

FINAL BILL REPORT

2ESSB 6406

PARTIAL VETO C 1 L 12 E 1 Synopsis as Enacted

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).

Senate Committee on Energy, Natural Resources & Marine Waters
Senate Committee on Ways & Means
House Committee on Ways & Means

Background: Hydraulic Project Approvals (HPA). An 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. HPAs are issued by the Department of Fish and Wildlife (DFW) 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. The Forest Practices Act establishes four classes of forest practices based on the potential for a proposed operation 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 (SEPA). SEPA applies to decisions by every state and local agency within Washington, including: proposals for project actions 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 SEPA 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.

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.

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. 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, 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, DOE must extend the phase II permits for a term of one year and without modification. Additionally, DOE must issue updated phase II permits, which become effective on August 1, 2013.

Summary: Establishes a System of HPA Fees and Exemptions. DFW 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, HPAs 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. DFW 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 (FPA). By December 31, 2013, the Board must incorporate fish protection standards from current DFW rules into the Forest Practices Rules, as well as approve technical guidance. Once these rules have been incorporated, a hydraulic project requiring an FPA or notification is exempt from the HPA requirement and is regulated under the forest practices rules. Future changes in DFW'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.

DFW may continue to review and comment on any FPA. DFW 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. DFW 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 DFW has up to 30 days to review the project for consistency with standards for the protection of fish life prior to review of the FPA by DNR.

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. FPA 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, DOE must update the rule-based categorical exemptions to SEPA, as well as update the environmental checklist. In updating the categorical exemptions, 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. DOE may not include any new subjects in updating the checklist, including climate change and greenhouse gasses.

By December 31, 2013, 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.

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 encompass 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 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, 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, 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.

Votes on Final Passage:

Senate 27 21

First Special Session

Senate 35 14

House 75 23 (House amended)

Senate 34 13 (Senate concurred)

Effective: July 10, 2012

Partial Veto Summary: The Governor vetoed provisions of the act specifying circumstances in which a local government may recover expenses incurred in preparing certain non-project environmental impact statements.