

2866-S

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

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

**HB 2866-S.E - DIGEST**

(DIGEST AS ENACTED)

Finds that hydraulic project approval should ensure that fish life is properly protected, but conditions attached to the approval of these permits must reasonably relate to the potential harm that the projects may produce.

Recognizes that the department of ecology is primarily responsible for the approval of storm water projects. The legislature believes that once the department of ecology approves a proposed storm water project, it is inappropriate for the department of fish and wildlife to require a major redesign of that project in order for the applicant to obtain hydraulic project approval.

Expresses a belief that it is more appropriate for the department of fish and wildlife to defer the design elements of a storm water project to the department of ecology and focus its own efforts on determining reasonable mitigation or conditions for the project based upon the project's potential harm to fish.

Declares an intent to restore some balance over conditions attached to hydraulic permits, and to minimize overlapping state regulatory authority regarding storm water projects in order to reduce waste in both time and money while still providing ample protection for fish life.

VETO MESSAGE ON HB 2866-S

April 5, 2002

To the Honorable Speaker and Members,

The House of Representatives of the State of Washington  
Ladies and Gentlemen:

I am returning herewith, without my approval as to section 6, Engrossed Substitute House Bill No. 2866 entitled:

"AN ACT Relating to hydraulic permits;"

Engrossed Substitute House Bill No. 2866 makes changes to the hydraulic project approval (HPA) statute and adds members to the Hydraulic Appeals Board.

Section 6 of the bill would have added three members to the Hydraulics Appeals Board - one to be appointed by the Association of Washington Cities, one by the Association of Washington Counties, and one by the Washington Public Ports Association - to serve at the pleasure of those associations. These associations should not control half of a quasi-judicial board that hears appeals in which the associations very often have a stake.

In reviewing the bill, I am also concerned about sections 4 and 5. These sections address the relationship between HPA permits and general storm water permits, and how the Department of Fish and Wildlife (WDFW) may condition the issuance of an HPA permit.

Although I have decided not to veto sections 4 and 5, I am concerned that these sections could limit the ability of WDFW to provide protection for fish through the HPA process. There has not been a sufficient examination of whether the storm water manual, local ordinances, or "other mechanisms" would be adequate substitutes for the conditions that the department would consider. The consequence could be to tie the hands of the department in the implementation of one of its only regulatory programs for fish habitat protection without adequate assurance that the alternative will provide the necessary level of protection.

The supplemental operating budget includes a provision requiring WDFW to establish a hydraulic project approval (HPA) program technical review task force. This task force is to conduct a thorough evaluation of the HPA program and make recommendations to the legislature by November of this year. I am requesting that this task force also address the question of the overlap of state statutory requirements and local programs, to determine whether they adequately address impacts covered by the HPA process.

There is an opportunity to streamline these processes and clarify regulatory authority. However, we must make these improvements in a manner that will protect critical salmon habitat, and maintain the ability of our state agencies to provide such protection. I expect that the HPA task force will make recommendations to accomplish this.

For the reasons indicated above, I have vetoed section 6 of Engrossed Substitute House Bill No. 2866.

With the exception of section 6, Engrossed Substitute House Bill No. 2866 is approved.

Respectfully submitted,  
Gary Locke  
Governor