

SENATE BILL REPORT

SB 5545

As of February 15, 2013

Title: An act relating to the working waterfront redevelopment jobs act.

Brief Description: Establishing the working waterfront redevelopment jobs act.

Sponsors: Senators Ranker, Ericksen, Fain, Litzow and Shin.

Brief History:

Committee Activity: Energy, Environment & Telecommunications: 2/14/13.

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Staff: Jan Odano (786-7486)

Background: Hydraulic Project Approval (HPA). 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 in the state. HPAs are issued by the Department of Fish and Wildlife (DFW) to ensure the protection of fish life.

Shoreline Management Act (SMA). SMA requires the development of local shoreline master programs (master programs), which must be consistent with guidelines adopted by the Department of Ecology (DOE). Each local government must establish a program for the administration and enforcement of a shoreline permit system. Property owners or developers must generally obtain a substantial development permit for qualifying developments within shoreline areas. Substantial developments are defined to include both developments with total cost or fair market value exceeding \$5,000 – as adjusted for inflation – and developments materially interfering with normal public shoreline use.

Fish Habitat Enhancement Projects (FHEP). Under current law, a project qualifying as FHEP receives streamlined State Environmental Policy Act review and local permitting. FHEP must receive approval through a specified entity, such as through sponsorship by DFW or a conservation district. Additionally, FHEP must be a project to:

- eliminate human-made fish passage barriers;
- restore an eroded or unstable stream bank using bioengineering; or
- place woody debris or other structures that benefit natural reproducing fish stocks.

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.

Projects qualifying as FHEP must use a joint aquatic resource permit application to apply for approval.

Summary of Bill: Marine Areas Redevelopment and Restoration Project (MARRP). To qualify as MARRP, a project must:

- be located adjacent to or include marine shorelines with commercial and industrial uses allowed under a master program;
- generate at least ten jobs on an ongoing basis;
- involve the redevelopment and reuse of degraded shorelines in a manner that will lead to a net contribution to shoreline ecological functions;
- provide for the protection of fish life, including meeting the substantive fish protection requirements of chapter 77.55 RCW;
- be consistent with the local shoreline master program and any applicable development regulations; and
- not require preparation of an environmental impact statement under the State Environmental Policy Act.

An applicant for a MARRP project must use the joint aquatic resource application form. The application must be given to the Department of Natural Resources (DNR), DOE, the Department of Health and the appropriate city or county administering the shoreline master program for the project site.

DFW must hold a public comment period on a MARRP application, as well as coordinate with state agencies, local governments, and appropriate tribes with expertise relevant to the project. DFW must then approve, condition, or deny a MARRP permit within 45 days of the completion of the comment period. MARRP permitting decisions by DFW are subject to appeal through the Pollution Control Hearings Board. A project proponent whose MARRP application is denied or deemed inappropriate for MARRP review may apply for any required permits through the standard processes.

A project meeting MARRP criteria is exempt from a substantial development permit, permits or approvals under the Growth Management Act (GMA), and HPA permits. Additionally, DNR must prioritize the processing of requests for aquatic use that meet MARRP requirements.

Appropriation: None.

Fiscal Note: Available.

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 is similar to a fish enhancement project permit. It has a simpler application, establishes a streamlined process and does not restrict the comment process.

CON: DFW does not have the expertise to approve or deny projects. We are concerned with expanding their authority. Few people will use this permitting option because the federal Army Corps of Engineers permits need to be addressed.

OTHER: There were concerns with impacts to current cleanups at Port Gamble. There are concerns that by avoiding the local permit process, local land use regulation may be pre-empted. Counties determine and enforce GMA regulations. It is not worth the effort, cost, litigation, and enforcement if a project is allowed to circumvent those locally determined plans.

Persons Testifying: PRO: Pat Chapman, DFW.

CON: Brandon Houskeeper, Assn. of WA Business.

OTHER: Brian Lynn, DOE; Kristin Swenddal, DNR; Laura Merrill, WA State Assn. of Counties; Davor Gjurasic, Port Gamble Sklallam Tribe.