

Legislature Amends Important Environmental and Natural Resource Laws

Legal Alert
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Foster Pepper News Alert

In the last minutes of the 2012 Special Legislative Session, the Legislature passed, by substantial majorities in both houses, Second Engrossed Substitute Senate Bill 6406 (2ESSB 6406), revising several of the state's most important natural resources and environmental laws. The Bill awaits action by the Governor.

The new legislation contains four parts: (1) Hydraulic Project Approvals (2) Hydraulic Project Approval and Forest Practices Integration; (3) State Environmental Policy Act and Local Development Regulations; and (4) Municipal Storm Water General Permits. The following paragraphs summarize notable aspects of the Bill. For a more detailed summary of the amendments, click [here](#).

The **State Environmental Policy Act (SEPA)** is extensively amended. The ultimate effect of the amendments will depend on the outcome of mandatory rule-making by the Department of Ecology (Ecology), whether local governments will use new authority to streamline SEPA compliance, and future administrative and judicial interpretations of new language.

Ecology must update and increase the levels of existing categorical exemptions and update the environmental checklist, without adding any new subjects, "including climate change and greenhouse gases," in two stages of rule-making, by the end of 2012 and 2013.

An immediate, significant effect of the amendments is to authorize cities and counties to apply the maximum level of existing categorical exemptions regardless of whether the maximum level has been adopted in a local SEPA ordinance. This authorization lasts until Ecology has completed the mandated update of the categorical exemptions.

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SEPA's Planned Action and Infill Development exemptions are revised to expand their scope and make these tools more useful and efficient.

New statutory exemptions are established for several significant categories of nonproject actions. Many amendments of development regulations and building, energy, and electrical codes are now exempt from SEPA.

Lead agencies may specify that questions in their environmental checklists are adequately addressed by a locally adopted ordinance, development regulation, land use plan, or other legal authority.

The Bill authorizes, for five years, a fee of \$150 for most **hydraulic project approvals (HPAs)**, with certain exemptions. It also mandates issuance of renewable five-year permits to marinas and marine terminals for recurring maintenance, and requires that HPAs allow minor modifications of the timing of work.

For **HPAs related to forest practices**, the Bill requires the Department of Fish and Wildlife (DFW) and the Department of Natural Resources (DNR) to take steps to transfer to DNR most of the responsibility for review of applications for HPAs. The Forest Practices Board must incorporate DFW's fish protection standards into the Forest Practices rules and approve "technical guidance" in the Board's Manual. Once that happens, hydraulic projects requiring a forest practices application or notification will be regulated by DNR. However, DFW will still review and comment on applications, and will perform enhanced "concurrence review" of certain "water crossing structures," including bridges, culverts, and fill, that affect fish-bearing streams.

In addition, the duration of forest practice applications and notifications is increased from two to three years, and fees for forest practice applications and notifications are generally tripled, from \$50 to \$150 (\$100 for small landowners); and fees for Class IV General applications also are generally tripled from \$500 to \$1500.

With regard to stormwater, the Bill defers implementation of certain requirements in DOE's updated **Phase II NPDES Municipal Stormwater General Permit for Western Washington**. The effective date of the updated Permit remains August 1, 2013, but certain requirements within the Permit will not go into effect until sometime between December 31, 2016, and December 31, 2018, corresponding to the dates by which the GMA requires cities in Western Washington to comprehensively update their comprehensive plans and development regulations. The deferred requirements are those for low-impact development; for increased frequency of catch basin inspections and illicit discharge detection; and for the application of new stormwater controls to projects smaller than one acre. For the Phase II General Permit for Eastern Washington, the Bill simply extends for one year, until August 1, 2014, the effective date of DOE's new Permit, which does not include the requirements that are deferred for Western Washington.

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For more information about the Bill's effect on Phase II municipal stormwater permits, please contact [Lori Terry Gregory](mailto:lori.terry@foster.com) (lori.terry@foster.com | 206.447.8902).