

HOUSE BILL REPORT

2ESSB 6406

As Passed House - Amended:

April 10, 2012

Title: An act relating to modifying programs that provide for the protection of the state's natural resources.

Brief Description: Modifying programs that provide for the protection of the state's natural resources.

Sponsors: Senate Committee on Energy, Natural Resources & Marine Waters (originally sponsored by Senators Hargrove, Hobbs, Delvin, Hatfield, Tom, Stevens, Regala, Morton, Ranker and Shin).

Brief History:

Committee Activity:

Ways & Means: 3/7/12.

First Special Session

Floor Activity:

Passed House - Amended: 4/10/12, 75-23.

Brief Summary of Second Engrossed Substitute Bill (As Amended by House)

- Establishes Hydraulic Project Approval (HPA) fees and exemptions through June 30, 2017.
- Specifically authorizes multiple site HPAs and expands the use of an existing HPA for regular maintenance activities at marinas and marine terminals.
- Integrates HPAs for forestry activities into the associated forest practices application (FPA).
- Extends the duration of an approved FPA.
- Increases FPA fees.
- Requires State Environmental Policy Act (SEPA) rulemaking.
- Modifies other SEPA provisions including those relating to categorical exemptions and local government cost recovery.
- Modifies provisions relating to municipal storm water general permits.

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.

HOUSE COMMITTEE ON WAYS & MEANS

Staff: Michael Bennion (786-7118) and Jason Callahan (786-7117).

Background:

Hydraulic Project Approvals.

A Hydraulic Project Approval (HPA) is required for any project that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. Hydraulic permit approvals are issued by the Washington Department of Fish and Wildlife (WDFW) to ensure the proper protection of fish life. There is currently no fee for an HPA. Generally, a person must apply for and obtain an HPA for each hydraulic project conducted.

Forest Practice Applications.

There are four classes of forest practices based on the potential for a proposed project to adversely affect public resources. The Forest Practices Board (Board) establishes standards that determine which forest practices are included in each class. Any owner of forest land who proposes to conduct a forest practice must pay an application fee. The fee for most forest practices applications is \$50. However, a fee of \$500 generally applies to forest practice operations on lands that have high potential for conversion.

State Environmental Policy Act.

The State Environmental Policy Act (SEPA) applies to decisions by every state and local agency within Washington, including proposals for projects such as construction projects; and nonproject actions such as an agency decision on a policy, plan, or program. The lead agency is responsible for identifying and evaluating the potentially adverse environmental impacts of a proposal. Generally, an Environmental Impact Statement must be prepared for a proposal which the lead agency determines will have a probable significant, adverse impact on the environment. However, statute and 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.

Municipal Storm Water General Permits.

The federal Clean Water Act (CWA) establishes the National Pollutant Discharge Elimination System (NPDES) permit system to regulate wastewater discharges from point sources to surface waters. The NPDES permits are required for storm water discharges from certain industries, construction sites of specified sizes, and municipalities operating municipal separate storm sewer systems that meet specified criteria. The Department of Ecology (DOE) administers permits, including municipal storm water general permits, under the CWA.

On January 17, 2007, the DOE reissued the phase I municipal storm water general permit and issued two phase II municipal storm water permits, one for Western Washington and one for Eastern Washington, all with an effective date of February 16, 2007. As a result of 2011 legislation, by July 31, 2012, the DOE must extend the phase II permits for a term of one year and without modification. Additionally, the DOE must issue updated phase II permits, which become effective on August 1, 2013.

Summary of Bill:

Establishes a System of HPA Fees and Exemptions.

The WDFW must generally charge an application fee of \$150 for an HPA located at or below the ordinary high water line. Exemptions from the application fee are provided for project types including pamphlet permits, applicant funded contracts, hydraulic permit approvals on farm and agricultural lands, and mineral prospecting and mining activities. The authority to impose the application fee expires June 30, 2017.

Modifies Certain HPA Permitting Authorities.

The WDFW may issue a multiple-site permit, which provides site-specific permitting for multiple projects. Also, activities that may be conducted under an existing specific category of HPA for regular maintenance activities at marinas and marine terminals are expanded.

Integrates HPAs for Forestry Activities into the Associated Forest Practices Application.

By December 31, 2013, the Board must incorporate fish protection standards from current WDFW rules into the Forest Practices Rules, as well as approve technical guidance. Once these rules have been incorporated, a hydraulic project requiring an associated forest practices application (FPA) or notification is exempt from the HPA requirement and is regulated under the forest practices rules. Future changes in WDFW's fish protection rules relevant to forestry must go through the forest practices adaptive management process, consistent with a provision of the 1999 forests and fish report.

