

HOUSE BILL REPORT

HB 1952

As Reported by House Committee On:

Environment

General Government Appropriations & Oversight

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

Brief Description: Streamlining the state environmental policy act process.

Sponsors: Representatives Upthegrove, Short, Fagan and McCune.

Brief History:

Committee Activity:

Environment: 2/17/11 [DPS];

General Government Appropriations & Oversight: 2/18/11, 2/21/11 [DP2S(w/o sub ENVI)].

Brief Summary of Second Substitute Bill

- Creates new statutory categorical exemptions under the State Environmental Policy Act for certain types of development or redevelopment.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Upthegrove, Chair; Short, Ranking Minority Member; Harris, Assistant Ranking Minority Member; Crouse, Jacks, Jinkins, Morris, Moscoso, Nealey, Pearson, Takko and Taylor.

Minority Report: Do not pass. Signed by 2 members: Representatives Fitzgibbon and Tharinger.

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

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proposal. The lead agency is responsible for identifying and evaluating the potential adverse environmental impacts of a proposal. Some minor projects do not require an environmental review, so the lead agency will first decide if environmental review is needed. If the proposed project is the type of project that is "categorically exempt" from the SEPA review process, no further environmental review is required.

Categorical exemptions are identified in both the Revised Code of Washington and the Washington Administrative Code (WAC). By statute, the Department of Ecology (DOE) may adopt categorical exemptions by rule for the types of actions that are not major actions significantly affecting the quality of the environment. An action that is categorically exempt under the rules adopted by the DOE may not be conditioned or denied.

Summary of Substitute Bill:

Categorical Exemptions.

Categorical exemptions are created in statute for the following activities:

- construction or location of residential structures;
- construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure (excluding feed lots);
- construction of an office, school, commercial, recreational, service, or storage building;
- construction of a parking lot;
- landfill or excavation;
- construction or installation of minor road and street improvements;
- grading, excavating, filling, septic tank installations, and landscaping necessary for an exempt building or facility;
- installation or removal of impervious underground tanks;
- repair, remodeling, maintenance, or minor alteration of existing private or public structures, facilities, or equipment (including utilities), involving no material expansions;
- approval of short plats or short subdivisions;
- technical codes meeting minimum standards;
- stormwater, water and sewer facilities, lines, equipment, hookups, or appurtenances;
- and
- temporary farmers markets or mobile food vendors.

Certain exemptions do not apply where a rezone is required for the development.

Categorical Exemption Levels.

The categorical exemption level for the identified activities (listed above) varies depending on where the activity takes place. The exemption levels depend on whether the activity is undertaken wholly or partly on lands covered by water or on natural resources land. The exemption levels also vary depending on whether the activity is within an urban growth area,

outside an urban growth area, or within a planning jurisdiction that is partially planning under the Growth Management Act.

If a city or county finds that the local development code is not fully sufficient to mitigate the impacts of development, a city or county may establish a lower exemption level for their jurisdiction or for a specific issue or subject area. If the proposed action is located in more than one city or county, the lower of the agencies' adopted exemption levels controls regardless of which agency is the lead agency.

Public Notice.

Proposed activities that are categorically exempt under the bill are subject to all existing public notice requirements for development and redevelopment required by the SEPA.

Substitute Bill Compared to Original Bill:

The original bill contained an intent section, which is removed in the substitute bill. The substitute bill modifies certain categorical exemption levels. The substitute bill creates a categorical exemption for temporary farmers markets or mobile food vendors. The original bill created a categorical exemption for any fill or excavation activity classified as a forest practice. The substitute bill removes this exemption. The substitute bill adds a provision concerning public notice requirements for activities that are categorically exempt.

Appropriation: None.

Fiscal Note: Requested on February 17, 2011.

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

Staff Summary of Public Testimony:

(In support – from testimony on HB 1713, identical except for the title) The bill is designed to facilitate local economic development and reduce regulatory burdens without compromising environmental protection. The bill makes modest changes to categorical exemptions that are currently identified in the WAC. The bill is about SEPA reform and streamlining the permitting process. The bill was developed by local governments to save time and money for both private and public projects. The SEPA needs to be updated to reflect how land use planning and development regulations have developed over time.

