

SENATE BILL REPORT

SB 5669

As Reported by Senate Committee On:
Natural Resources & Marine Waters, February 21, 2011

Title: An act relating to consolidating natural resources agencies and programs.

Brief Description: Regarding the consolidation of certain natural resources agencies and programs.

Sponsors: Senators Ranker, Swecker, Regala, Rockefeller, Nelson, White, Pflug and Shin; by request of Governor Gregoire.

Brief History:

Committee Activity: Natural Resources & Marine Waters: 2/10/11, 2/21/11 [DPS-WM, DNP, w/oRec].

Brief Summary of Substitute Bill

- Creates the Department of Fish, Wildlife and Recreation as a new executive agency;
- Consolidates the Department of Fish and Wildlife, State Parks and Recreation Commission, Recreation and Conservation Office, and Department of Natural Resources' Law Enforcement Program into the new agency;
- Consolidates the Pollution Liability Insurance Agency, certain reclaimed water functions, and certain support functions for the Columbia River Gorge Commission into the Department of Ecology, and consolidates low-level radioactive waste site use permitting functions into the Department of Health;
- Establishes transition teams and processes to facilitate the consolidation of agencies and programs into the new agency; and
- Establishes July 1, 2012, as the date the various consolidations occur.

SENATE COMMITTEE ON NATURAL RESOURCES & MARINE WATERS

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.

Majority Report: That Substitute Senate Bill No. 5669 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; Fraser and Swecker.

Minority Report: Do not pass.

Signed by Senators Morton, Ranking Minority Member; Hargrove.

Minority Report: That it be referred without recommendation.

Signed by Senator Stevens.

Staff: Curt Gavigan (786-7437)

Background: Washington has a number of state agencies and programs involved in the management of the state's natural resources. In turn, these natural resource agencies represent an array of governance structures. Some of these agencies and programs include:

The Department of Fish and Wildlife (DFW). DFW serves as manager of the state's fish and wildlife resources. Among other duties, DFW must protect and manage fish and wildlife, including establishing the time, place, manner, and methods used to harvest or enjoy fish and wildlife. DFW also manages nearly one million acres of public land for fish and wildlife, habitat conservation, and wildlife-oriented recreation. The Legislature has provided the Fish and Wildlife Commission with broad policy and rulemaking authority for DFW. Commission members are appointed by the Governor with the advice and consent of the Senate. The Commission, in turn, has the authority to appoint the Director.

The State Parks and Recreation Commission (SPRC). The Legislature has charged the SPRC with care and control over lands set aside for park purposes, including 120 developed parks. Statutes provide the SPRC with broad policy and rulemaking authority over management of the state's park system. Other SPRC responsibilities include recreational boater safety and education and winter recreation. SPRC members are appointed by the Governor with the advice and consent of the Senate. The Commission, in turn, has the authority to appoint the Director.

The Recreation and Conservation Office (RCO). The RCO administers a number of grant and policy programs relating to natural resource conservation and outdoor recreation. These programs include the Recreation and Conservation Funding Board (RCFB) and Salmon Recovery Funding Board (SRFB); the Governor's Salmon Recovery Office; the Forum on Monitoring Salmon Recovery and Watershed Health; the Invasive Species Council; and the Habitat and Recreational Land Coordinating Group. The Director of RCO is appointed by and serves at the pleasure of the Governor. However, the Governor must select the Director from among nominations submitted by the RCFB.

Department of Natural Resources (DNR) Law Enforcement Program. DNR maintains a law enforcement program to protect public safety and DNR managed lands. DNR's law enforcement officers are limited authority peace officers, meaning that their role is the apprehension or detection of persons committing infractions or violating criminal laws relating to a limited subject area.

Pollution Liability Insurance Agency (PLIA). PLIA offers insurance coverage for cleanup of contamination from active heating oil tanks that are registered in the program prior to contamination occurring. PLIA serves as the reinsurer for policies that cover underground storage tanks (USTs). PLIA also provides financial assistance to public and private owners and operators of USTs that are certified as meeting vital local government public health and safety needs. PLIA and its programs are funded through a pollution liability fee imposed on dealers making sales of heating oil to a homeowner or a consumer, and an excise tax on the wholesale value of petroleum. PLIA and the pollution liability insurance program are set to expire on June 1, 2013.

Reclaimed Water Program. Reclaimed water is an effluent derived from a wastewater treatment system that has been treated to be suitable for a beneficial use that otherwise would not occur. Reclaimed water may be used for a variety of non-potable water purposes, including irrigation, agricultural uses, industrial and commercial uses, streamflow augmentation, dust control, fire suppression, surface percolation, and discharge into constructed wetlands. The Department of Health (DOH) issues permits to water generators for commercial or industrial uses of reclaimed water. The Department of Ecology (DOE) issues reclaimed water permits for land applications of reclaimed water.

