

# HOUSE BILL REPORT

## HB 2802

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**As Reported By House Committee On:**  
Agriculture & Ecology

**Title:** An act relating to construction projects in state waters.

**Brief Description:** Limiting the need for a hydraulic construction permit to those projects done below the ordinary high water mark.

**Sponsors:** Representatives Chandler, Sump and Cairnes.

**Brief History:**

**Committee Activity:**

Agriculture & Ecology: 1/28/98, 2/5/98 [DP].

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### HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

**Majority Report:** Do pass. Signed by 7 members: Representatives Chandler, Chairman; Parlette, Vice Chairman; Schoesler, Vice Chairman; Delvin; Koster; Mastin and Sump.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Linville, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; Cooper and Regala.

**Staff:** Bill Lynch (786-7092).

**Background:** Any person who conducts a commercial or industrial operation which results in solid or liquid waste material being discharged into the waters of the state, and any county or municipal corporation operating a sewerage system which results in the disposal of waste material into the waters of the state must obtain a waste disposal permit from the Department of Ecology. The Department of Ecology is required to send notice of all permit applications to the director of the Department of Fish and Wildlife and the Secretary of Social and Health Services. A permit may not be issued if the Department of Ecology finds that the disposal of waste will pollute the waters of the state in violation of the state's policy to insure the purity of all waters of the state consistent with public health and public enjoyment of the water, and the propagation of wild life, birds, game, fish, and other aquatic life, and the industrial development of the state.

The federal Clean Water Act requires discharges of pollution into water from a point source to be made pursuant to a national pollution discharge elimination system (NPDES) permit which puts limits on the effluent. These permits are to assure water quality is maintained so that there is protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow for recreational uses in and on the water. The Department of Ecology is responsible for administering the provisions of the federal Clean Water Act, including enforcing water quality standards.

In general, any construction of a hydraulic project or the performance of any work that will use, divert, obstruct, or change the natural flow or bed of any fresh or salt water in the state requires the approval of the Department of Fish and Wildlife. The "bed" of fresh or salt water is defined as the land below the ordinary high water line of state waters.

The Department of Fish and Wildlife may only consider the protection of fish life as a ground upon which to deny or condition the approval of the hydraulics permit. The department may not unreasonably withhold approval of the project or work. The exemptions from obtaining a hydraulics permit do not include work requiring a NPDES permit or wastewater discharge permit.

**Summary of Bill:** Hydraulics permits are only required for work located below the ordinary high water mark of state waters.

Any work located below the ordinary high water mark which requires a national pollution discharge elimination system (NPDES) permit under the federal Clean Water Act or a wastewater discharge permit from the Department of Ecology under the water pollution control laws does not require hydraulics permit approval from the Department of Fish and Wildlife.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** It would be better to have the Department of Fish and Wildlife's input at the beginning of a project instead of at the end when a lot of time and resources have already been expended, and the SEPA process and local permit requirements have already been met. A number of existing laws provide for environmental protection, the hydraulics permit isn't necessary. This clarifies what many people think the law already says.

**Testimony Against:** The state needs to protect salmon habitat. This takes us in the wrong direction. Many projects built above the ordinary high water mark create more problems in the stream bed than projects constructed below the ordinary high water mark. Hydraulic permit approvals are important to ensure that necessary vegetation for fish is in place. It is a lot cheaper to protect existing habitat than to restore habitat. NPDES permits and wastewater permits don't affect construction, and often look at an entire region and not individual sites. The National Marine Fisheries Service (NMFS) must make sure a "take" doesn't occur under the Endangered Species Act. Hydraulics permits look not just at the construction activity, but the timing of the activity. Without the hydraulics permit, people would have to get multiple permits from local governments.

**Testified:** Karen Terwilliger, Dept. of Fish and Wildlife (con); Gordon Zogus, NMFS (con); Dick Wallace, Dept. of Ecology (con); Nancy Gloman, National Fish and Wildlife Service (con); Bruce Wishert, People for Puget Sound (con); Dawn Vyvyan, Yakima Indian Nation (con); and Scott Hazelgrove, Association of WA Business (pro).