

August 29, 2019

MEMORANDUM

To: Planning, Land Use and Zoning Committee
From: Lish Whitson, Analyst
Subject: Comparison of Seattle's State Environmental Policy Act (SEPA) requirements and environmental review in other jurisdictions

At the August 7, 2019, Planning, Land Use and Zoning Committee (PLUZ) meeting, Councilmembers requested a review of how Seattle's State Environmental Policy Act (SEPA) regulations compare with requirements in other jurisdictions. This memorandum discusses environmental review in other states and Washington State's largest jurisdictions to support the Committee's review of [Council Bill 119600](#). At the September 4, 2019, PLUZ meeting, I will briefly discuss the findings in this memo and answer Councilmembers' questions.

Council Bill 119600

Council Bill 119600 would make the following changes to Seattle's SEPA regulations as discussed in the [Central Staff memorandum](#) for the August 7, 2019, PLUZ meeting:

1. Add a time limit on the length of SEPA appeals in front of the Hearing Examiner, limiting appeals to 120 days, 150 days with notice to all parties, or longer if all parties agree;
2. Incorporate SEPA exemptions for nonproject actions under [RCW 43.21C.450](#);
3. Incorporate SEPA exemptions for multifamily, mixed use and commercial development in urban villages up to the limits currently provided for urban centers under [RCW 43.21C.229](#);
4. Incorporate waivers of appeals of some actions as provided by [HB 1923 \(2019\)](#);
5. Permit the Director of the Seattle Department of Construction and Inspections (SDCI) to promulgate rules to provide uniform standards for preparing environmental documents;
6. Clarify that additional non-environmental analysis of economic issues, when included in an environmental document, is not subject to appeal;
7. Clarify that analysis of the potential economic impacts related to individual businesses is not required under SEPA; and
8. Clarify that the Legislative Department may act as lead agency or may delegate lead agency status to another City agency, at its discretion.

In brief, only four other states require that cities review environmental impacts associated with associated with governmental decisions. No other state's environmental regulations provide for appeals to be heard by Hearing Examiners, and only two states allow appeals to the courts.

Washington is the only state that provides for appeals to both a local Hearing Examiner and the courts.

“Little NEPAs”

Following the adoption of the Federal National Environmental Policy Act (NEPA) in 1969, 20 states adopted laws to require the analysis and disclosure of environmental impacts of governmental decisions. These laws are commonly called “[Little NEPAs](#).” Each State’s program is unique. Only five of those state laws apply to local jurisdictions: California, Georgia, Minnesota, New York and Washington. None of these states, except Washington, allows for appeals to a Hearing Examiner.

California, Minnesota and New York have environmental review programs that are more similar to Washington’s SEPA. Each requires an early determination of whether a governmental action could have significant adverse impacts to the environment. If so, they then require the development of a more detailed Environmental Impact Statement (EIS). Each state provides for a round of public comments on a draft EIS.

California and New York allow for challenges to the adequacy of the Final EIS to the courts. In California, appeals of negative declarations¹ are heard by the elected decisionmaking body.

In Minnesota, the State Environmental Quality Board has 60 days to determine whether an EIS is adequate. If determined to be inadequate, lead agencies have 60 days to revise the EIS.

In Georgia, a jurisdiction is required to issue an “environmental effects report” on governmental actions. There is no opportunity for appeal of an environmental effects report.

The other aspect of these Little NEPAs that is relevant to Council Bill 119600 is the use of exemptions to exclude some projects from environmental review. These include:

- Georgia: no environmental review of permitting decisions or adoption of regulations.
- Minnesota: in the Twin Cities metropolitan area, no environmental review of projects with fewer than 1,500 attached units or 1,000 detached units.
- California: No environmental review for affordable housing projects or residential infill projects up to 100 units.

¹ A negative declaration is a statement that there are not likely to be significant adverse environmental impacts, similar to Washington’s Determination of Nonsignificance.

Washington's Largest Jurisdictions

In contrast to these states, Washington's SEPA provides for appeals of a Determination of Nonsignificance or a Final EIS to a local Hearing Examiner, provided the local jurisdiction chooses to use a Hearing Examiner. Each of Washington's largest counties and cities provides for appeals of environmental determinations and EIS's to a Hearing Examiner. Four of these jurisdictions have time limits for the Hearing Examiner's determination:

- King County: Hearing Examiner must issue a decision within 90-120 days of the appeal, may be longer if parties agree to a longer timeframe.
- Pierce County: Hearing must be scheduled within 70 days of the appeal. The Hearing Examiner must publish their decision within 10 days of the close of the appeal.
- City of Spokane: Hearing must be scheduled within 30 days of the appeal, unless parties agree to a longer term.
- Tacoma: Hearing Examiner decision must be issued within 120 days of the appeal. Tacoma does not provide for Hearing Examiner appeals of non-project actions.²

Washington's other large counties and cities³ provide for appeals to be heard by a Hearing Examiner and do not include a time limit on those hearings.

Next Steps

A public hearing on CB 119600 is scheduled for 5:30 pm on Monday, September 9, 2019. The PLUZ Committee may take action on the bill at a special meeting on September 11.

cc: Kirstan Arestad, Exec Director
Aly Pennucci, Supervising Analyst

² Non-project actions include plans and policies that do not directly result in construction or development of a structure.

³ These include Snohomish, Spokane, and Clark counties, and Vancouver, Bellevue, and Kent.