

SENATE BILL REPORT

SB 5862

As of April 19, 2011

Title: An act relating to the administration of natural resources programs.

Brief Description: Regarding the administration of natural resources programs.

Sponsors: Senators Hargrove, Pridemore and Swecker; by request of Department of Fish and Wildlife and Department of Natural Resources.

Brief History:

Committee Activity: Natural Resources & Marine Waters: 3/09/11, 4/01/11 [DPS-WM, DNP, w/oRec].

Ways & Means: 4/19/11.

Brief Summary of Bill

- Establishes hydraulic project approval fees.
- Integrates hydraulic project approvals for forestry activities into the associated forest practices application.
- Increases forest practices application fees.
- Makes other changes to the hydraulic project approval and forest practices application processes.

SENATE COMMITTEE ON NATURAL RESOURCES & MARINE WATERS

Majority Report: That Substitute Senate Bill No. 5862 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Ranker, Chair; Regala, Vice Chair; Hargrove and Swecker.

Minority Report: Do not pass.

Signed by Senator Stevens.

Minority Report: That it be referred without recommendation.

Signed by Senator Morton, Ranking Minority Member.

Staff: Curt Gavigan (786-7437)

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.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Chris Godwin (786-7441)

Background: Hydraulic Project Approvals (HPA). An HPA is required for any hydraulic project, which is a 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, and in recent years DFW has processed approximately 4000 applications per year.

Pamphlet HPAs. Generally, a person must apply for and obtain an HPA for each hydraulic project conducted. However, in two circumstances the Legislature has provided DFW with the authority to adopt rules and publish a pamphlet that serves as the HPA. These activities are removing and controlling noxious weeds, and small-scale prospecting and mining.

HPA Enforcement. A person is subject to a gross misdemeanor for certain HPA-related violations, which include conducting a hydraulic project without an HPA or violating a requirement or condition of an HPA. DFW may also impose civil penalties of up to \$100 per day for violations of the statutory provision that sets out the HPA requirement and basic permitting process.

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. The classes are:

- Class I forest practices are those determined by the Board to have no direct potential for damaging a public resource.
- Class II forest practices have a less than ordinary potential for damaging a public resource.
- Class III forest practices are more substantial than Class II, but less substantial than Class IV.
- Class IV forest practices include activities on lands that have high potential for conversion or substantial environmental impacts.

Forest Practice Fees. 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.

Summary of Bill (Recommended Substitute): Specifies Circumstances in Which an HPA is Required. An HPA is required for a hydraulic project conducted at or below the ordinary high water line, or that meets both of the following:

- is a dike, levee, bridge, shoreline, or stream bank protection project, or a mineral prospecting and mining activity; and
- is conducted within a channel migration zone, 100-year floodplain, or 200-foot landward of the ordinary high water line.

Establishes an HPA Fee System to Provide Dedicated Funding for the HPA Program. DFW must generally charge fees for HPAs according to a statutory fee schedule that is adjusted annually for inflation. The fees are as follows:

- *Single-Site Permits.* A total of \$150 for low-complexity projects, \$650 for medium-complexity projects, and \$1,300 for high-complexity projects, with project complexity based on categories established in the act;
- *Multiple-Site Permits.* A fee established based on project complexity and the number of sites;
- *General Permits.* A total of \$5,000 for a general permit, authorizing up to three project types. There is an additional charge for additional project types. The renewal fee for a general permit authorizing the same project types and geographic range is \$100.
- *Permit Modification.* A permit modification fee of \$100.

An appropriated account is created to hold HPA fees collected that are used to fund DFW's HPA-related activities.

Provides Specified Fee Exemptions and Refunds for HPAs.

- *Fee Exemptions.* Full fee exemptions are provided for activities associated with pamphlet permits, applicant funded contracts, and a number of fish passage and habitat project types. An application for mineral prospecting and mining activities is exempt from the permit processing fee, meaning that the cost is \$150 for such applications. Also, DFW may reduce fees if the work required to receive and process an application is substantially less than typically required.
- *Fee Refunds.* DFW must refund a portion or all of the application submittal and permit processing fee in certain circumstances including where DFW fails to process an application by the statutory deadline, denies a permit, or if no permit is required.

