

SENATE BILL REPORT

SB 5862

As of March 9, 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.

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

Staff: Curt Gavigan (786-7437)

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, 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.

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.

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: 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 include:

- an application submittal fee of \$150;
- in addition to an application submittal fee, a permit processing of \$850 for a single site permit, \$4,850 for a general permit, and for a multiple site permit the applicable permit processing fee plus 20 percent for each additional site; and
- 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. 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 where the impacts from the projects are well understood and proven mitigation measures exist.

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. 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; and
- 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 five years.

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

- *Role of DFW.* DFW must review all FPAs affecting waters of the state, any associated hydraulic projects, and submit written comments to the Department of Natural Resources (DNR) within 30 days of DNR's accepting the application. DFW may conduct site visits, and is responsible for effectiveness monitoring. DFW must notify DNR when it updates relevant HPA rules.
- *Role of DNR.* The Board must incorporate relevant HPA rules adopted by DFW into the Forest Practices Rules. DNR holds final approval authority over FPAs that include a hydraulic project.
- *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 protection 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.

Extends Timeframes Relating to FPAs. The time generally allotted DNR to process a Class III or IV FPA 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 previously approved four year FPAs following specified rule changes.

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 \$150.
- Class III applications involving more than 20 acres of harvest are increased from \$50 to \$250.
- Class IV applications for which DNR must analyze whether an environmental impact statement is required are increased from \$50 to \$2,500.
- Class IV applications on lands that have high potential for conversion are generally increased from \$500 to \$5,000.

Definitions are provided and amended. An intent section is included.

Appropriation: None.

Fiscal Note: Requested on March 2, 2011.

[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: 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: 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.