

SENATE BILL REPORT

SB 5657

As of February 18, 2011

Title: An act relating to modifying the categorical exemptions for development under the state environmental policy act.

Brief Description: Modifying the categorical exemptions for development under the state environmental policy act.

Sponsors: Senators Pridemore and Swecker.

Brief History:

Committee Activity: Government Operations, Tribal Relations & Elections: 2/15/11.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

Staff: Karen Epps (786-7424)

Background: The State Environmental Policy Act (SEPA) applies to decisions made by state and local agencies, including counties, cities, ports, and special districts. It provides a framework to consider the environmental consequences of a proposed project prior to taking action on the proposal.

The SEPA process begins with a permit application or initiation of an agency proposal. The proposal is reviewed to determine if it is exempt or if SEPA is required. The environmental review process involves the identification and evaluation of probable environmental impacts, and the development of mitigation measures that will reduce adverse environmental impacts. This environmental information is used by agency decision-makers to decide whether to approve a proposal, approve it with conditions, or deny the proposal.

A proposal that is likely to have significant adverse environmental impacts requires an environmental impact statement (EIS). For most proposals, one agency is designated as the lead agency. The lead agency is usually the agency proposing the project; although, the lead agency status may be transferred by agency agreement. The lead agency prepares the EIS to provide an impartial review of significant environmental impacts, reasonable alternatives, and mitigation activities that would avoid or minimize the adverse impacts.

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.

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.

Summary of Bill: If the proposed action is located in more than one city or county, the lower of the agencies' adopted exemption levels controls the action, regardless of which agency is the lead agency.

Categorical exemptions are created 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 – including fill or excavation classified as a forest practice;
- 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; and
- storm water, water and sewer facilities, lines, equipment, hookups, or appurtenances.

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

The categorical exemption level for the activities listed above vary 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 jurisdiction that is partially planning under the Growth Management Act.

A city or county may establish an alternative exemption level. 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 set a lower exemption level for their jurisdiction or for a specific issue or subject area.

Appropriation: None.

Fiscal Note: Available.

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: This bill should provide relief without compromising existing levels of environmental protection. That is a key and central component to this legislation. There have been categorical exemptions since 1984. This bill would allow the elimination of SEPA when it is redundant and simply not needed because other regulations do the same job of protecting the environment. SEPA presents a variety of challenges, and this bill will help with that. This legislation is long overdue. There are some projects that need to be unburdened from these requirements. With the advent of more detailed comprehensive plans, there has been more a detailed environmental impact assessment done on projects. This bill does not eliminate SEPA in urban growth areas, but it is good start in the right direction. SEPA has become largely perfunctory since 95 percent of decisions are straight designation of no significance determinations. This bill is designed to provide no back sliding on environmental protections.

CON: SEPA provides the environmental safety net. This bill goes too far with its categorical exemptions. It would be better public policy to ask Ecology to update the categorical exemptions by rule. The premise of this bill seems to be that the need for SEPA has diminished, but that is not the case. SEPA challenges bring issues forward. This bill carves out huge exemptions from SEPA for certain types of development. These categorical exemptions were originally meant to be de minimis projects. The size of the exemptions in this bill are sometimes quadrupled in size from the original exemptions. Ecology does a good job of establishing categorical exemptions. SEPA serves a valuable function in enforcing all the other environmental laws. SEPA provides a service to the citizens. SEPA is one way to stop and slow down projects.

OTHER: Fire Districts use the SEPA process to seek voluntary mitigation and to look at impacts and levels of service.

Persons Testifying: PRO: Chris McCabe, Association of Washington Business; Pat Schneider, Foster Pepper and Association of Washington Business; Scott Hildebrand and George Newman, Master Builders Association of King and Snohomish Counties; Martin Snell, Clark County; Kamuron Gurol, City of Sammamish.

CON: April Putney, Futurewise; Bruce Wishart, People for Puget Sound; Arthur West, citizen; Jane Stavish and Susan Macomson, South Sound Group, Sierra Club.

OTHER: Mike Brown, Washington Fire Chiefs.