

HOUSE BILL REPORT

ESHB 2285

As Passed House:
February 12, 2018

Title: An act relating to establishing a reporting process for the department of natural resources regarding certain marbled murrelet habitat information.

Brief Description: Establishing a reporting process for the department of natural resources regarding certain marbled murrelet habitat information.

Sponsors: House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Chapman, Tarleton, Lytton, Tharinger, Blake and Appleton).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/10/18, 1/17/18 [DPS].

Floor Activity:

Passed House: 2/12/18, 54-43.

Brief Summary of Engrossed Substitute Bill

- Directs the Department of Natural Resources (DNR) to report to the Legislature concerning the marbled murrelet habitat conservation plan on state lands.
- Requires the report to include, among other things, an economic analysis of potential losses or gains resulting from any proposed marbled murrelet long-term conservation strategy, strategies for maintaining or increasing family-wage timber and related jobs in affected rural communities, and recommendations for additional reasonable, incentive-based, nonregulatory marbled murrelet conservation measures.
- Directs the Commissioner of Public Lands to appoint a marbled murrelet advisory committee to assist in the preparation of the report described above.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.
Signed by 14 members: Representatives Blake, Chair; Chapman, Vice Chair; Buys, Ranking

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.

Minority Member; Dent, Assistant Ranking Minority Member; Chandler, Fitzgibbon, Lytton, Orcutt, Pettigrew, Robinson, Schmick, Springer, Stanford and Walsh.

Staff: Robert Hatfield (786-7117).

Background:

Federal Endangered Species Act.

Congress passed the federal Endangered Species Act (ESA) in 1973, which provides protection for threatened and endangered species. An endangered species is a species in danger of extinction throughout all or part of its historic range. A threatened species is a species likely to become endangered within the foreseeable future. The ESA generally prohibits take of protected species, which includes harassing, harming, or killing such species. The United States Fish and Wildlife Service (USFWS) has primary responsibility for the ESA administration with regards to threatened and endangered wildlife.

A habitat conservation plan (HCP) is a tool available to regulated parties under the ESA. An HCP is a voluntary, long-term planning agreement between the federal government and a state, locality, private landowner, or other non-federal party that sets conditions under which certain actions are permitted to occur even though the actions may result in harm to an endangered species. An HCP commonly describes the effects the proposed actions will have on an endangered species, how those impacts will be minimized or mitigated, and how the mitigation will be funded. In addition, an HCP must provide elements which ensure any harm caused will be incidental and that the harm will not appreciably reduce the likelihood of the survival or recovery of the affected species.

In return for agreeing to the provisions of an HCP, the non-federal party is eligible to receive an incidental take permit. This permit allows the non-federal party to proceed with the actions identified in the HCP with certainty that they will not be found in violation of the ESA. The incidental take permit makes the elements of the HCP binding. A violation of the incidental take permit may result in a violation of the ESA.

The Department of Natural Resources.

The Department of Natural Resources (DNR) manages a number of different categories of land on behalf of the State of Washington, each for a specific purpose and under different management requirements.

Board of Natural Resources.

The Board of Natural Resources (Board) sets policies to guide how the DNR manages the state's lands and resources. The Board has several responsibilities:

1. approve or disapprove trust land timber and mineral sales;
2. establish the sustainable harvest level for forested trust lands;
3. approve or disapprove sales or exchanges of trust lands; and
4. guide the DNR's stewardship of state Natural Area Preserves, Natural Resources Conservation Areas, and aquatic or submerged lands.

State Trust Lands.

Upon statehood, the United States granted the State of Washington trust lands to support various public institutions. The DNR now manages approximately 3 million acres of federally granted trust lands that provide revenue for grade schools, state universities, buildings on the capitol campus, and correctional facilities.

State Forest Lands.

The DNR also manages more than 600,000 acres of state forest lands, which were acquired primarily through tax foreclosures in the 1920s and 1930s, and to a lesser extent through purchases by the state or gifts to the state. State forest lands are managed for the benefit of the counties in which the lands are located.

Sustained Yield.

The DNR is required to manage forested state trust lands on a sustained yield basis. To achieve a sustained yield, the DNR must manage the state's forests to provide a continuing harvest level without any prolonged curtailments or cessation of harvests. As part of this obligation, the DNR must periodically adjust the tracts of land that are included in the sustained yield management program, and calculate a sustainable harvest level accordingly.

