
Environment Committee

HB 1198

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, Short, McCune and Harris.

Brief Summary of Bill

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

Hearing Date: 2/3/11

Staff: Courtney Barnes (786-7194).

Background:

The State Environmental Policy Act (SEPA) applies to decisions by every state and local agency within Washington. One agency is usually identified as the lead agency for a specific proposal. The lead agency is responsible for identifying and evaluating the potential adverse environmental impacts of a proposal. Some minor projects do not require environmental review, so the lead agency will first decide if environmental review is needed. If the proposed project is the type of project that has been "categorically exempt" from the SEPA review process, no further environmental review is required.

If the lead agency needs additional information to evaluate the proposal, the agency may ask the applicant to conduct studies. The lead agency and applicant may also work together to change the proposal to reduce likely impacts. If the lead agency has enough information to determine that the proposal is unlikely to have a significant adverse environmental impact, the agency will issue a determination of non-significance (DNS). If the information indicates the proposal is likely to have a significant adverse environmental impact, the lead agency will require the preparation of an environmental impact statement (EIS). The EIS includes an evaluation of

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alternatives to the proposal and measures that would eliminate or reduce the likely environmental impacts of the proposal.

Agencies are given the authority to condition a proposal when specific adverse environmental impacts are identified in the DNS or EIS. An agency may deny a proposal when an EIS shows that the proposal is likely to have significant environmental impacts that cannot be mitigated to an acceptable level.

Once all agency appeal options are exhausted, the SEPA allows judicial challenges to substantive and procedural decisions made by lead agencies. In addition to the remedies requested by the party bringing the judicial challenge, a court may award up to \$1,000 to the prevailing party if a specific finding is made that the 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 the party is adversely affected by a judicial review of the adequacy of an EIS or review of 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 is eligible to recover attorney's fees, court costs, and actual damages that were reasonably incurred as part of the judicial review of the underlying project. 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:

- creating a delay in the underlying project;
- increasing expenses for the underlying project; or
- improving the petitioning party's position in future negotiations regarding mitigation or other protective measures.

Appropriation: None.

Fiscal Note: Available.

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