

# HOUSE BILL REPORT

## ESSB 5946

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**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], 2/20/20, 2/27/20 [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.

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### HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

**Majority Report:** Do pass as amended. Signed by 10 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; DeBolt, Ranking Minority Member; Dye, Assistant Ranking Minority Member; Doglio, Fey, Goehner, Mead, Robinson and Shewmake.

**Minority Report:** Do not pass. Signed by 1 member: Representative Boehnke.

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

**Background:**

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 (Ecology), certain projects or activities are exempt from SEPA requirements.

State Environmental Policy Act 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 Ecology to adopt rules relating to actions exempt from SEPA in emergency situations.

State Environmental Policy Act 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.

Additional, separate emergency management authorities are also provided to local governments under state law. Cities with a population of over 300,000 have authority to 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 events. 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.

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### **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 the number of occupants based on one person per bed;
- the shelter or encampment must comply with the water quality regulations of the lead agency;
- the shelter or encampment may not be located within 1,000 feet of a salmon-bearing waterway or water body listed for impaired water quality;
- 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 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 an early learning facility permitted by the lead agency unless the school or early learning facility or its controlling organization has provided written notification approving the siting.

Lead agencies may determine, based on the needs and population served by a temporary shelter or transitional encampment, whether to allow drugs or alcohol by occupants of encampments or shelters sited under the SEPA exemption.

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. Temporary shelters and transitional encampments do not include sites that lack sufficient sanitary facilities, as determined by the lead agency after a public hearing.

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 makes the following changes to the engrossed substitute Senate bill:

- 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;
- provides that temporary shelters and transitional encampments do not include sites that lack sufficient sanitary facilities, as determined by the lead agency after a public hearing at which information about sanitary capacity is provided by a public health official;
- provides that transitional encampment or temporary shelter siting is not exempt from SEPA in locations within 1,000 feet of a salmon bearing waterway or water body listed for impaired water quality;
- requires temporary shelters or transitional encampments to comply with the water quality regulations of the lead agency in order to qualify for the exemption from SEPA;
- 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 and instead authorizes lead agencies to determine, based on the needs and population served by a temporary shelter or transitional encampment, whether to allow drugs or alcohol by occupants of encampments or shelters sited under the SEPA exemption;
- 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;
- specifies that early learning facilities from which a lead agency must receive approval prior to siting a transitional encampment or temporary shelter nearby without

- undergoing review under the SEPA include only facilities that are permitted by the lead agency and in existence at the time of siting; and
- specifies that 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.
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**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) Siting of temporary encampments and shelters is one tool to help provide a stable environment for people experiencing homelessness. The exemption from the State Environmental Policy Act (SEPA) would only apply in jurisdictions that have declared an emergency on homelessness. Other laws and land-use codes protective of the environment would apply to the siting of encampments, such as laws protecting water quality. Experience with SEPA review of encampment and shelter siting shows that it is a duplicative review and can substantially delay and add unnecessary costs to siting efforts.

(Opposed) None.

**Persons Testifying:** Senator Nguyen, prime sponsor; and Mike Podowski, City of Seattle.

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