

# SENATE BILL REPORT

## SB 5547

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As Reported by Senate Committee On:  
Agriculture, Water, Natural Resources & Parks, February 21, 2019

**Title:** An act relating to the proposed department of natural resources' marbled murrelet long-term conservation strategy.

**Brief Description:** Concerning the proposed department of natural resources' marbled murrelet long-term conservation strategy.

**Sponsors:** Senators Van De Wege, Braun, Takko, Warnick and Short.

**Brief History:**

**Committee Activity:** Agriculture, Water, Natural Resources & Parks: 2/07/19, 2/21/19 [DPS-WM, DNP].

**Brief Summary of First Substitute Bill**

- Directs the Joint Legislative Audit and Review Committee (JLARC) to analyze the harvest volume and revenue impacts of strategies for the long-term conservation of the marbled murrelet.
- Prevents the Forest Practices Board from adopting a long-term conservation strategy for the marbled murrelet until the JLARC analysis is complete.

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### SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

**Majority Report:** That Substitute Senate Bill No. 5547 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Van De Wege, Chair; Warnick, Ranking Member; Honeyford and Short.

**Minority Report:** Do not pass.

Signed by Senators Salomon, Vice Chair; McCoy and Rolfes.

**Staff:** Jeff Olsen (786-7428)

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*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.*

**Background:** Federal Endangered Species Act. The federal Endangered Species Act (ESA) provides protection for threatened and endangered species. The ESA generally prohibits taking protected species, which includes harassing, harming, or killing such species. The United States Fish and Wildlife Service (USFWS) has primary responsibility for administration of the ESA with regard 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 it 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 Managed Lands. DNR 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. 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.

Marbled Murrelet. The marbled murrelet 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 DNR, entered into a HCP for the marbled murrelet on certain trust lands managed by DNR.

State Environmental Policy Act. The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify environmental impacts that may result from governmental decisions, such as the issuance of permits or the adoption of land use plans. Under SEPA, a government agency is designated as the lead agency and in that role has responsibility for complying with SEPA's procedural requirements, including making a threshold determination as to whether an EIS is needed, and preparing the EIS when one is required. Under rules adopted to implement SEPA, until a final EIS is issued, no action may be taken by a governmental agency that would have an adverse environmental impact or limit the choice of reasonable alternatives.

**Summary of Bill (First Substitute):** DNR must analyze the harvest volume and revenue impacts of the preferred alternative for the long-term conservation of the marbled murrelet. The analysis must consider the impacts of the preferred alternative to the interim strategy and the baseline. The analysis must report impacts over several ten-year periods from 2015 to

2074. The report must include impacts to individual counties and junior taxing districts including revenue, sustainable harvest volume, acres available for management, and acres deferred by age class.

The Forest Practices Board may not adopt a long-term conservation strategy for the marbled murrelet until the analysis is complete and made available for public review and comment and reported to appropriate committees of the Legislature. Lands set aside from timber management that are not included within the preferred alternative are not subject to any limitation on management activities relating to marbled murrelet conservation following the issuance of a final environmental impact statement.

**EFFECT OF CHANGES MADE BY AGRICULTURE, WATER, NATURAL RESOURCES & PARKS COMMITTEE (First Substitute):** The substitute replaces JLARC with DNR to conduct the fiscal analysis of the alternatives. The substitute requires a 30 day public review period and a public hearing on the fiscal analysis. The substitute removes the exemption from State Environmental Policy Act rules and clarifies that lands not included within the preferred alternative are not subject to any limitation on management activities relating to marbled murrelet conservation following the issuance of a final environmental impact statement.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: The long term conservation plan has broad consequences and the analysis required in the bill is necessary to understand the impacts to counties and junior taxing districts. Many junior taxing districts rely on timber revenues for their operations. The current land set aside in the HCP provides sufficient habitat and additional acreage is not needed. The Legislature is the trustee and should examine the fiscal impacts of the long-term strategy. More information is needed to understand the issues and problems so that a solution can be determined.

CON: The changes proposed in the bill undermines the work being done by the solutions table. More time is needed to work together to find a solution, and this creates delay and division. The study in the bill is duplicate of the work that DNR is already doing.

OTHER: The financial analysis in the bill is useful, but there are concerns about delaying the current process and making changes to the SEPA process.

**Persons Testifying:** PRO: Senator Kevin Van De Wege, Prime Sponsor; Bruce Beckett, Port of Port Angeles; James McEntire, Port Angeles Business Association; Cheryl Heywood, Timberland Regional Library; Heath Heikkila, American Forest Resource Council.

CON: Lisa Remlinger, Washington Environmental Council; Patricia Jones, Olympic Forest Coalition; Angus Brodie, Department of Natural Resources.

OTHER: Brian Sims, Washington State School Directors Association; Paul Jewell, Washington State Association of Counties.

**Persons Signed In To Testify But Not Testifying:** No one.