Columbia River Gorge Commission. The Columbia River Gorge National Scenic Area Act (Act) authorized an interstate compact between Washington and Oregon to create the Columbia River Gorge Commission (CRGC), which develops and adopts land use and resource protection policy for nonfederal lands through the Scenic Area Management Plan. The CRGC is the appeals board when Scenic Area land use decisions are challenged. The CRGC works with the counties administering the land use ordinances that implement the Management Plan.

Site Use Permit Authority. The Northwest Interstate Compact on low-level radioactive waste management (Compact) consists of eight states, including Washington. The commercial low-level radioactive waste disposal facility is located near the center of the Hanford Site on approximately 100 acres of federal land leased to the state of Washington. DOE implements requirements of the Compact, including administering a user permit system and issues site use permits for generators, packagers, or brokers using the commercial low-level radioactive waste disposal site. The site use permit fee must cover the costs of administering the user permit system and the fee must be sufficient to fund the state's participation in the Compact.

DOH is responsible for implementing a regulatory and inspection program for ionizing radiation, issues licenses for the receipt and disposal of low-level radioactive waste. It is authorized to inspect the premises and determine financial assurance for a license applicant.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Substitute): Creates the Department of Fish, Wildlife, and Recreation (DFWR). The DFWR is created as an executive branch agency. The primary duties of the newly created DFWR are to:

- preserve, protect, and perpetuate the state's fish and wildlife resources;
- wisely manage the state's parks and trail systems, promote outdoor recreation and safety, and protect cultural, historical, and natural sites; and

- be a good steward of public funds that perpetuate healthy ecosystems and open spaces; restore habitat important to fish and wildlife; and support outdoor recreation and recreational places and facilities.

The Governor must appoint the DFWR Secretary from a list of five candidates accepted by the Governor that has been submitted jointly by the Fish and Wildlife Commission and SPRC. The Secretary serves at the pleasure of the Governor and is subject to Senate confirmation.

Consolidates Specified Agencies and Programs into DFWR.

- DFW is consolidated into DFWR in its entirety. The Fish and Wildlife Commission retains current policy and rulemaking authority.
- SPRC is consolidated into DFWR in its entirety. The SPRC retains current policy and rulemaking authority.
- RCO is consolidated into DFWR in its entirety. The RCFB and SRFB have independent and final decision-making authority over specified grant administration matters when DFWR is an applicant or recipient.
- DNR's law enforcement program is consolidated into DFWR. DNR's law enforcement officers become Fish and Wildlife Officers within DFWR. DNR and DFWR must enter into an agreement for enforcement on state trust lands. DNR land management accounts may be used to fund enforcement on state trust lands.

Establishes a Transition Team to Facilitate the Consolidation into DFWR. The agencies affected by the consolidation of agencies and programs in DCR must each select a representative to participate on the Natural Resources Consolidation Transition Team. The Transition Team may invite appropriate persons to participate on the Transition Team, and must provide opportunities for input from representatives of potentially affected bargaining units and appropriate stakeholders. The Transition Team must work to facilitate an effective and efficient consolidation, and must develop materials including:

- by August 1, 2011, a report detailing all legislative and fiscal changes needed to implement the consolidation, and expected costs and savings from consolidation. The Transition Team must consider and make recommendations regarding the scope of the duties appropriately exercised by the Secretary in supervising the administrative operations of DFWR;
- by September 1, 2011, if necessary, a supplemental budget request for consideration during the 2012 legislative session; and
- by July 1, 2012, a second report detailing all legislative and fiscal changes needed to implement the consolidation, and expected costs and savings from consolidation.

By April 1, 2012, the Public Employment Relations Commission (PERC) must review the collective bargaining units within the agencies set for consolidation into DFWR. If an existing unit is appropriate, the exclusive bargaining representative may continue to serve in that role. If not, PERC must modify a unit and order an election. PERC may also order an election if similarly situated employees are represented by more than one employee organization.

Transfers agencies and programs to and from DOE and DOH.

- PLIA is consolidated into DOE its entirety. The DOE Director must appoint the administrative head of the pollution liability insurance program.
- DOE must provide administrative assistance to the CRGC. DOE must provide administrative and functional assistance to the CRGC, including providing the CRGC's budget proposal to the Governor.
- Consolidates reclaimed water functions into DOE. DOE must consult with DOH when a use of reclaimed water may pose a significant public health risk.
- Consolidates Low-level Radioactive Waste Site Use Permitting functions into DOH. DOH is authorized to administer a user permit system and issue site use permits for generators, packagers, or brokers to use the commercial low-level radioactive waste disposal site.

Similar to the DFWR consolidation, affected agencies must each select a representative to participate on a Consolidate Transition Team to facilitate the consolidations and develop a series of legislative and fiscal recommendations through July 1, 2012. The timelines for the Transition Team's work product mirrors that required for the DFWR Transition Team.

The date is set for each of the above consolidations as July 1, 2012.