Marbled Murrelet.

The marbled murrelet (*Brachyramphus marmoratus*) is a species of bird that resides along the Pacific Coast of North America. The marbled murrelet was listed by the USFWS in 1992 as a threatened species in California, Oregon, and Washington.

In 1997 the State of Washington, through the DNR, entered into a HCP for the marbled murrelet on certain trust lands managed by the DNR.

Summary of Engrossed Substitute Bill:

The Department of Natural Resources (DNR) must provide a report to the Legislature concerning certain aspects of the marbled murrelet Habitat Conservation Plan (HCP), beginning in 2018 and continuing every year until the year after the United States Fish and Wildlife Service (USFWS) issues an incidental take permit on the state trust lands HCP for the long-term conservation strategy for the marbled murrelet.

The report must contain:

- an economic analysis of potential losses or gains from any proposed marbled murrelet long-term conservation strategy selected by the Board of Natural Resources (Board), forwarded to or approved by the USFWS, and subsequently adopted by the Board;
- recommendations for actions that support maintaining or increasing family-wage timber and related jobs in affected rural communities;
- recommendations for strategies to ensure no net loss of revenues to the trust beneficiaries due to the implementation of additional marbled murrelet conservation measures;
- recommendations for additional means of financing county services; and
- recommendations for additional reasonable, incentive-based, nonregulatory conservation measures for the marbled murrelet that also provide economic benefits to rural communities.

No fewer than 90 days before submitting the report to the Legislature, the DNR must submit a draft of the report for review and comment to the chair and ranking member of the committees of the House of Representatives and Senate with jurisdiction over state lands.

The Commissioner of Public Lands (Commissioner) must appoint a marbled murrelet advisory committee. The committee may include one or more representatives from state trust lands beneficiaries, impacted state forestland beneficiaries, junior taxing districts, environmental organizations, local governments, milling interests or an association representing milling interests, private forest landowners or a statewide association representing private forest landowners, and local public interest groups. The committee may consult with relevant state and federal agencies and with tribes.

The sections directing the submission of the report and the formation of an advisory committee expire at the end of the calendar year following the issuance by the USFWS of an incidental take permit on the long-term conservation strategy for the marbled murrelet under the state trust lands HCP and subsequent adoption by the Board.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 13, 2018.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The Department of Natural Resources (DNR) entered into a 1997 habitat conservation plan (HCP) for marbled murrelets in order to comply with the Endangered Species Act in a way that best fulfilled the DNR's trust obligations. At time of the original HCP, there was also a process put in place to develop a long term conservation strategy for marbled murrelets. The Board of Natural Resources has now picked a preferred alternative, and will submit that proposed amendment to the United States Fish and Wildlife Service in the summer of 2018. The 1997 HCP set aside 583,000 acres of state trust lands in Western Washington, and the proposed HCP amendment would set aside an additional approximately 35,000 acres. There is a desire to get ahead of impacts associated with the amendment to the HCP.

County trust lands were once county lands, that were then put into trust so that DNR would manage them for the benefit of the counties. Revenue from these trust lands go to counties, but also to junior taxing districts. There have been previous impacts of endangered species on these trust lands. The proposed amendment to the HCP will have significant job consequences in the affected communities. In Skamania County, 75 percent of their trust lands are encumbered by the HCP, and in Pacific County, the number is 57 percent.

It is important that recommendations come back to the Legislature, because solutions may need to be legislatively driven. Conducting a valuation of the state trust lands makes sense. The Legislature is ultimately the trustees of the trusts.

(Opposed) None.

(Other) The bill recognizes that as things are currently structured, some things that are needed for marbled murrelets are in conflict with what's needed for rural communities and trust beneficiaries. It is time to step back and look at how trusts are structured, and at other ways of deriving income for the trusts, yet not allow the marbled murrelet to slip into extinction. It is good that the bill recognizes the validity of both sets of issues. It would be useful to broaden language in the bill to recognize other factors that drive job loss in rural communities. The DNR is providing helpful leadership on this issue.

Persons Testifying: (In support) Representative Chapman, prime sponsor; Bruce Beckett, Port of Port Angeles; Heath Heikkila, American Forest Resource Council; Laura Berg, Washington State Association of Counties; Andrew Hayes and Dave Warren, Department of Natural Resources.

(Other) Paula Swedeen, Conservation Northwest.

Persons Signed In To Testify But Not Testifying: None