Specifically Authorizes General and Multiple Site HPAs. DFW may issue a multiple-site permit, which provides site-specific permitting for multiple projects. DFW is also authorized to issue a general permit covering multiple projects at unspecified sites across a defined area if the impacts from the projects are well understood and proven mitigation measures exist. A specific category of general permit is provided for regular maintenance activities at marinas and marine terminals.

Modifies Civil and Criminal Enforcement Provisions for HPAs.

- *Stop Work Orders.* DFW is authorized to issue a notice to comply or stop work order for HPA related violations.
- *Civil Penalties.* DFW is authorized to levy civil penalties of up to \$10,000 for each HPA related violation, with the maximum penalty varying by project complexity. DFW must establish a civil penalty schedule that considers factors including the impact of the violation and whether a person has a history of violations.
- *Criminal Penalties.* HPA violations include a violation of a stop work order or a DFW rule-identifying conditions under which an HPA is approved.

Establishes Monitoring and Reporting Requirements for HPAs. By January 1, 2012, DFW must implement a program to monitor the effectiveness of the HPA program, including compliance and fish life protection. By December 31, 2013, DFW must report to the

Legislature on matters including the impact of fees and recommendations to improve permit streamlining and the HPA fee schedule.

Makes Substantive Changes to Other HPA Provisions.

- an HPA is required to contain provisions allowing for minor deviations from a work timing window where there are no spawning or incubating fish present in the vicinity;
- the requirement for an HPA permittee to demonstrate substantial progress on the project within two years of receiving an HPA is removed. An HPA remains valid for up to five years; and
- DFW must post examples of high-quality HPA applications and the resulting permits on the Internet.

Integrates HPAs for Forestry Activities into the Associated FPA. An activity requiring an FPA is exempt from the requirement to obtain an HPA, and from regulations that apply to HPAs.

- *Role of DFW.* DFW may review and provide comments on FPAs, and may conduct a site visit. Any comments must be provided within 30 days of the FPA submittal. DFW must conduct a review of certain project types that pose a significant risk to fish bearing waters. DNR must provide additional weight to DFW's comments if DFW was required to review the project and conduct a site visit.
- *Role of DNR.* By December 31, 2011, the Board must integrate relevant HPA rules adopted by DFW into the Forest Practices Rules; adopt guidance in the Forest Practices Board Manual; and, based on specified criteria, determine categories of projects that pose a significant risk to fish life that DFW must review. The Board must utilize and accept recommendations from the Timber, Fish, and Wildlife Policy Committee in carrying out these duties. DNR holds approval and enforcement authority over FPAs that include a hydraulic project. When DFW changes hydraulic rules in the future, the Board must integrate relevant changes into the forest practices rules.
- *Memorandum of Agreement.* By October 31, 2011, DFW and DNR must develop a memorandum of agreement covering the transition of HPAs into FPAs consistent with the act's provisions.

An FPA application that involves a hydraulic project must include plans for the project and proposed measures for the projection of fish life. An FPA that involves a hydraulic project may not be processed as a Class II FPA, which would require only notification to DNR.

DNR must post examples of high-quality HPA applications and the resulting permits on the Internet

Extends Timeframes Relating to FPAs. The time generally allotted DNR to process a Class III or IV FPA that includes a hydraulic project is increased from 30 to 45 days. The duration of an FPA or notification is increased from two to four years, and can be renewed by filing a new FPA or notification. DNR may review and condition previously approved four year FPAs in order to implement an agreement under the state Forest Practices Habitat Conservation Plan dispute resolution process.

Increases FPA Fees. FPA fees are increased in the following manner:

- All Class II and those Class III applications involving 20 acres or less of harvest are increased from \$50 to \$100.
- Class III applications involving from more than 20 acres to 120 acres of harvest are increased from \$50 to \$150.
- Class III applications involving more than 120 acres of commercial harvest are increased from \$50 to \$550.
- Class IV applications for which DNR must analyze whether an environmental impact statement is required are increased from \$50 to \$750.
- Class IV applications on lands that have high potential for conversion are generally increased from \$500 to \$5,000.

Definitions are provided and amended.

