

HOUSE BILL REPORT

HB 2866

As Reported by House Committee On:

Natural Resources

Title: An act relating to hydraulic permits.

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

Sponsors: 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].

Brief Summary of Substitute Bill

- Prohibits hydraulic projects from being unreasonably conditioned.
- Prohibits the Department of Fish and Wildlife (DFW) from requiring the redesign of a proposed storm water project already approved by the Department of Ecology (DOE) as a condition to obtain a hydraulics permit. Requires the DFW to make findings of deficiency that are submitted to the DOE for further review when it imposes conditions upon or denies a hydraulic permit for a storm water project because of inadequate design.
- 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 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 the design of storm water projects. The DOE is recognized as having the primary responsibility for the design of storm water projects. If the DOE approves the design of a proposed storm water project, the DFW cannot require the redesign of that project as a condition to obtain a hydraulics permit.

If the DFW denies or conditions a hydraulic permit for a proposed storm water project already approved by the DOE, and the conditions or denial are based upon the design of the project, then the DFW must make specific findings of deficiency concerning the storm water project that describe how the proposed project is inadequate to protect fish life and transmit these findings to the DOE. The DOE must review these findings and either modify the original permit to address these findings or issue an order dismissing the findings. If the hydraulic permit is conditioned or denied by the DFW following the consideration by the DOE of the DFW findings of deficiency, the decision to condition or deny the permit must be made by the director of the DFW or the director's designee.

The provisions of any storm water manual developed by the DOE are to be considered only as advisory by the DFW when reviewing a proposed storm water project for purposes of issuing a hydraulics permit. Any impact to flows resulting from a storm water project must be considered in relation to its impact to fish for purposes of hydraulic project approval.

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.

Substitute Bill Compared to Original Bill:

Language is added to extend the process established for denials of hydraulic permits for storm water projects based upon inadequate design to include conditions attached to those

permits. Language is deleted pertaining to addressing proportionate share of cumulative impacts within a watershed.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date of Substitute Bill: 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.