The bill has broad application and addresses jurisdictions that are both fully and partially planning. Many cities and counties will benefit from the changes made by the bill. The residential construction industry has suffered in the current economy. The bill makes reasonable reforms to help the construction industry, which is already regulated by the Growth Management Act. Currently, in many cases the SEPA is a duplicative process. The bill will prevent this duplication.

(In support with concerns) The bill makes great additions, but a clarification is necessary. In particular, the categorical exemptions related to short plats and subdivisions need to be amended to clarify that all aspects of the subdivision or short plat are exempt.

(With concerns) The objectives of the bill are good, but the exemption levels created by the bill are radically different than those currently permitted in the WAC. As drafted, the bill could create backsliding in environmental protection. The bill should be amended to achieve the objectives of the bill without compromising environmental protection. The categorical exemption levels should be raised, but not all jurisdictions have come into compliance with land use regulations. The exemption levels created by the bill are too drastic and further negotiation is necessary.

(Opposed) The bill does not create small exemptions. In some cases, the bill quadruples the categorical exemptions permitted under the WAC. The SEPA is still necessary to protect the environment. The bill is applicable to many types of projects that have significant environmental impacts. The exemptions are too broad and effectively gut the SEPA. The SEPA works well and should not be gutted.

Persons Testifying: (In support) Representative Upthegrove, prime sponsor; Chris McCabe and George Kresovich, Association of Washington Business; Martin Snell, Washington State Association of County and Regional Planning Directors; Kamuron Gurol, City of Sammamish; Scott Hildebrand, Master Builders Association of King and Snohomish Counties; Kurt Wilson, Soundbuilt Homes; Mike Nykiem; and Bob Johnson, Lewis County.

(In support with concerns) Hans Korve.

(With concerns) Tom Clingman, Department of Ecology; Cliff Portman, City of Seattle; and Faith Lumsden, Office of Regulatory Assistance.

(Opposed) Bruce Wishart, People for Puget Sound; April Putney, Futurewise; and Arthur West.

Persons Signed In To Testify But Not Testifying: Linda Berry-Maraist, Debra Munguia, and Jeanette McKague.

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS & OVERSIGHT

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Environment. Signed by 10 members: Representatives Miloscia, Vice Chair; McCune, Ranking Minority Member; Taylor, Assistant Ranking Minority Member; Ahern, Armstrong, Blake, Moscoso, Pedersen, Van De Wege and Wilcox.

Minority Report: Do not pass. Signed by 3 members: Representatives Hudgins, Chair; Fitzgibbon and Ladenburg.

Staff: Owen Rowe (786-7391).

Summary of Recommendation of Committee On General Government Appropriations & Oversight Compared to Recommendation of Committee On Environment:

The second substitute bill requires the Department of Ecology (DOE) to carry out the requirements of the bill within existing resources.

Appropriation: None.

Fiscal Note: Requested on February 17, 2011.

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

Staff Summary of Public Testimony:

(In support) This bill is the outcome of discussions by city and county planners over several years. This bill will save applicants and local governments money, while protecting the environment and focusing the State Environmental Policy Act (SEPA) on those projects that need an environmental review. The process behind this bill began over six months ago, during the Governor's Transforming Washington budget process that challenged participants to think of ideas that could save the public and private sectors money. This bill is a work in progress; please keep it moving forward.

(Opposed) This bill dramatically increases the number of categorical exemptions under the SEPA. Originally, these exemptions were meant for projects that had no environmental impact. The size of projects that are exempt are increasing tenfold under this bill. There is value in a SEPA review even when the process results in a determination of non-significance. This bill could lead to increased litigation by avoiding the mitigation that is part of a SEPA review. The safeguards under the SEPA need to remain in place. It is hard to gauge a fiscal impact on bad land-use planning. The SEPA enables a holistic and regional view of a given project's impact. The DOE is the proper agency to set exemptions under the SEPA, not the Legislature. Do not gut the SEPA process.

Persons Testifying: (In support) Scott Merriman, Association of Counties; Dave Williams, Association of Washington Cities; and Chris McCabe, Association of Washington Business.

(Opposed) Bruce Wishart, People for Puget Sound; and Arthur West.

Persons Signed In To Testify But Not Testifying: None.