EFFECT OF CHANGES MADE BY NATURAL RESOURCES & MARINE WATERS COMMITTEE (Recommended Substitute): The recommend substitute bill:

- removes the intent section;
- changes definitions relating to HPAs and FPAs;
- specifies circumstances in which an HPA is required;
- changes the fee schedule for HPAs, including varying fees based on project complexity;
- specifies a HPA general permit category for marina and marine terminal maintenance;
- varies maximum civil penalties for HPAs based on project complexity;
- changes the process by which the Board adopts HPA rules for purposes of integration, allowing integration instead of incorporation by reference;
- removes the requirement that DFW review all forest practices related HPAs and specifies a process for determining which it must review;
- changes the process by which approved four-year forest practices permits may be reconditioned;
- extends the allowed processing time for Class III and IV FPAs to 45 days only if there is an associated HPA; and
- changes the fee schedule for FPAs.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Natural Resources & Marine Waters): PRO: This bill will complete integration of FPAs and HPAs for forestry activities as contemplated under the Forests and Fish Agreement. The fees contained in the bill would also help offset general funds support for these two programs. The integration of the programs in the bill maintains fish protection by allowing DFW to continue to adopt HPA rules, conduct compliance monitoring, and comment on proposed FPAs. Streamlining is also accomplished by moving two required permits into one for forest landowners. The federal

government is concerned about the integrity of the habitat conservation plan, and wants to make sure integration involves adequate monitoring. The HPA program plays an important role in the protection of Puget Sound, and must be sustained.

CON: HPAs are unlawful and their issuance currently takes too long; so, they are not worth the money charged under the bill for the small scale mineral prospecting community. DFW has not demonstrated that small scale mining activities pose a significant impact to fish, and limiting access to this activity hurts mineral recovery and the individuals who enjoy it. The bill will not raise sufficient revenue, particularly since the main HPA users are other agencies and the bill includes so many fee exemptions. The timber industry opposes the bill because the fee is excessive and the HPA and FPA programs are not in fact streamlined, but is willing to continue dialog on the issue. Private timber companies have struggled in recent years and have had to become more efficient, which DFW and DNR must also do prior to imposing fees. Additionally, the agencies should look to lower the regulatory burdens. Fee increases in the HPA program are not appropriate while the question of the extent of upland jurisdiction of the HPA program is still unresolved, which should be defined as the wetted perimeter.

OTHER: It is appropriate for HPA users to contribute to the program, as do other environmental permittees. Providing DFW with enhanced HPA civil enforcement authority is also important to provide a non-criminal deterrent for HPA violations. Changes to the HPA program must not include a change in the program's jurisdiction. Resources provided to DFW in the bill would provide important effectiveness monitoring capacity. Although integration of FPAs and HPAs for forestry activity could be successful, DFW must have a stronger role in issuing and conditioning permits. Integration cannot be accomplished at the expense of environmental protection. Cities and counties understand the state's need to impose fees, but want to make sure the Legislature closely monitors the results of program changes.

Persons Testifying (Natural Resources & Marine Waters): PRO: Bridget Moran, Clay Sprague, DNR; Lisa Veneroso, DFW; Kirstin Arestad, Office of Financial Management; Steve Landino, National Oceanic and Atmospheric Administration; Tim Hyatt, Skagit River System Cooperative; Alia Griffins, WA Federation of State Employees; Michael Grayum, Puget Sound Partnership.

CON: Bruce Beatty, Barbara Kovacs, Bela Kovacs, citizen; Ed Levesque, gold miner; William Thomas, Washington Prospectors; Robert Cunningham, NW Treasure Supply; Tom Nelson, Sierra Pacific Ind.; Rick Dunning, WA Farm Forestry Assn.; Mark Doumit, WA Forest Protection Assn.; Norm Schaaf, Merrill and Ring; Robert Meier, Rayonier; Scott Atkinson, NW Mineral Prospectors Club; Johan Hellman, WA Public Ports Assn.; John Stuhmiller, WA Farm Bureau.

OTHER: Miguel Perez Gibson, Colville Tribe; Dawn Vyvan, Yakama Nation; Bruce Wishart, People for Puget Sound; Josh Weiss, WA State Assn. of Counties; Gary Rowe, County Engineers; Dave Williams, Assn. of WA Cities; Doug Levy, Cities of Kent and Everett; Bill Robinson, The Nature Conservancy.