The WDFW may continue to review and comment on any FPA. The WDFW must review, and either verify that the review has occurred or comment on, certain forest practices applications relating to fish bearing waters or shorelines of the state. The WDFW must also provide concurrence review for certain FPAs that involve a water crossing structure, including specified culvert projects, bridge projects, and projects involving fill. Under this process, applicants must submit plans and specifications to the Department of Natural Resources (DNR). The WDFW has up to 30 days to review the project for consistency with standards for the protection of fish life.

Extends Timeframes Relating to FPAs.

The duration of an FPA or notification is increased from two to three years, and can be renewed subject to any new forest practices rules.

Increases FPA Fees.

Forest practices application fees are generally increased threefold. Specifically, forest practices applications in which the land is to remain in forestry, Class II, III, and IV special, are increased from \$50 to \$150. However, this fee is reduced to \$100 for small forest landowners harvesting on a single, contiguous ownership. Class IV general applications involve conversion related activities and are increased from \$500 to \$1500.

Requires SEPA-Related Rulemaking.

By December 31, 2012, the DOE must update the rule-based categorical exemptions to SEPA, as well as update the environmental checklist. In updating the categorical exemptions, the DOE must increase the existing maximum threshold levels for the specified project types such as the construction or location of residential developments, agricultural

structures, or construction of a commercial building. The maximum exemption levels must vary based on the location of the project, such as whether the project is proposed to occur inside or outside of an urban growth area. The DOE may not include any new subjects in updating the checklist, including climate change and greenhouse gasses.

By December 31, 2013, the DOE must update the thresholds for all other project actions, create categorical exemptions for minor code amendments that do not lessen environmental protection, and propose methods for more closely integrating SEPA with the Growth Management Act. During these rulemaking processes, a local government may generally apply the highest rule-based categorical exemption level regardless of whether the city or county with jurisdiction has exercised its authority to raise the exemption level above the established minimum.

The DOE must convene an advisory committee that includes interests including local governments, businesses, environmental interests, state agencies and tribal governments. The advisory committee must assist in the rulemaking processes and work to ensure that tribes, agencies, and stakeholders can receive notice of projects through SEPA and other means.

Modifies and Creates New Statutory Categorical Exemptions.

The types of development that may qualify as a planned action are expanded to include essential public facilities that are part of a residential, office, school, commercial, recreational, service, or industrial development that is designated as a planned action. Tools are specified for the determination of project consistency with a planned action ordinance. Notice and public meeting requirements are provided for planned actions that encompasses an entire jurisdiction or less than an entire jurisdiction.

Commercial development up to 65,000 square feet, excluding retail development, is made eligible for the infill development categorical exemptions where consistent with planning and environmental review criteria.

New categorical exemptions are established for certain nonproject actions including amendments to development regulations: required to ensure consistency with comprehensive plans; required to ensure consistency with shoreline master programs; and that provide an increase in specified types of environmental protection.

Makes Other Changes to SEPA and Local Development Provisions.

Other changes to SEPA and local development provisions include:

- authorizing local governments to recover certain costs for expenses incurred in preparing a nonproject Environmental Impact Statement regarding planned actions and infill development, and establishing processes for imposing and appealing associated development fees;
- authorizing money in the Growth Management Planning and Environmental Review Fund to be used to make loans, in addition to grants, to local governments for specified purposes; and
- authorizing lead agencies to identify within an environmental checklist items that are adequately covered by other legal authorities, although a lead entity may not ignore or delete a question.

Modifies Provisions Relating to Municipal Storm Water General Permits.

By July 31, 2012, the DOE must extend for an additional one year, for a total of two years, and without modification the phase II municipal storm water general permit for Eastern Washington municipalities. Additionally, the DOE must issue an updated permit for these Eastern Washington municipalities to become effective on August 1, 2014.

Updated Western Washington phase II municipal storm water general permits must become effective August 1, 2013, as under current law. Timeframes for the effect of certain requirements within the updated permit are specified, including for low impact development requirements and local code reviews, catch basin inspection and illicit discharge detection frequencies, and application of storm water controls to projects smaller than one acre.

Definitions are provided and amended. Technical changes are made.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains multiple effective dates.

