

HOUSE BILL REPORT

ESHB 2866

As Amended by the Senate

Title: An act relating to hydraulic permits.

Brief Description: Limiting overlapping jurisdiction regarding the permitting of storm water projects.

Sponsors: By House Committee on Natural Resources (originally sponsored by Representatives Doumit, Sump, Reardon, Schoesler, Linville, Kessler, Morris, Mulliken, Hatfield, Pearson, Grant, Armstrong and McMorris).

Brief History:

Committee Activity:

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

Floor Activity:

Passed House: 2/16/02, 74-24.

Senate Amended.

Passed Senate: 3/8/02, 30-18.

Brief Summary of Engrossed Substitute Bill

- Prohibits hydraulic projects from being unreasonably conditioned.
- Limits the Department of Fish and Wildlife ability to issue or condition hydraulic permits for storm water projects under certain circumstances.
- Allows marine terminals in existence on June 6, 1996, or marine terminals that have received a hydraulic project approval for its initial construction, to obtain upon request a renewable five-year hydraulic project approval for regular maintenance activities of the marine terminal.
- Increases the membership of the Hydraulics Appeals Board by adding three members representing local governments.

HOUSE COMMITTEE ON NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Doumit, Chair; Rockefeller, Vice Chair; Sump, Ranking Minority Member; Buck, Eickmeyer, Ericksen, Jackley, Orcutt and Pearson.

Minority Report: Do not pass. Signed by 2 members: Representatives McDermott and Upthegrove.

Staff: Bill Lynch (786-7092).

Background:

A person must obtain hydraulic project approval 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 or work. Hydraulic permits are issued to ensure the proper protection of fish life and are issued by the Department of Fish and Wildlife (DFW).

Hydraulic project approvals cannot be unreasonably withheld. Some concerns have been expressed that the conditions being attached to hydraulic permits are not in proportion to the impact of the proposed project. The imposition of impact fees by local governments requires that the fees must reasonably relate to the increased service demands caused by the development activity. The local ordinance imposing the fee must develop a method for calculating the amount of impact fees based upon the proportionate share of the cost of public facility improvements required for each type of development activity. There is no similar type of guidelines used for attaching conditions to hydraulic permits.

Additional concerns have been raised by applicants seeking approval for storm water projects that there are inconsistent directions being given by the Department of Ecology (DOE) and the DFW.

Marinas in existence on June 6, 1996, or that have received a hydraulic project approval for its initial construction, may obtain upon request a renewable five-year hydraulic project approval for regular maintenance activities of the marina. This type of renewable five-year approval for regular maintenance is not available for marine terminals.

The Hydraulics Appeals Board consists of three members. One member is the director of the Department of Ecology or the director's designee, one member is the director of the Department of Agriculture or the director's designee, and the remaining member is the director of the DFW or the director's designee. The board is responsible for hearing those hydraulic appeals related to diversions of water for agricultural irrigation or stock watering, streambank stabilization to protect farm and agricultural land, and proposals pertaining to off-site mitigation. There are no representatives of local government on this board.

Summary of Engrossed Substitute Bill:

Hydraulic projects may not be unreasonably conditioned. Conditions imposed upon

obtaining a hydraulic project approval must reasonably relate to the project. The DFW may not impose conditions that attempt to optimize fish life that are out of proportion to the impact of the proposed project.

Hydraulic permits must contain provisions that allow for minor modifications to the plans and specifications without requiring a permit to be reissued.

A process is established to address overlapping jurisdiction between the DOE and the DFW regarding storm water projects. The DOE and local governments operating under the water pollution control laws are recognized as having the primary responsibility for the regulation of storm water projects. Once the DOE or a local government have approved a storm water project that is consistent with the storm water manual adopted by the DOE, or its equivalent, a hydraulic permit is only required for the actual construction of any storm water outfall or associated structures. The DFW may not deny or condition hydraulic permits under these circumstances based upon water quality or quantity impacts arising from storm water discharges for which the structure is being installed.

In other locations, the DFW may issue hydraulic permits pertaining to storm water projects, and the permits may contain provisions that protect fish life from adverse effects resulting from the direct hydraulic impacts of the discharge. Before issuing a hydraulic permit with conditions under these circumstances, the DFW must make a finding that the discharge from the outfall will cause harmful effects to fish, send the findings to the applicant and the city or county in which the project is being proposed, and allow the applicant an opportunity to use local ordinances or other mechanisms to avoid adverse effects resulting from the direct hydraulic discharge. Once this process is followed, the DFW may issue a hydraulic permit that prescribes the discharge rates from an outfall structure that will prevent adverse effects to the bed or flow of the waterway. The DFW may recommend, but not specify, the measures needed to meet these discharge rates. The DFW may not require changes to the project design above the mean higher high water mark of marine waters or the ordinary high water mark of fresh waters of the state. Nothing is intended to alter any authority the DFW may have to regulate other types of projects under the hydraulics code.

Marine terminals in existence on June 6, 1996, or marine terminals that have received a hydraulic project approval for their initial construction, may obtain upon request a renewable five-year hydraulic project approval for regular maintenance activities of the marine terminal.

The membership of the Hydraulics Appeals Board is increased by three members representing local governments. One of these members represents cities, one member represents counties, and one member represents port districts. The local government representatives are appointed by and serve at the pleasure of their respective state associations.

EFFECT OF SENATE AMENDMENT(S):

States that hydraulic permits may be reasonably conditioned. Suspends the 45-day requirement for hydraulic permit approval if the applicant desires to utilize local ordinances or other mechanisms to avoid adverse effects of hydraulic discharges. Replaces the finding by the Department of Ecology of a storm water project being consistent with the department's storm water manual to the applicant needing a National Pollution Discharge Elimination System (NPDES) municipal storm water permit as the triggering event to shift upland regulation exclusively to the Department of Ecology. Removes the language that states the primary responsibility to regulate storm water projects belongs to Ecology and local governments.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For (original bill): There is a need to improve the current process to make it more reasonable. It is difficult to know which agency is in charge on storm water projects, clarifying that the DOE is in the lead is good. Storm water is becoming a bigger and bigger issue. Requiring conditions for hydraulic permits to reasonably relate to the impact of the project is a very good addition. Streamlining this process is overdue. It takes too much time to get a hydraulics permit now.

(With concerns) The language pertaining to cumulative effects is too broadly written and would be an increase in authority for the department. The expansion of the Hydraulics Board membership should not include special purpose districts.

Testimony Against (original bill): Storm water is a major factor in the decline in fish. The DFW is filling in the gaps that the DOE doesn't address. There is not an overlap in the current process. The additional authority for marine terminals is a major concern because substantial repairs and reconstruction can be very disruptive, and they should be required to obtain a new permit. The storm water project streamlining is not appropriate for all projects such as airports.

Testified: (In support) Kristen Sawin, Association of Washington Businesses; Eric Johnson, Washington Public Ports Association; Willy O'Neil, Associated General Contractors; and Dave Williams, Association of Washington Cities.

(In support with concerns) Greg Hueckel, Department of Fish and Wildlife; and Robert Jensen, Environmental Hearings Office.

(With concerns) Terry Hull, Puget Sound Water Quality Action Team; and Phil Watkins, Airport Communities Coalition.

(Opposed) Bruce Wishart, People for Puget Sound.