

HOUSE BILL REPORT

ESHB 2757

As Passed House:

February 19, 2002

Title: An act relating to administration of hydraulic project approval.

Brief Description: Creating the hydraulic project approval permit program technical advisory group.

Sponsors: By House Committee on Natural Resources (originally sponsored by Representatives Rockefeller, Ericksen, Hunt, Doumit, Linville and Pearson).

Brief History:

Committee Activity:

Natural Resources: 2/5/02, 2/8/02 [DPS].

Floor Activity:

Passed House: 2/19/02, 97-0.

Brief Summary of Engrossed Substitute Bill

· Creates an advisory group to review the hydraulic approval program. The advisory group's review must include several elements, including an examination of the statutes and regulations to determine whether there are clear goals for the program, recommendations regarding the development of outcome-based performance measures for the program, and recommendations concerning whether existing funding sources are adequate for the program.

HOUSE COMMITTEE ON NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Doumit, Chair; Rockefeller, Vice Chair; Sump, Ranking Minority Member; Buck, Eickmeyer, Ericksen, Jackley, McDermott, Orcutt, Pearson and Upthegrove.

Staff: Bill Lynch (786-7092).

Background:

A person is required to obtain a hydraulic permit for any project or work that will use,

divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state before beginning the construction work. These include certain projects or activities related to irrigation or stock watering purposes or streambank stabilization, and projects and activities related to marine beach front protective bulkheads or rock walls. The permits are issued to ensure the proper protection of fish life and are issued by the Department of Fish and Wildlife (DFW).

The DFW is statutorily authorized to issue programmatic hydraulic project approvals for small scale mining and prospecting, and for activities or projects conducted solely for the removal or control of certain aquatic weeds. The programmatic approval is in lieu of an applicant obtaining an individual hydraulic permit. Under the programmatic approval process, the department publishes a pamphlet that states the rules for that activity. As long as the person follows the rules provided in the pamphlet, that person is considered to be in compliance with the law. There is no general authority for the DFW to issue pamphlet hydraulic project approvals for other types of work or activities.

The DFW processes in excess of 6,000 hydraulic project approvals a year. The scope of the review of these projects varies based on the proposed project. The DFW is not authorized to charge fees for processing hydraulic project approvals.

Summary of Engrossed Substitute Bill:

A hydraulic project approval permit program technical advisory group is created to conduct a study of the state hydraulic project approval permit program. The advisory group constitutes a subcommittee of the Fish and Wildlife Commission (commission) and consists of seventeen members.

Membership of the advisory group consists of: a member of the commission who serves as the chair; one person designated by the Secretary of Transportation; one person designated by the Director of the Department of Fish and Wildlife; one person designated by the Director of Ecology; one person designated by the Commissioner of Public Lands; one person jointly designated by the Association of Washington Cities and the Washington State Association of Counties; one person designated by Washington State Public Ports Association; one person designated by the Regional Fisheries Enhancement Group Advisory Board; one person designated by the Washington State Farm Bureau; one person who represents marine construction, jointly designated by the Building Industry Association of Washington and the Associated General Contractors of Washington; one person designated by the American Council of Engineering Companies; one person designated by the Northwest Indian Fisheries Commission; one person designated by aquaculture interests; two persons representing environmental organizations; one person designated by commercial fishing interests; and one person designated by recreational fishing interests.

Federal regulatory representatives must be invited to participate in the work of the advisory group. The commission may employ temporary staff or contract for necessary support services.

As part of its study of the hydraulic permit program, the advisory group must determine: if there are clear statutory and administrative goals for the program; whether the activities, projects, and physical areas covered by the program are clearly delineated in statute; whether there is duplication or conflict with similar federal, state, or local regulatory programs; whether the program is being administered in a cost-effective manner and whether there are system efficiencies that can be adopted; whether the program is consistently applied from region to region; the effectiveness of permit conditions and mitigation requirements in protecting fish life; the adequacy of permit monitoring to ensure that the protection of fish life is being achieved; the adequacy of training programs for department employees and groups responsible for complying with the program requirements; whether the hydraulic appeals board process and membership can be changed to improve the appeals process; and whether existing funding sources are adequate for the program workload and fairly distribute costs and benefits of the program between general taxpayers and program applicants.

After completing its study, the advisory group must submit a report that provides recommendations to improve the program, and appropriate funding sources for the program. The report must also identify outcome-based performance measures to improve the timeliness of permit issuance, service delivery, and client satisfaction. Any recommendations concerning fees must be consistent with the efforts to integrate forest practices and hydraulic permitting processes.

The advisory group must submit a report containing its recommendations and findings to the Governor, the Fish and Wildlife Commission, and the appropriate legislative committees by November 15, 2002.-

Appropriation: None.

Fiscal Note: Requested on January 31, 2002.

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

Testimony For (original bill): Fees can benefit both sides because the hydraulic permit program is critically underfunded. The pamphlet approvals and the creation of an advisory committee are good improvements to the law. Pamphlets are a good way to streamline the process. Users of the system should pay fees for processing permits. The streamlining process is a good step forward, and the Legislature recently enacted streamlining for transportation projects that should work. There is a large budget shortfall, and fees for these permits will help address this shortfall.

(With concerns) Pamphlets don't provide the same level of protection as existing permits. The proposed interim fee is set too low.

Testimony Against (original bill): Project applicants spend large sums of monies doing the upgrades, and shouldn't have to pay fees for the permits. Adding fees will greatly increase costs. Hydraulic approvals was a major part of the forests and fish agreement, and this separate fee authority is a disincentive to integrate forest practices and hydraulic permitting. The fee schedule should be submitted to the Legislature for approval. Adoption of fees through an emergency process doesn't allow for proper input. Fees should not be open-ended. Public entities are the project applicants for many of the more complex projects. These projects benefit the government and not the landowner, so the project applicants shouldn't have to pay fees. Hydraulic permits approvals should use the reviews already conducted by the Army Corps of Engineers.

Testified: (In support) Bruce Wishart, People for Puget Sound; Terry Hull, Puget Sound Water Quality Action Team; and Greg Hueckel, Department of Fish and Wildlife.

(In support with concerns) Jim Cahill, Office of Financial Management; and Loren Stern, Department of Fish and Wildlife.

(Opposed) Tim Boyd and Court Stanley, Port Blakely Tree Farms; Bill Garvin, Washington Forest Protection Association; Mary Burke, Washington Cattlemen's Association; Kristen Sawin, Association of Washington Businesses; Eric Johnson, Washington Public Ports Association; Nels Hanson, Washington Farm Forestry Association; and Willy O'Neil, Associated General Contractors.