

Date of Hearing: August 19, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

SB 716 (McGuire) – As Introduced February 19, 2021

Policy Committee: Water, Parks and Wildlife

Vote: 14 - 0

Urgency: No

State Mandated Local Program: No

Reimbursable: No

SUMMARY:

This bill extends the sunset of the Habitat Restoration and Enhancement Act from January 1, 2022 until January 1, 2027, and requires a report to the Legislature.

FISCAL EFFECT:

Unknown significant funding shortfalls over the next five years due to the inability of the fee to fully cover the costs of the program (Habitat Restoration and Enhancement Account).

The Habitat Restoration Account is within the Fish and Game Preservation Fund which has been in structural deficit for many years.

COMMENTS:

- 1) **Background and Purpose.** This bill extends the sunset for the Habitat Restoration and Enhancement Act (Act) by five years. The Act allows DFW to approve habitat restoration or enhancement projects in lieu of any other permit or approval issued by DFW, including but not limited to permits issued under the California Endangered Species Act (CESA), the Native Plant Protection Act, and lake and streambed alteration agreements.

This bill also extends the Habitat Restoration and Enhancement Account within the Fish and Game Preservation Fund. The Act requires DFW to assess an application fee for a project consistent with the fees for lake and streambed alteration agreements. The fees follow a graduated schedule based upon the total cost of a project.

For example, the 2020 fee schedule for Habitat Restoration and Enhancement projects with a term of up to five years ranged from \$609.25 for a project that costs less than \$5,000, to \$5,430.60 for a project that costs \$350,000 or more. The fees are adjusted annually pursuant to the Federal Implicit Price Deflator Index.

The purpose of this bill is to extend the Act to provide an expedited permitting process for small scale habitat restoration projects for another five years and provide another progress report to the Legislature.

- 2) **Fees are Inadequate.** AB 2193 (Gordon), Chapter 604, Statutes of 2014, enacted the Act and also required DFW to submit a report to the Legislature on the implementation of the Act no later than December 31, 2020. The report was submitted in July of 2021.

According to the report, in the first five years, DFW approved 93 habitat restoration or enhancement projects pursuant to the Act and eight projects were determined ineligible. DFW reported the program was not adequately funded. DFW received \$307,917 in fees since the program was implemented, which was not sufficient to cover the estimated cost of DFW staff time for processing and reviewing requests. Estimated cost exceeded the fee revenues by a substantial amount.

DFW estimates that the review and approval process in 2020 cost up to \$10,000 per project. This analysis included salaries, benefits, operating expenses, and equipment for each classification per year. Salaries were estimated from the lowest step of each classification with three meritorious salary adjustments (mid-salary).

The total hours spent on project approvals is likely underestimated as it does not include time spent on denied, withdrawn or incomplete requests. Nor does it include outreach activities, consultation with the State Water Board and other stakeholders, and general program administration including departmental overhead (25%).

The report noted that lake and streambed alteration fees were not designed to cover the cost of threatened and endangered species consultation. The habitat restoration and enhancement project review addresses not only lake and streambed alteration activities but also threatened, endangered and candidate species consultation. This represents an additional scope of work with species specific conditions.

- 3) **AB 2193 Report Recommendations.** The AB 2452 DFW report made the following recommendations for statutory changes:
- a) Extend the sunset another five years, to January 2027, with additional fee authority that enables DFW to recover revenue commensurate with costs based on the experience over the past five years.
 - b) Promote pre-consultation with DFW and detailed project planning and engineering.
 - c) Require appropriate biological surveys and engineering designs to be included in the list of documents required to be submitted with a habitat restoration and enhancement project request.
 - d) Expressly enable amendment requests and associated amendment fees and enable the extension of DFW timelines by mutual agreement.
 - e) Any proposal that would expand eligibility to larger projects should also increase the review timelines and fees for larger projects to ensure effective project review and to cover DFW costs. Alternatively, the State Water Resources Control Board could amend the 401 Small Habitat Restoration Project Certification to allow projects that do not exceed a 1,000 linear foot limit. This would align the state with the National Oceanic Atmospheric Administration's Programmatic Biological Opinion standard and remain consistent with a "small" habitat restoration or enhancement project designation.

- f) Evaluate alternatives through DFW's Service Based Budgeting initiative to identify operational improvements to cover program implementation to minimize any potential fee increase, and only increase fees if necessary.

It appears the recommendations in numbers one and six are somewhat inconsistent. The first recommendation calls for the extension of the program for five years with fee authority to fully recover costs, while the sixth recommendation calls for fees as the last resort, after evaluating alternatives through the department's Service Based Budgeting initiative.

The committee may wish to consider whether the program should be extended for five years without an additional funding mechanism to ensure all costs are recovered.

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