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## Environment Committee

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### HB 2253

**Brief Description:** Modernizing the functionality of the state environmental policy act.

**Sponsors:** Representatives Fitzgibbon, Billig and Jinkins.

#### Brief Summary of Bill

- Creates new statutory categorical exemptions under the State Environmental Policy Act for certain types of development, utility-related actions, and habitat restoration and environmental mitigation projects.
- Creates a Categorical Exemption Board to conduct rulemaking on specific topics under the State Environmental Policy Act currently under the rulemaking authority of the Department of Ecology.
- Modifies other provisions under the State Environmental Policy Act related to planned actions, environmental checklist requirements, and notice and comment requirements.
- Authorizes funding in the Growth Management Planning and Environmental Review Fund to be used for loans, as well as grants, to local governments.

**Hearing Date:** 1/13/12

**Staff:** Anna Jackson (786-7194).

#### **Background:**

##### State Environmental Policy Act.

The State Environmental Policy Act (SEPA) applies to decisions by every state and local agency within Washington. The SEPA applies to both "project" and "nonproject" actions of state and local agencies. Examples of nonproject actions include an agency decision on a policy, plan, or program, as well as legislation, ordinances, rules and regulations that contain standards controlling use of the environment. One agency is usually identified as the lead agency for a

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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 lead agency determines that a proposed project will have a probable significant, adverse impact on the environment, it must prepare an Environmental Impact Statement (EIS). 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.

Categorical exemptions are identified in both the Revised Code of Washington and the Washington Administrative Code. The Department of Ecology (Ecology) 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 Ecology may not be conditioned or denied [RCW 43.21C.110].

### Growth Management Act.

The Growth Management Act (GMA) is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, the GMA establishes numerous requirements for local governments obligated by mandate or choice to fully plan under the GMA and a reduced number of directives for all other counties and cities. Twenty-nine of Washington's 39 counties, and the cities within those counties, are planning jurisdictions. The Department of Commerce (Commerce) provides technical and financial assistance to jurisdictions that must implement requirements of the GMA.

The SEPA permits counties and cities to designate types of projects as "planned actions." A planned action is a project plan whose impacts are analyzed in an EIS associated with specified planning actions, including, but not limited to, a local government's use of a comprehensive plan or subarea plan under the GMA. Development consistent with a planned action may not require additional environmental review.

### **Summary of Bill:**

#### Categorical Exemption Board.

The Categorical Exemption Board (Board) is created to perform rulemaking for a limited set of activities under the SEPA. The Board is composed of seven members, including the Director of the Department of Ecology, the Commissioner of Public Lands, and gubernatorial appointees representing counties, cities, environmental interests, business interests, and tribes. By December 31, 2012, the Board must conduct rulemaking to implement changes to the categorical exemptions contained in statute and rule. By December 31, 2013, the Board must adopt further updates to the categorical exemptions in statute and rule to include higher default levels and more flexible levels than those currently specified in rule. The Board may not adopt rules that relate to climate change or that result in categorical exemptions that are lower than those in effect on July 1, 2011.

#### Categorical Exemptions.

In addition to activities identified by the Board through rulemaking, categorical exemptions are created in statute for the following activities:

- certain utility-related actions, such as installing electric facilities or lines with an associate voltage of 115,000 volts or fewer; building over existing distribution lines with transmission lines of 115,000 volts or more; and placing electric facilities, lines, equipment underground;
- infill development that is either commercial development under 10,000 square feet or industrial development;
- habitat restoration projects and environmental mitigation projects (excluding stand-alone commercial wetland mitigation banks on more than five acres and fish hatcheries);
- certain nonproject actions, including amendments to development regulations required to ensure consistency with comprehensive plans and shoreline master programs;
- certain project actions within an urban growth area, including single-family residential developments of 50 units or less, and of multi-family developments of 80 units or less; the construction of an office, school, commercial, recreational, service, or storage building of 30,000 square feet or less; and any landfill or excavation of 1,200 cubic yards or less; and
- certain project actions outside of an urban growth area, including single-family residential developments of 25 units or less; the construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure covering up to 50,000 feet (excluding feed lots); the construction of an office, school, commercial, recreational, service, or storage building of 15,000 square feet or less; and any landfill or excavation of 1,000 cubic yards or less.

#### Planned Actions.

The types of development that qualify as a planned action are expanded to include essential public facilities that are part of a residential, office, school, commercial, recreational, service, or industrial development that is designated as a planned action. In addition, local governments are given the authority to define the types of development included in the planned action. To determine project consistency with a planned action ordinance, local governments may use either: (1) the environmental checklist; (2) a modified checklist pursuant to rules adopted by the Department of Ecology to implement the SEPA; (3) a form that is designated in the planned action ordinance; or (4) a form contained in rules adopted by an agency pursuant to the SEPA requirements.

#### Local Options for Completing an Environmental Checklist.

A lead agency using an environmental checklist may satisfy the requirements of the checklist by identifying instances where the questions on the checklist are adequately covered by a local ordinance, development regulation, land use plan, or other legal authority, provided the lead agency explains how the proposed project satisfies the applicable local legal authority. A lead agency may not ignore or delete a question on the checklist.

#### Growth Management Planning and Environmental Review Fund.

Money in the Growth Management Planning and Environmental Review Fund (Fund) may be used to make loans, in addition to grants, to local governments for the purposes outlined in the

SEPA. In awarding grants or loans, the Department of Commerce is directed to give preference to proposals that include, among other elements listed in statute, environmental review that addresses the impacts of increased density or intensity of comprehensive plans, subarea plans, or receiving areas designated by a city or town under the regional transfer of development rights program.

Integrated SEPA and Project Review Procedures.

Integrated SEPA and project review procedures are created and replace prior notice and comment procedures under the SEPA. The integrated project review procedures include provisions related to notice, comment, and appeals, and are applicable to all local governments (not just those fully planning under the GMA).

**Appropriation:** None.

**Fiscal Note:** Requested on Jan 10, 2012.

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