Ecology & Parks Committee

---

### HB 2500

**Brief Description:** Creating a cause of action for persons who are adversely affected by the judicial review of a decision made under the state environmental policy act.

**Sponsors:** Representatives Taylor, Kretz, Rodne, Short, Schmick and Herrera.

#### Brief Summary of Bill

- Creates a cause of action that allows a party to bring a lawsuit under the State Environmental Policy Act if they are adversely affected by a judicial challenge to the adequacy of an Environmental Impact Statement or to a threshold determination.

**Hearing Date:** 1/12/10, 1/15/10

**Staff:** Jason Callahan (786-7117).

#### Background:

The State Environmental Policy Act (SEPA) requires local governments and state agencies to prepare an environmental impact statement (EIS) if proposed legislation or other major actions may have a probable significant, adverse impact on the environment. The responsible official has authority to make the threshold determination whether an EIS must be prepared. If it appears a probable significant adverse environmental impact may result, the proposal may be altered or its probable significant adverse impact mitigated. If this cannot be accomplished, an EIS is prepared. The EIS is limited, or scoped, to address only the matters determined to have a probable significant adverse environmental impact.

Under the SEPA, a project may be conditioned to mitigate specific adverse environmental impacts identified in the environmental documents. Any conditions must be based on policies identified and designated as possible bases for the exercise of SEPA authority.

The public entity responsible for adhering to the requirements of the SEPA for a given project or proposal is referred to as the lead agency. The SEPA does allow judicial challenges to

---

*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.*

substantive and procedural decisions made by lead agencies after all agency appeal options are exhausted.

In addition to the remedies requested by the party bringing the judicial challenge, a court may also award up to \$1,000 to the prevailing party if a specific finding is made that legal position of the opposition party is frivolous and without basis.

**Summary of Bill:**

A cause of action is created that allows a party to bring a lawsuit under the SEPA if they are adversely affected by a judicial challenge to the adequacy of an EIS or to a threshold determination. A cause of action is only created if the result of the underlying review of the EIS or threshold determination is made to the judicial system (as opposed to an agency appeal) and results in a dismissal by the court or a finding of adequacy.

If a challenge under the cause of action is successful, the plaintiff would be eligible to recover attorney's fees, court costs, and actual damages that were reasonably incurred as part of the previous judicial review of the underlying project. In addition, the plaintiff may also recover exemplary damages of up to \$50,000 if the court finds that the primary motivation of the original judicial review can reasonably be identified as to cause delay in the underlying project, increasing the project applicant's expenses, or to improve a party's future negotiating position regarding mitigation or other measures.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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