

SENATE BILL REPORT

SB 5969

As Reported by Senate Committee On:
Trade & Economic Development, February 18, 2015

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

Brief Description: Updating the state environmental policy act.

Sponsors: Senators Brown and Braun.

Brief History:

Committee Activity: Trade & Economic Development: 2/18/15 [DP, DNP].

SENATE COMMITTEE ON TRADE & ECONOMIC DEVELOPMENT

Majority Report: Do pass.

Signed by Senators Brown, Chair; Braun, Vice Chair; Angel and Ericksen.

Minority Report: Do not pass.

Signed by Senators Chase, Ranking Minority Member; Frockt and McCoy.

Staff: Jeff Olsen (786-7428)

Background: The State Environmental Policy Act. The State Environmental Policy Act (SEPA) establishes a review process for state agencies and local governments to identify possible environmental impacts that may result from government actions. The actions include project actions involving decisions on specific projects, such as the issuance of a permit, and nonproject actions involving decisions on policies and plans, including the adoption of land use plans and regulations. The information collected through the SEPA review process may be used to change a proposal to mitigate likely impacts, or to condition or deny a proposal when adverse environmental impacts are identified.

Provisions of the SEPA generally require a project applicant to complete an environmental checklist. An environmental checklist includes questions about the potential environmental impacts of the proposal. This checklist is then reviewed by the lead agency – one agency identified as such and responsible for compliance with the procedural requirements of SEPA – to determine whether the proposal is likely to have a significant adverse environmental impact. This environmental threshold determination is made by the lead agency and is documented in either a determination of nonsignificance or a determination of significance.

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 determination of significance requires the preparation of an environmental impact statement (EIS) by the lead agency. The EIS must include detailed information about the environmental impact of the project and any adverse environmental effects that cannot be avoided if the proposal is implemented. The EIS must also include alternatives, including mitigation, to the proposed action.

The National Environmental Policy Act. The National Environmental Policy Act (NEPA) establishes a review process that is similar to the SEPA process to determine the environmental impact of federal undertakings. There are three levels of analysis that can be undertaken pursuant to NEPA:

- categorical exclusion determination, which determines if the project meets certain criteria which have been previously determined to indicate that the project will have no significant environmental impact;
- environmental assessment, which requires the preparation of a written assessment of whether the project will have a significant impact on the environment; and
- environmental impact assessment, which is a more detailed evaluation of the proposed project and potential alternatives.

Coastal Zone Management Act. The Coastal Zone Management Program (CZMP) is a federal program administered by the National Oceanic and Atmospheric Administration, which encourages and assists states to develop and implement CZMPs. States prepare CZMPs that describe their coastal resources and how they are managed. In general federal or federally permitted activities that affect any land use, water use, or natural resource of a state's coastal zone must comply with the enforceable policies contained in the CZMP.

Clean Water Act. The federal Clean Water Act sets effluent-based limitations on pollutant discharges into navigable waters. The Environmental Protection Agency has delegated federal Clean Water Act authority to the Department of Ecology, which issues a variety of permits under state and federal laws that stipulate conditions for discharges into state waters.

Summary of Bill: Legislative findings state that SEPA should not unreasonably delay or prevent economic growth and development of infrastructure. The Legislature reaffirms its desire for job retention and growth and finds that public agencies should coordinate environmental reviews to avoid unnecessary delay and encourage investment in the state.

The governmental entities with responsibility for SEPA review must adopt the scope of analysis contained in the federal review for proposals that have an environmental analysis under NEPA. There are exceptions, for example, if there is a finding that the environmental analysis is inadequate.

A governmental entity responsible for SEPA must complete its environmental review no later than 30 days after publication of a categorical exclusion determination, a finding of no significant impact, or a final EIS that is prepared under NEPA for the same proposal. If the governmental entity fails to comply with the deadline, the SEPA requirements are waived for the proposal.

For projects not requiring review under NEPA, the governmental entity must issue a threshold determination no later than 60 days after submitting the completed application.

Environmental reviews of a project must be complete no later than 12 months after submission of a complete application. If the governmental entity fails to comply with the deadline, the SEPA requirements are waived for the proposal.

Certifications under the CZMP or Section 401 of the Clean Water Act are exempt from the requirements of SEPA.

Appropriation: None.

Fiscal Note: Requested on February 13, 2015.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Washington is one of the most trade-dependent states and needs regulations that provide environmental protections and promote competitiveness. There are currently overlapping state and federal permitting processes that can delay projects. The goal is to ensure proper environmental protections while accelerating permitting and provide certainty with reasonable timelines.

CON: This approach ties the hands of the local and state agencies by limiting the scope to the federal level. It is not clear what problems have occurred with the Coastal Zone Management Program. The scope of NEPA and SEPA are very different. There has been an extensive update of SEPA rules recently, and there needs to be time to let the new rules work. The timelines provided in the bill are concerning, very few projects result in environmental reviews, but those may require more time.

OTHER: Ports conduct a number of projects and are very familiar with the SEPA process. There have been recent concerns about the direction of the SEPA process being set around certain commodities. Ports like the intent of the bill, but are concerned about adopting analysis done under NEPA unchanged. The SEPA process is not perfect and needs additional improvements, but NEPA may be worse. Timelines may be difficult because planning departments do not have sufficient resources.

Persons Testifying: PRO: Mike Ennis, Assn. of WA Business.

CON: Bryce Yadon, Futurewise; Tom Clingman, Dept. of Ecology; Darcy Nonemacher, WA Environmental Council.

OTHER: Gerry O'Keefe, Assistant Director for Environmental Policy, WA Public Ports; Laura Merrill, WA State Assn. of Counties.