Staff Summary of Public Testimony:

(In support of ESSB 6406) The DNR supports the bill and is happy to do their part to integrate streamlining and permit processing efficiencies. Key to the DNR's support is the revised fee structure necessary to do the new work outlined. The modest streamlining is in-line with what the 1999 Legislature directed: one permit for HPAs and FPAs. The forest industry is in some of the worst economic times since the Great Depression. The industry is still a large job provider and each year contributes to the Forest and Fish Support Account and the adaptive management activities it supports, pays tens of millions of dollars in taxes and engages in other costly environmental protection actions, and yet we have agreed to a threefold increase in our permit fees. By delaying the expensive storm water permits which have nominally more benefits than the existing permit, housing starts will get going again and hundreds of millions of dollars will flow into local governments. Tripling the fees on small forest landowners is counterintuitive to the interests of the state. This bill strikes the appropriate middle ground and unlike other proposals does not widen the gap between storm water Phase I and Phase II permits. All permit holders should have the same standards. It makes sense to have the review and a time to adjust after seeing what the Environmental Protection Agency reports in their audit of Phase I permits.

(In support with concerns on ESSB 6406) The Association of Washington Counties is largely supportive of the bill, with the exception of the storm water provisions which our members have differing positions on. The SEPA component has been worked on for several years and will save local governments money. The SEPA provisions are similar to those in a bill that passed the House, but not the Senate, and are not a detriment to the environment.

(With concerns on ESSB 6406) Hydraulic Project Approval programs provide an important protection to fish and their habitats—a foundational component for the WDFW's ability to

manage commercial and recreational fisheries in the state as well as supporting healthy aquatic ecosystems. Creating fees for the HPA programs is essential to support the program, manage previous program reductions and, at a minimum, maintain the level of staffing. The WDFW would like to see the fee set permanently. The League of Women Voters is concerned with the part of the bill that deals with storm water permits. The Legislature should consider who would be most likely impacted by these provisions regarding toxic runoff and storm water. That tends to be more low-income and marginalized communities, tribal communities, and those more likely to fish and eat the fish out of the aquatic bodies. Please think about the economic and health care costs of rolling back these rules. The Association of Washington Business (AWB) supports fees if it comes with reform, which this bill does not. In exchange, there is at least a sunset on the fees and we would support tying that with a GAAP analysis. Without the sunset, AWB is opposed. Storm water is a huge cost driver and AWB supports and encourages delaying the permit and adding LID to the provisions of the underlying bill. Predictability is absolutely essential. The Legislature needs to be absolutely clear about the jurisdictional questions of where this fee would be applied. This bill relies on a study and postpones jurisdictional questions to some future date and this should be resolved right now. The programmatic HPAs are a very reasonable way to streamline efficiencies and reduce cost for basic maintenance activities.

(Opposed to ESSB 6406) The DOE supports the state environmental policy act section and opposes the storm water section, believing it would create unnecessary delay, cause uncertainty, and increase permit costs. In addition, there are questions of whether it would impact our delegation agreement with the Environmental Protection Agency. The Skagit River System Cooperative is opposed to the version of the bill that passed out of the Senate. Our primary concern surrounds the general HPAs. It is broad, open-ended, typically issued to county road crews whose work could have a damaging impact on the environment. We support the civil authority provisions that were taken out of the bill in the Senate.

Persons Testifying: (In support of ESSB 6406) Darin Cramer, Department of Natural Resources; Debora Munguia, Washington Forest Protection Association; Art Castle, Building Industry Association of Washington; Rick Dunning, Washington Farm Forestry Association; George Walk, Pierce County; and Carl Schroeder, Association of Washington Cities.

(In support with concerns on ESSB 6406) Josh Weiss, Washington State Association of Counties.

(With concerns on ESSB 6406) Jeff Davis, Department of Fish and Wildlife; Lonnie Johns-Brown, League of Women Voters; Brandon Houskeeper, Association of Washington Business; Johan Hellman, Washington Public Ports Association; and Genesee Adkins, King County.

(Opposed to ESSB 6406) Don Seeberger, Department of Ecology; Tim Hyatt, Skagit River System Cooperative; Cliff Traisman, Washington Environmental Council and Washington Conservation Voters; Dawn Vyvyan, Yakama Nation; Bruce Wishart, People for Puget Sound and Sierra Club; Mo McBroom, Washington Environmental Council; Tom Davis, Washington Farm Bureau; Van Collins, Associated General Contractors; and Miguel Perez-Gibson, Colville Tribes and Washington Environmental Council.

Persons Signed In To Testify But Not Testifying: None.