

# HOUSE BILL REPORT

## HB 2709

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**As Reported by House Committee On:**  
Environment

**Title:** An act relating to protecting the state's cultural resources.

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

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

**Brief History:**

**Committee Activity:**

Environment: 2/4/14, 2/5/14 [DPS].

**Brief Summary of Substitute Bill**

- Requires local governments to provide notice of project permit applications to the Department of Archaeology and Historic Preservation, affected tribes that request ongoing notification, and other parties that request notification.

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### HOUSE COMMITTEE ON ENVIRONMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Fitzgibbon, Chair; Farrell, Fey, Kagi, Morris, Ortiz-Self and Tharinger.

**Minority Report:** Do not pass. Signed by 6 members: Representatives Senn, Vice Chair; Short, Ranking Minority Member; Pike, Assistant Ranking Minority Member; Harris, Nealey and Overstreet.

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

**Background:**

The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. The GMA establishes land use designation and environmental protection requirements for all Washington counties and cities, and a significantly wider array of planning duties for the 29 counties and the cities within that are

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obligated by mandate or choice to satisfy all planning requirements of the GMA. The GMA directs jurisdictions that fully plan under the GMA to adopt internally consistent comprehensive land use plans that are generalized, coordinated land use policy statements of the governing body. Comprehensive plans, which are the frameworks of county and city planning actions, are implemented through locally adopted development regulations.

State law establishes certain requirements for local government project permit review processes. Local governments are required to provide notice to project applicants within 28 days of receipt of a permit application which states whether the application is complete. The notice should identify other government entities that may have jurisdiction over any aspect of the project application. Local governments planning under a GMA comprehensive plan must provide a notice of permit decisions to the project applicant and others requesting notice once a permitting decision has been reached. This notice must include a statement of any threshold determinations under the State Environmental Policy Act.

Local governments that do not plan under a GMA comprehensive plan are exempt from certain aspects of the local project review process requirements, including the requirement to provide notices of project permit decisions that include threshold determinations under the State Environmental Policy Act (SEPA). This notice must also be provided to other persons who requested notice of the project permit decision.

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#### **Summary of Substitute Bill:**

Local governments are required to provide, within 28 days of receipt, a notice of project permit application completeness to the following parties, in addition to the project applicant:

- affected tribes that request ongoing notification;
- the Washington State Department of Archaeology and Historic Preservation; and
- other persons that request notification.

This notification requirement applies to local governments regardless of whether they are planning under a GMA comprehensive plan. Local governments may not adopt ordinances or resolutions to exclude certain types of project permits from these notification obligations.

Local governments that do not plan under a GMA comprehensive plan must also conform to the same project decision statement requirements as counties planning under a GMA comprehensive plan. This includes the requirement to provide notification of the decision to any parties who request it.

#### **Substitute Bill Compared to Original Bill:**

The substitute bill eliminates all of the original bill's requirements, which required certain otherwise-categorically exempt actions to undergo cultural resource review requirements under the SEPA.

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**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

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

**Staff Summary of Public Testimony:**

(In support) We want to make sure that in the course of streamlining the SEPA review processes, we don't eliminate necessary aspects of project review that aren't covered by other laws. The SEPA is often the only opportunity for tribes to protect cultural resources from development. Tribal graves and items of cultural significance are spread throughout this state, and there needs to be processes in place to protect the integrity of historical markers. Tribes are frustrated that we don't usually get sufficient notice of development in potentially culturally sensitive areas; existing development regulations don't usually provide notice or an opportunity to comment on proposed projects, or to protect cultural resources from being lost. This bill would not be retroactive to projects currently underway, but would possibly require one county to modify recently adopted ordinances to comply.

(Opposed) We are interested in continuing the dialogue on this process, but we are not sure that rolling back SEPA streamlining is the way to get at cultural resource protection concerns. This bill would create a lot of process and review for the Department of Ecology and local governments, without a commensurate benefit in cultural resource protection. The fact that tribes are even relying on the SEPA for notification requirements is a symptom of the fact other development regulation processes in the GMA aren't functioning correctly; it would be more powerful to resolve this problem by fixing development regulations, rather than amending the SEPA, which isn't a perfect tool for protecting cultural resources. Businesses want certainty in development regulations, and having a two-tiered SEPA cultural resource review for certain types of projects would be a step backwards.

**Persons Testifying:** (In support) Representative Fitzgibbon, prime sponsor; Dawn Vyvyan, Yakama Nation and Puyallup Tribe of Indians; and Ruth Jim, Yakama Tribal Council.

(Opposed) Josh Weiss, Washington State Association of Counties; Brandon Houskeeper, Association of Washington Business; and Tom Clingman, Department of Ecology.

**Persons Signed In To Testify But Not Testifying:** None.