

# FINAL BILL REPORT

## ESHB 2866

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### PARTIAL VETO

**C 368 L 02**

Synopsis as Enacted

**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).

**House Committee on Natural Resources**

**Senate Committee on Natural Resources, Parks & Shorelines**

#### **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 but the statute does not address the kinds of conditions that may be attached to hydraulic permits. 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 guidelines to be used for conditioning hydraulic permits.

Applicants seeking to construct a stormwater management device must receive both a hydraulic permit from the Department of Fish and Wildlife and a National Pollution Discharge Elimination Permit from the Department of Ecology. The two permits may require different requirements to be met before the project is approved.

Marinas that were 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.

**Summary:**

The Department of Fish and Wildlife (DFW) may not unreasonably condition hydraulic projects. 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 Department of Ecology (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 a storm water project has been granted a National Pollution Discharge Elimination System permit, also known as the NPDES permit, a hydraulic permit is required only 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.

**Votes on Final Passage:**

House 74 24  
Senate 30 18 (Senate amended)  
House 68 28 (House concurred)  
House 61 35 (House reconsidered)

**Effective:** June 13, 2002

**Partial Veto Summary:** The Governor vetoed a section that increased the membership of the Hydraulics Appeals Board by adding three members representing local governments.