SENATE BILL REPORT
SB 6130

As of January 31, 2012

Title: An act relating to modernizing the functionality of the state environmental policy act without compromising the underlying intent of the original legislation.

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

Sponsors: Senators Rolfes, Swecker, Nelson, Ericksen and Kline.

Brief History:
Committee Activity: Environment: 1/17/12.

SENATE COMMITTEE ON ENVIRONMENT

Staff: Diane Smith (786-7410)

Background: The State Environmental Policy Act (SEPA) applies to decisions by every state and local agency within Washington. Proposals for projects are subject to SEPA review. These projects may include public buildings such as jails, schools, and libraries; public infrastructure such as sewers, roads, and electrical lines; and private projects such as subdivisions, shopping centers, and industrial facilities.

When a proposal is made, permits and approvals may be required from state, local, and federal agencies. From among these, a lead agency for SEPA purposes is determined according to Washington Administrative Code (WAC). The lead agency is responsible for identifying and evaluating the potentially adverse environmental impacts of a proposal. Some minor projects do not require an environmental review, so the lead agency will first decide if an environmental review is needed. If the proposed project is the type of project that is categorically exempt from SEPA review process, then no further environmental review is required.

Categorical exemptions are identified in both the Revised Code of Washington and the 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 DOE may not be conditioned or denied.

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.

SEPA also applies to nonproject proposals. Nonproject actions of state and local agencies 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.

SEPA allows counties and cities to designate types of projects as planned actions. Planned actions shift environmental review of a project from the time a permit application is made to an earlier phase in the planning process. The first step is analyzing the likely environmental impacts of future projects by preparation of an Environmental Impact Study (EIS.) However, the environmental checklist is used to decide whether an EIS is required. The lead agency must also review the environmental checklist.

EIS is prepared on a comprehensive plan or subarea plan or other specified planning document. The types of project action must be limited to certain types of development or to specific localities within the jurisdiction. They may also be time-limited as identified in EIS. Development consistent with a planned action as adopted by ordinance or resolution, does not require additional SEPA threshold determination or appeal. Planned actions must be located within an urban growth area (UGA) and not be essential public facilities under the Growth Management Act (GMA.)

GMA is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, GMA establishes numerous requirements for local governments that are obligated, by mandate or choice, to fully plan under GMA. GMA establishes 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 GMA.

The regional transfer of development rights program was enacted in 2007 to be a land use planning tool available to local governments that may be included in a jurisdiction's comprehensive plan.

Summary of Bill: The Categorical Exemption Board (Board) is created to perform rulemaking for a limited set of activities under SEPA. The Board is composed of seven members, including the Director of the DOE, 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.

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, or 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 fish hatcheries and stand-alone commercial wetland mitigation banks on more than five acres);
- certain nonproject actions, including amendments to development regulations required to ensure consistency with comprehensive plans and shoreline master programs;
- certain project actions within an UGA, 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 UGA, 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.

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 DOE to implement 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 SEPA requirements.

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.

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 SEPA. In awarding grants or loans, 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 are created and replace prior notice and comment procedures under 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).

Provisions are made for integrating the environmental notice and review process under SEPA with other notices required by this act. Local governments must provide notice with specified content for various actions and at specified times.

If a local government provides for an administrative appeal of its decisions made pursuant to its development and environmental codes, the applicant for a project permit and any party who provided comment on the application before the date of decision have standing to file an administrative appeal.

Appropriation: None.

Fiscal Note: Not requested.

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 originally came from city and county planners. SEPA is 40 years old and many of SEPA's environmental concerns are now integrated into local codes. SEPA requires a lot of work that is not needed to achieve the best environmental outcomes in modern times. The Legislature has put other categorical exemptions in statute and is perfectly capable of adding others. The major elements of effective streamlining SEPA without weakening environmental protections are in this bill. Local governments say that there is too much asking of questions that have already been answered. The checklist reform is the most useful place to concentrate because this is where the questions are asked. It is appropriate to rely on local ordinances to answer questions on the SEPA checklist.

CON: It is vital that this bill address real needs based on evidence, not temporary concerns brought about by the economic downturn.

OTHER: There are concerns about splitting rulemaking between the new board and DOE. We need to be careful to meet the needs of state agencies such as the Department of Transportation and the Department of Natural Resources (DNR). Adopting categorical exemptions in statute is also concerning. Cultural resource protection is not part of the GMA planning process. The Department of Archaeology and Historic Preservation (DAHP) received 3300 notices and responded 2000 times last year to notices from local governments complying with SEPA requirements. We need to preserve some mechanism for DAHP to be aware of and communicate with project proponents. Without this, no harm to cultural resources cannot be guaranteed. There should be a voice for cultural resources on the new board. DOT also depends on these SEPA notices and some means of ensuring notice of projects that effect state highways must also be retained. This is not the correct process to review and revise SEPA. Rulemaking should stay within DOE. Perhaps a taskforce that advises DOE would be appropriate. Standing is a concern especially since the bill is interpreted so differently on this point.

Persons Testifying: PRO: Pamela Krueger, DNR; Josh Weiss, WA State Assn. of Counties; Tom Klingman, DOE; Carl Schroeder, Assn. of WA Cities.

CON: James Evans, City of Tacoma.

OTHER: Allyson Brooks, DAHP; Faith Lumsden, Governor's Office of Regulatory Assistance; Mo McBroom, Washington Environmental Council; Paul Parker, WA State Transportation Commission.