

HOUSE BILL REPORT

HB 1251

As Reported By House Committee On:
Government Operations

Title: An act relating to standing to appeal actions taken under the state environmental policy act.

Brief Description: Limiting standing to appeal actions under SEPA to those who are directly impacted.

Sponsors: Representatives Backlund, L. Thomas, Lisk, Mastin, McMorris, Sheldon, Basich, Hatfield, Fuhrman, Chandler, Elliot, Johnson, Hargrove, Clements, Hickel, Huff, Beeksma, Schoesler, Hymes, Boldt, Sheahan, Sherstad and Morris.

Brief History:

Committee Activity:

Government Operations: 2/21/95, 2/22/95 [DP].

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

Majority Report: Do pass. Signed by 9 members: Representatives Reams, Chairman; Goldsmith, Vice Chairman; L. Thomas, Vice Chairman; Hargrove; Honeyford; Hymes; Mulliken; D. Schmidt and Van Luven.

Minority Report: Without recommendation. Signed by 6 members: Representatives Rust, Ranking Minority Member; Scott, Assistant Ranking Minority Member; Chopp; R. Fisher; Sommers and Wolfe.

Staff: Steve Lundin (786-7127).

Background: The State Environmental Policy Act (SEPA) requires local governments and state agencies to prepare a detailed statement, or environmental impact statement, if proposed legislation or other major action may have a probable significant, adverse impact on the environment. The determination whether a detailed statement must be prepared involves a threshold determination and use of an environmental checklist.

If it appears that a probable significant adverse environmental impact may result, the proposal may be altered, or its probable significant adverse impact mitigated, to remove the probable significant adverse impact. If the probable significant adverse

environmental impact remains then a detailed statement, or environmental impact statement, is prepared. The environmental impact statement is limited, or scoped, to only address the matter or matters that are determined under the threshold determination process to have a probable significant adverse environmental impact.

Unless specifically provided to the contrary, an appeal under SEPA shall be of the governmental action and its accompanying environmental determinations. An aggrieved person may obtain judicial review under SEPA if he or she has standing to appeal under the existing law. The Court of Appeals in Trespanier v. Everett, 64 Wn.App. 380, 382 (1992), noted that courts use a two part test to determine whether a person has standing to challenge a SEPA determination, as follows:

"First, the interest that the petitioner is seeking to protect must be "arguably within the zone of interests to be protected or regulated by the statute or constitutional question"... Second, the petitioner must allege an "injury in fact" i.e., that he or she will be "specifically and perceptibly harmed" by the proposed action."

Summary of Bill: Only a person who is directly impacted by a specific governmental action taken under SEPA may appeal the environmental decisions under SEPA. A person who is "directly impacted" means a person whose interest is within the zone of interests to be protected or regulated by SEPA and who will suffer an injury in fact if the proposed action is taken.

This language is very similar to the standing requirements enunciated by the Court of Appeals in Trespanier v. Everett and differs only as follows:

- o The person must have an interest within the zone of interests to be protected or regulated, instead of arguably must have such an interest.
- o The zone of interests to be protected or regulated, within which the person must have an interest, is SEPA rather than the underlying statute or constitutional provision under which the action was taken.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: This will stop frivolous appeals.

Testimony Against: There are other ways to accomplish this. Initiative 164 may conflict with this. This is not in the best interest.

Testified: Representative Backlund, prime sponsor; Chris Lehman, Coalition of Washington Communities; Michael Divoleo, Washington Association of American Planners, and Dave Williams, Association of Washington Cities.