EFFECT OF CHANGES MADE BY NATURAL RESOURCES & MARINE WATERS COMMITTEE (Recommended Substitute): The proposed substitute bill recommended by the Natural Resources & Marine Waters Committee:

- Changes the new agency from the Department of Conservation and Recreation to DFWR;
- Changes the head of the new agency from a Director to a Secretary;
- Requires the Governor to select the Secretary from a list of five candidates accepted by the Governor that have been jointly submitted by the Fish and Wildlife Commission and SPRC;
- Removes many specific DFWR powers and duties provided to the Secretary;
- States the intent of the Legislature to retain the policy and rulemaking authority of the Fish and Wildlife Commission and SPRC upon their transfer to DFWR;
- Removes language providing the Fish and Wildlife Commission and SPRC with advisory duties;
- Removes language transferring numerous powers and duties from the Fish and Wildlife Commission and SPRC to the Secretary;
- Specifies additional requirements for the transition team including consideration of appropriate duties to be exercised by the Secretary in supervising administrative operations of DFWR;
- Specifies that the transition team may invite appropriate persons to participate on the team, and must provide opportunities for representatives of affected bargaining units and stakeholders to provide input;
- Removes language transferring the Department of Archeology and Historic Preservation, and Department of Natural Resources' Natural Heritage Program to DFWR;
- Restores language from the original bill that was removed from the version heard in committee. That language transferred the PLIA to DOE; certain administrative support functions for CRGC to DOE; reclaimed water program functions from DOH

- to DOE; low-level radioactive waste site use permitting functions from DOE to DOH. Creates a transition team to guide this transition process;
- Removes numerous implementing provisions changing the agency names and references;
 - Includes an intent section; and
 - Makes technical changes.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on July 1, 2011.

Staff Summary of Public Testimony on Proposed Substitute as Heard in Committee:

PRO: The proposal arises out of continuing budget challenges and a desire to ensure the state looks at government organizations and does not just cut front-line staff. This will create a simpler, more functional agency structure. It will also save some money now, with the opportunity for more savings in the future. The reorganization must keep key environmental protections in place, and ensuring efficient agencies will help save resources to support these core functions. This proposal is a work in progress; and, there are suggestions for improvement as it moves through the legislative process, including ensuring that the commissions continue to serve as forum for public input.

CON: DAHP is not a good fit with DNR because the two agencies have little nexus and because DAHP must regulate certain DNR projects and activities. DAHP operating under DNR could be seen as a conflict of interest. The SPRC is a well run agency that would not fit well combined with a fish and wildlife management agency. Allowing the Governor to appoint the agency head makes the position more political than under a commission structure. There is no objection to government reform or streamlining, but this consolidation proposal is not the answer. The open public process provided by the Fish and Wildlife Commission is valuable, and should not be changed. Recreational fishing is a \$1 billion industry in the state, and that economic driver more than offsets the small cost of the Fish and Wildlife Commission. The citizens of the state adopted the current fish and wildlife management structure by referendum, and that system has been a success over the last 15 years. The agencies are not broke, and do not need to be fixed. A consolidation process will impact agency morale and distract from substantive duties, with very little in dollar savings to show for it. Before consolidating agencies the state should first try all other means to save money and improve the agencies. The state's natural resources are too fragile to put at risk by merging the managing agencies and changing management structures.

OTHER: This is an important discussion to have. The commissions should retain a role as a communication point between citizens and agencies, and be involved in long-term strategic planning. The recreational fishing industry is open to discussions on this issue, but wants to avoid removing policy authority of the Fish and Wildlife Commission and its authority to appoint the director. DAHP operating under DNR could be viewed as a conflict of interest.

Persons Testifying: PRO: John Mankowski, Governor's Office; Kirstan Arestad, Office of Financial Management; Bill Robinson, The Nature Conservancy; Mo McBroom, WA Environmental Council; Jeremy Jording, WA Assn. of Fish and Wildlife Professionals.

CON: Robert Rao, Frank Urabeck, Jim Tuggle, Ray Carter, Joe Taller, Wallace Cogley, Teri Nomura, citizens; Larry Snyder, Vancouver Wildlife League; Tim Young, Brian Yearat, Mark James, WA Federation of State Employees; Daniel Fallstrom, WA State Snowmobile Assn; Paul Sparks, Gregg Bufando, Trout Unlimited; Carl Rienstra, Ted Measor, Jim Howard, Coastal Conservation Assn., Puget Sound Anglers; Ed Wickersham, Dave Kuno, Lewis Boyd, Coastal Conservation Assn.; Norman Reinharot, Kitsap Poggie Club; Don Freeman, South Sound Fly Fishers; Ron Garner, Puget Sound Anglers; Jack Field, WA Cattlemen's Assn.; Jennifer Meisner, Susan White, Michael Sullivan, WA Trust for Historic Preservation; Connie Lorenz, Olympia Downtown Assn.

OTHER: Ed Owens, Coalition of Coastal Fisheries, Hunters Heritage Council; Carl Burke, Fish Northwest, NW Sportsfishing Ind; Dawn Vyvyan, Yakama Nation.