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## Environment Committee

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### HB 2709

**Brief Description:** Protecting the state's cultural resources.

**Sponsors:** Representatives Fitzgibbon, Fey and Appleton.

<p style="text-align: center;"><b>Brief Summary of Bill</b></p> <ul style="list-style-type: none"><li>• Makes decisions on certain project and nonproject actions subject to the cultural resource requirements of the State Environmental Policy Act environmental checklist and review process.</li></ul>
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**Hearing Date:** 2/4/14

**Staff:** Jacob Lipson (786-7196).

**Background:**

The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify environmental impacts that may result from governmental decisions, such as the issuance of permits or the adoption of land use plans. Generally, an environmental impact statement (EIS) must be prepared for a proposal which the lead agency determines will have a probable significant, adverse impact on the environment. However, statute and the SEPA rules contain categorical exemptions for certain actions that are not major actions significantly affecting the quality of the environment. Categorically exempt actions do not require further environmental review.

Cultural Resources in the SEPA Review Process.

Except for development projects that are exempt from the SEPA requirements, the SEPA generally requires a project applicant to submit an environmental checklist. Because the SEPA rules define historic and cultural preservation as a component of the built environment, cultural resources are one category of environmental impact covered by the SEPA checklist, and must be analyzed in an EIS where applicable.

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*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 SEPA checklist includes questions about the potential impacts of the project on the built environment and the natural environment, as well as questions about historic and cultural preservation. In particular, the project applicant must provide information about:

- any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site;
- any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site; and
- any proposed measures to reduce or control impacts.

The SEPA checklist is reviewed by the SEPA lead agency to determine whether the project is likely to have a significant adverse environmental impact. The lead agency will also review the checklist to determine if the applicant has identified mitigation sufficient to reduce environmental impacts.

After the checklist is reviewed, the lead agency issues its threshold determination. If a lead agency determines that a project is not likely to have a significant adverse environmental impact, or if mitigation sufficient to reduce these impacts has been identified, then the lead agency issues a determination of nonsignificance (DNS) or a mitigated DNS (MDNS), which includes mitigation conditions for the project. Alternatively, a lead agency issues a determination of significance (DS) if it determines that a project is likely to have a significant adverse environmental impact or mitigation cannot be identified to reduce these impacts. The DS triggers the requirement to prepare an EIS. The EIS is scoped to address only the matters determined to have a probable significant adverse environmental impact. The Washington Department of Archaeology and Historic Preservation is the determinant of cultural resource impacts, and provides written technical opinions to lead state and local lead agencies conducting reviews of decisions that potentially impact cultural resources.

#### 2012 Legislation and Subsequent SEPA Rules Update.

In 2012 the Legislature passed Chapter 1, Laws of 2012 1st Special Session (SB 6406), which took effect on July 10, 2012. The bill created new categorical exemptions from the SEPA review processes in statute, and directed the Department of Ecology (DOE) to further update the categorical exemptions under SEPA in a two-phase rule-making process, the second phase of which is still ongoing. The changes to SEPA under the 2012 law included:

- *Infill Exemption.* A city or county planning under the Growth Management Act was authorized to establish a new categorical exemption from the SEPA for project actions related to certain commercial developments up to 65,000 square feet, not including retail development. Among other requirements, the development must be proposed to fill in an urban growth area where current density and intensity of use is lower than called for in the comprehensive plan.
- *Nonproject Exemptions.* Other new categorical exemptions from the SEPA for certain nonproject actions were established. These nonproject actions included amendments to development regulations required to ensure consistency with an adopted comprehensive plan or a shoreline master program, or to provide increased environmental protection. They also included amendments to technical codes adopted to ensure consistency with state law.
- *Rule-based Exemptions.* By December 31, 2012, the DOE was required to increase the existing maximum threshold levels for specified categories of project actions, such as the construction or location of residential developments, the construction of certain

agricultural structures and commercial buildings, and land filling or excavation activities. The DOE was also required to establish maximum exemption levels for action types that vary based on the location of the project, such as whether the project is proposed to occur in or out of an urban growth area. By December 31, 2013, the DOE is required to update, but not decrease, the maximum threshold levels for all other project actions. The DOE is also required to create categorical exemptions for minor code amendments that do not lessen environmental protection.

**Summary of Bill:**

Decisions on certain proposed actions are made subject to the cultural resource requirements of the SEPA review process, including the environmental checklist and, when applicable, additional environmental analysis. The actions made subject to cultural resource review requirements are the ones that were made categorically exempt from the SEPA review pursuant to the 2012 legislation and subsequent rulemaking. Other actions made categorically exempt from the SEPA review pursuant to statutes enacted and rules adopted on or after July 1, 2012, are also subject to cultural resource review requirements.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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