

HOUSE BILL REPORT

ESSB 5946

As Reported by House Committee On:
Environment & Energy

Title: An act relating to the application of the state environmental policy act to temporary shelters and transitional encampments.

Brief Description: Concerning the application of the state environmental policy act to temporary shelters and transitional encampments.

Sponsors: Senate Committee on Housing Stability & Affordability (originally sponsored by Senators Nguyen, Saldaña, Hasegawa, Das and Lovelett).

Brief History:

Committee Activity:

Environment & Energy: 3/25/19, 4/1/19 [DPA].

**Brief Summary of Engrossed Substitute Bill
(As Amended by Committee)**

- Exempts permit actions to site certain temporary shelters or transitional encampments from the requirements of the State Environmental Policy Act.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: Do pass as amended. Signed by 7 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; Doglio, Fey, Mead, Peterson and Shewmake.

Minority Report: Do not pass. Signed by 3 members: Representatives Shea, Ranking Minority Member; Dye, Assistant Ranking Minority Member; Boehnke.

Staff: Jacob Lipson (786-7196).

Background:

The State Environmental Policy Act.

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,

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such as the issuance of permits or the adoption of land use plans. The SEPA environmental review process involves a project proponent or the lead agency completing an environmental checklist to identify and evaluate probable environmental impacts. If an initial review of the checklist and supporting documents results in a determination that the government decision has a probable significant adverse environmental impact (threshold determination), the proposal must undergo a more comprehensive environmental analysis in the form of an Environmental Impact Statement (EIS).

Under SEPA, a government agency is designated as the lead agency, and in that role is assigned responsibility for complying with SEPA's procedural requirements, including making a threshold determination and preparing the EIS when one is required.

State Environmental Policy Act Exemptions.

Under SEPA laws and in SEPA rules adopted by the Department of Ecology (ECY), certain projects or activities are exempt from SEPA requirements.

The SEPA laws:

- exempt specified actions undertaken during a state of emergency declared by the Governor, including emergency cloud seeding and the licensing-exempt weather modification and control activities undertaken during a water supply shortage or state of emergency related to a lack of precipitation; and
- require the ECY to adopt rules relating to actions exempt from SEPA in emergency situations.

The SEPA rules:

- exempt certain minor new construction, including the construction or location of single-family residential projects and multifamily residential projects with less than four units;
- provide authority for cities, counties, and towns to increase the minor new construction exemption threshold to up to 30 single-family or 60 multifamily units in urban growth areas in counties fully planning under the Growth Management Act, or up to 20 single-family residential units and 25 multifamily units in other areas;
- exempt certain land use decisions, such as for an exempt project or certain rezones associated with exempt projects; and
- exempt emergency actions that must be undertaken to avoid an imminent threat to public health or safety, to prevent an imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation.

State of Emergency Declarations by Local Governments.

Political subdivisions of Washington have the authority to declare emergencies or disasters, which are events or sets of circumstances which demand immediate action to preserve public health, protect life, protect public property, or provide relief to any stricken community. Political subdivisions may enter into contracts and incur obligations necessary to combat disasters, protect health and safety, and may provide for emergency assistance without regard to time-consuming procedures and formalities prescribed by law, including budget law, the appropriation and expenditure of funds, public work provisions, and contracting requirements.

Additionally, separate emergency management authorities are also provided to local governments under state law. Cities with a population of over 300,000 have authority maintain an emergency fund from which to expend money, by an ordinance approved by two-thirds of council members, to meet obligations or expenses from happenings that could not have been anticipated, including fire, flood, and other specified vents. Smaller cities and towns may also spend money, through the adoption of an ordinance approved by two-thirds of council members, on similar unanticipated happenings of an emergency. Counties may spend money upon the happening of an emergency upon a unanimous vote of county commissioners to adopt an emergency resolution.

At least three cities (Seattle, Olympia, and Tacoma) and one county (King) in Washington have issued determinations of an emergency related to persons experiencing homelessness within the past few years. Under a statutory authority that is distinct from the statutory authority which authorizes local governments to declare an emergency, the Board of Health of at least one county (Thurston) has also declared homelessness to be a public health crisis.

