

SENATE BILL REPORT

SB 6130

As Reported by Senate Committee On:
Environment, February 1, 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, 2/01/12 [DPS-WM, DNP].

SENATE COMMITTEE ON ENVIRONMENT

Majority Report: That Substitute Senate Bill No. 6130 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Nelson, Chair; Rolfes, Vice Chair; Ericksen, Ranking Minority Member; Chase and Sheldon.

Minority Report: Do not pass.

Signed by Senators Honeyford and Morton.

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

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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.

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 (Recommended Substitute): By December 31, 2012, DOE must update the rule-based categorical exemptions to SEPA found in WAC 197-11-800, as well as update the environmental checklist found in WAC 197-11-960. In updating the categorical exemptions, DOE must increase the existing maximum threshold levels for the following project types:

- the construction or location of single-family residential developments;
- the construction or location of multifamily residential development;

- the construction of an agricultural structure, other than a feed lot, that is similar to a barn, a loafing shed, a farm equipment storage building, or a produce-storing or packing structure;
- the construction of an office, school, commercial building, recreational building, service building, or storage building, including any associated parking areas or facilities for any of these structures;
- landfilling or excavation activities; and
- the installation of an electric facility, lines, equipment, or appurtenances, other than substations.

In updating the categorical exemptions, DOE also must establish maximum exemption levels for action types that differ based on whether the project is proposed to occur in: (1) an incorporated city; (2) an unincorporated area within an UGA; (3) an unincorporated area outside of an UGA but within a county planning under GMA; or (4) an unincorporated area within a county not planning under the GMA.

In updating the environmental checklist, DOE must reduce duplication in the checklist that has occurred due to amendments to SEPA and SEPA rules that have occurred since the checklist was last updated. DOE may not include any new subjects in the scope of the checklist.

Until the completion of the rulemaking required by December 31, 2012, any actions located within a city or a city's UGA may apply the highest categorical exemption levels authorized under WAC 197-11-800, regardless if the city or county with jurisdiction has exercised its authority to raise the exemption levels above the established minimum, unless the city or county with jurisdiction passes an ordinance or resolution that lowers the exemption level below the allowed maximum but not less than the default minimum levels detailed in rule.

By December 31, 2013, DOE must update the thresholds for all other project actions. During this process, DOE may also review and update the thresholds resulting from the 2012 rulemaking process.

For both phases of required rulemaking, DOE must convene an advisory committee to assist in updating the environmental checklist and the thresholds for other project actions consisting of members representing, at minimum, the following: cities; counties; business interests; environmental interests; agricultural interests; cultural resources interests; state agencies; and tribal governments.

In addition, for both phases of rulemaking, DOE must consider opportunities to ensure that state agencies and other interested parties can continue to receive notice about projects of interest through a means other than through notice under SEPA.

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) a modified environmental checklist pursuant to rules

adopted by DOE to implement SEPA; (2) a form that is designated in the planned action ordinance; or (3) a form contained in rules adopted by an agency pursuant to SEPA requirements.

DOE must accept electronic submittal of all required notice filings from lead agencies.

Categorical exemptions are created in statute for the following activities:

- habitat restoration projects and environmental mitigation projects (excluding stand-alone commercial wetland mitigation banks on more than five acres, fish hatcheries, and projects that are located on or that would affect lands of long-term commercial significance under the GMA); and
- certain nonproject actions, including amendments to development regulations required to ensure consistency with comprehensive plans and shoreline master programs, and amendments to local technical codes to ensure consistency with minimum standards contained in state law.

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. Even if a lead agency identifies instances where a local ordinance or regulation covers the questions on the checklist, an applicant may still provide answers to any questions on the checklist.

A lead agency may not ignore or delete a question on the checklist.

Money in the Growth Management Planning and Environmental Review 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 must 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.

EFFECT OF CHANGES MADE BY ENVIRONMENT COMMITTEE (Recommended Substitute): Removes the Categorical Exemptions Board (Board) and restores all SEPA rulemaking authority in DOE. Directs DOE to conduct two phases of rulemaking over the next two years to update the categorical exemptions in rule, as well as the environmental checklist, and specifies minimum requirements to be included in the initial rulemaking. DOE must convene an advisory committee consisting of stakeholders to assist in both phases of rulemaking to update the thresholds for categorical exemptions and the environmental checklist. This rulemaking process ceases on July 31, 2013.

DOE must accept electronic submittal of all required notice filings from lead agencies.

Commercial development under 10,000 square feet and industrial development are removed from the list of development types for which a local government may adopt a categorical exemption for purposes of in-fill.

Projects that are located on or which would affect lands designated as agricultural lands of long-term significance pursuant to the GMA are added to the list of projects that still require environmental review under the SEPA, even if they are designed exclusively to restore natural wildlife or fishery habitats, or if they serve as environmental mitigation for other projects.

The statutory exemption for certain utility-related actions is removed. In addition, the statutory categorical exemptions for nonproject actions are applicable to all local governments, not just those planning under the GMA. Finally, the statutory categorical exemptions for project actions are removed.

Specifies that an applicant may still provide answers to any questions on the environmental checklist, even if a lead agency identifies instances where questions on the checklist are adequately covered by a locally adopted ordinance, development regulation, land use plan, or other legal authority.

Also specifies that nothing in the section of law related to the environmental checklist affects the general SEPA appeal provisions.

The sections related to integrated notice, comment, and appeals procedures for projects under the SEPA and the Local Planning and Review Act are removed.

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 on Original Bill: 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.