

HOUSE BILL REPORT

HB 2285

As Reported by House Committee On:
Agriculture & Natural Resources

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: Representatives Chapman, Tarleton, Lytton, Tharinger, Blake and Appleton.

Brief History:

Committee Activity:

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

Brief Summary of Substitute Bill

- Directs the Department of Natural Resources to provide reports to the Legislature concerning the marbled murrelet habitat conservation plan on state lands, including recommendations for offsetting potential revenue losses to state trust land beneficiaries and recommendations for additional reasonable marbled murrelet conservation measures.
- Directs the Commissioner of Public Lands to appoint a marbled murrelet advisory committee.

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 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.

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.

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 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 1997 marbled murrelet HCP is amended and an incidental take permit has been issued by the United States Fish and Wildlife Service. The report must contain, among other elements, an economic analysis of the net revenue loss or gain to each of the affected trust beneficiaries as a result of the HCP, recommendations to offset potential loss of revenue to trust beneficiaries, and recommendations for additional reasonable marbled murrelet conservation measures.

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, environmental organizations, local governments, an association representing milling interests, a statewide association representing private forest landowners, local public interest groups, and other interested parties deemed appropriate by the Commissioner. The committee may consult with relevant state and federal agencies and with tribes.

In the event of any subsequent amendments to the 1997 HCP, the Commissioner must appoint a subsequent marbled murrelet advisory committee, which must remain in existence until the subsequent amendment has been adopted.

Substitute Bill Compared to Original Bill:

The substitute bill modifies the scope of subjects to be addressed in the report submitted by the Commissioner of Public Lands to the Legislature. The substitute bill requires the Department of Natural Resources to submit a draft of the marbled murrelet Habitat Conservation Plan economic impact report to the chair and ranking member of the committees of the House of Representatives and Senate whose committee jurisdiction includes state trust lands, and requires that the draft report be submitted to the chairs and ranking members no fewer than 90 days before the final report is due to the Legislature. The substitute bill directs the Commissioner of Public Lands to appoint a subsequent marbled murrelet advisory committee in the event that any subsequent amendment to the 1997 state trust lands Habitat Conservation Plan is ever proposed, and provides that the committee will continue to exist until the amendment is adopted. The substitute bill modifies the description of one of the entities from which the Commissioner of Public Lands may select a representative to participate on the marbled murrelet advisory committee, from "a statewide association to protect forests" to "a statewide association representing private forest owners."

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: 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. There is a desire to get ahead of impacts associated with the amendment to the HCP. 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. 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. It is important that recommendations come back to the Legislature, because solutions may need to be legislatively driven. 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. 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