Summary of Amended Bill:

Certain permit actions to site temporary shelters or transitional encampments are exempt from compliance with the State Environmental Policy Act (SEPA). In order for the permit action to be exempt:

- the shelter or encampment must be used for people experiencing homelessness;
- the shelter or encampment must include no more than 200 beds, with a number of occupants based on one person per bed;
- the permit for the shelter or encampment must include a condition that the encampment or shelter be used on the site for no more than three years. Permit actions to extend or reissue a permit are not exempt from SEPA;
- the shelter or encampment must not involve the erection of a new permanent structure;
- the local jurisdiction acting as the lead agency must have declared a state of emergency on homelessness that is in effect at the time of the permit action; and
- the shelter or encampment must not be located within 1,000 feet of a school or early learning facility unless the school or early learning facility or its controlling organization has provided written notification approving the siting.

Temporary shelters are defined as uses sited in a new or existing structure or modular structure that provides temporary quarters for sleeping and shelter, and may include common food preparation, shower, or other facilities. Transitional encampments are defined as uses having tents, modular structures, vehicles, or similar shelters that provide temporary quarters for sleeping and shelter, including common food preparation, shower, or other commonly used facilities that are separate from the sleeping shelters.

The SEPA exemption for permit actions related to the siting of temporary shelters or transitional encampments does not limit or change the existing SEPA exemption adopted by rule for emergency actions that must be undertaken to avoid an imminent threat to public

health or safety, to prevent an imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation.

Amended Bill Compared to Engrossed Substitute Bill:

The striking amendment:

- requires the three-year limitation on the siting of a temporary shelter or transitional encampment to be a condition of the permit issued to the shelter or encampment in order for the exemption from the State Environmental Policy Act (SEPA) to apply, and does not exempt from SEPA any extensions or reissuances of a permit to a shelter or encampment that remains on site for longer than three years;
- specifies that the lead agency under SEPA must be the local jurisdiction that has declared a state of emergency related to homelessness in order for the SEPA exemption to apply;
- requires a declaration of homelessness-related emergency to be in effect at the time of the permit action in order for the SEPA exemption to apply;
- clarifies that all criteria that qualify a facility for an exemption from SEPA apply to the siting of both transitional encampments and temporary shelters;
- removes the requirement that a shelter or encampment prohibit the on-premises use of alcohol or drugs in order for the SEPA exemption to apply;
- specifies that a school or early learning facility must issue a written notification to a lead agency when authorizing a SEPA exemption for the siting of a temporary shelter or transitional encampment within 1,000 feet of the school or early learning facility; and
- specifies that the SEPA exemption for permit actions related to the siting of certain transitional encampments or temporary shelters is in addition to exemptions adopted by administrative rule related to actions that are exempt from SEPA in situations of emergency, and does not limit or change those other SEPA exemptions.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended 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) Homeless individuals who died from exposure this winter could have been helped if temporary shelters could have been more easily set up in advance of the winter. The State Environmental Policy Act (SEPA) does not add environmental protections with respect to the siting of an encampment facility that are not otherwise provided by other city codes. The City of Seattle has been operating in a state of emergency with regards to homelessness for several years and needs additional tools to allow homeless encampments to be established. The City of Seattle has management plans in place to ensure safety for the homeless encampments that it establishes. Cities should have more flexibility when addressing homelessness emergencies, and should retain discretion in forming contracts with homelessness service providers. There are many reasons people become homeless. As

written, the bill might preclude life-saving services from being provided because temporary shelters would not be able to serve individuals with substance abuse issues.

(Opposed) This bill is a Band-Aid on a homelessness problem that needs to be addressed in a unified, statewide or regional response. The emergency power of cities is insufficient to address homelessness because a city cannot declare a perpetual state of emergency. The bill does not establish sufficient protections for when SEPA requirements are to be waived. Health standards, toilet facilities, and other measures are necessary to prevent encampments from becoming reservoirs of diseases like typhus. Nonprofit organizations that receive state grants to provide homelessness services should be open and accountable with how they spend state money.

Persons Testifying: (In support) Senator Nguyen, prime sponsor; Mike Podowski, City of Seattle; and Lauren Fay, Downtown Emergency Service Center.

(Opposed) Arthur West.

Persons Signed In To Testify But Not Testifying: None.