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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2021 - 2022 Regular Session

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### SB 716 (McGuire) - Habitat Restoration and Enhancement Act

**Version:** February 19, 2021

**Urgency:** No

**Hearing Date:** May 3, 2021

**Policy Vote:** N.R. & W. 9 - 0

**Mandate:** No

**Consultant:** Ashley Ames

**Bill Summary:** This bill would extend the sunset of the Habitat Restoration and Enhancement Act from January 1, 2022 until January 1, 2027, and require an additional legislative report providing information on the act on December 31, 2025.

**Fiscal Impact:**

- Unknown costs (Habitat Restoration and Enhancement Account within the Fish and Game Preservation Fund) to DFW for increased and expedited permit review.
- Unknown, but likely minor, fee revenues to the Habitat Restoration and Enhancement Account.

**Background:** Under the California Endangered Species Act (CESA), the Department of Fish and Wildlife is the trustee for the fish and wildlife resources of the state. CESA prohibits any act which could directly or indirectly harm threatened or endangered species unless authorized by DFW. Regulations generally require that CESA reviews occur within 90 days.

The Native Plant Protection Act requires DFW authorization for actions that could affect an endangered or rare native plant unless an exemption applies for agricultural activities, timber operations or mining.

Section 1602 of the Fish and Game Code prohibits the substantial diversion or obstruction of the natural flow of any river, stream, or lake without approval from DFW. If DFW determines that an activity may have a substantially adverse effect existing fishing or wildlife resources, DFW may require necessary measures to protect the resource as part of a streambed alteration agreement. Streambed alteration agreements are required to be acted upon within 90 days. Under §1609, the director of DFW may established a schedule of fees for a streambed alteration activities that are sufficient to pay the total costs incurred by DFW in administering and enforcing the chapter up to an inflation adjusted cap of \$5,000.

The California Environmental Quality Act has a categorical exemption for small habitat restoration projects for fish, plants or wildlife that do not exceed five acres in size.

**Proposed Law:** This bill would extend by five years the sunset for the Habitat Restoration and Enhancement Act (Act).

The Act allows DFW to approve a habitat restoration or enhancement project in lieu of any other permit or other approval issued by DFW including, but not limited to permits

issued under CESA, the Native Plant Protection Act, and the streambed alteration requirements.

This Act also establishes the Habitat Restoration and Enhancement Account within the Fish and Game Preservation Fund. The Act requires the department to assess an application fee for a project submitted under the act consistent with the fees for Lake and Streambed Alteration Agreements, as provided.

**Related Legislation:**

AB 2193 (Gordon, Chapter 604, Statutes of 2014) established the Habitat Restoration and Enhancement Act. The goal of the act was to help facilitate the approval of small voluntary habitat restoration and enhancement projects by providing an expedited approval pathway for projects that met certain criteria. As enacted, AB 2193 sunsets on January 1, 2022.

**Staff Comments:** DFW was unable to provide a fiscal estimate at the time of this analysis. Since the bill is a sunset extension of an existing program, staff based cost estimates for this bill off of the bill establishing the program as well as other information on the current program. In 2019-20, DFW's expenditure authority from the Habitat Restoration and Enhancement Account was \$9 million. It is unclear how much was actually expended from the account since it is reported as part of the larger Fish and Game Preservation Fund.

Section 1655 requires CDFW to charge the same application fees used by the LSA Program for HREA approval requests. The fees follow a graduated schedule that is based upon the total cost of a project. For example, the 2020 fee schedule for 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 for cost of living, using the Federal Implicit Price Deflator Index, per Section 713.

Section 1655 established the Habitat Restoration and Enhancement Account within the Fish and Game Preservation Fund. CDFW has received \$307,917 in HREA fees since the implementation of the program.

New or pilot programs approved by the Legislature often have a legislative reporting requirement prior to the sunset of the program to help facilitate legislative oversight. One of the goals of a sunset provision is to provide for informed legislative review after a program has been implemented for a few years to help identify whether or not the program needs revision and/or warrants extension in law. The legislative report is required by law to be provided in advance of when legislative action is needed. The department has not complied with the legislative reporting requirement which significantly constrains the ability of the Legislature to evaluate the merits of this act.

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