

HOUSE BILL REPORT

HB 2034

As Reported by House Committee On:
Fisheries, Ecology & Parks

Title: An act relating to hydraulic project permit efficiency and accountability.

Brief Description: Streamlining the hydraulic project approval permit application process.

Sponsors: Representatives Cooper, Buck and Linville.

Brief History:

Committee Activity:

Fisheries, Ecology & Parks: 2/25/03, 2/27/03 [DPS].

Brief Summary of Substitute Bill

- Establishes legislative intent to clarify authorities under RCW 77.55 (Construction Projects in State Waters) and streamline the hydraulic project application process to provide consistency and predictability for permit applicants.

HOUSE COMMITTEE ON FISHERIES, ECOLOGY & PARKS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Cooper, Chair; Berkey, Vice Chair; Sump, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Buck, Hatfield, O'Brien, Pearson and Upthegrove.

Staff: Jeff Olsen (786-7157).

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 state waters before beginning the construction or work. The Department of Fish and Wildlife (DFW) issues hydraulic project approvals (HPA) to ensure the proper protection of fish life.

Engrossed Substitute Senate Bill 6387, Section 307 (23) passed by the 2002 Legislature created the HPA Task Force (Task Force). The Task Force was directed to conduct an

evaluation of the HPA program and make recommendations to the Legislature by November 30, 2002. The Task Force report contains several recommendations for the HPA program including:

- The DFW should improve program consistency;
- the DFW should streamline permitting and technical assistance;
- all HPA appeals should be the jurisdiction of the Hydraulic Appeals Board;
- the DFW should establish a compliance section for the HPA Program; and
- the DFW should improve staff training and provide clear direction on legal authorities.

Summary of Substitute Bill:

Legislative intent is established clarifying the DFW's authority under RCW 77.55 (Construction Projects in State Waters). Legislative intent is also established to streamline the hydraulic project approval process to provide consistency and predictability for permit applicants and to ensure that projects with the highest potential risk to fish and fish habitat receive the highest priority.

Substitute Bill Compared to Original Bill:

The substitute bill corrects a technical error and cites the DFW's authority under RCW 77.55 and not the Department of Ecology.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The hydraulic statutes were created in 1949 and have been amended many times. There is a lack of clarity in the code and it should be updated and responsibilities should be clarified. The Fish and Wildlife Commission has directed the DFW to implement the Task Force recommendations. The HPA review should look at the scope of DFW's authority under RCW 77.55, consistency, streamlining, appeals, and compliance. The DFW should focus on priority projects and spend the most effort on projects having the biggest impact on fish. The HPA is the only permit solely to protect fish life and it plays a critical role in salmon recovery. One major concern is the loss of near shore habitat and the armoring of shorelines.

(In support with concerns) Project proponents are concerned about the lack of predictably

and consistency in the HPA program, the need for an effective dispute resolution process, and would like to see general or programmatic permits. The DFW should consider other federal and state permits in certain cases as "equivalent" and focus on areas where the HPA is the only permit. The hydraulics chapter involves construction projects in state waters, and should be managed by persons with experience in engineering. The DFW should ensure it has proper staff and training to implement the HPA program. The HPA and the Forest Practices Application need to be integrated as agreed to in the Forest and Fish Report. The HPA permitting process needs to be improved so it is more efficient for permit applicants and effective in protecting fish.

Testimony Against: The HPA reform should also include provisions for public notification and involvement. Currently there are no notice requirements or comment period for the public in the HPA permit process. If general permits are developed, there needs to be clear direction and criteria for the DFW to implement. The Endangered Species Act and federal permits are not equivalent to the HPA. Jurisdiction for the HPA program should not be limited to the beds of waters, but impacts to the beds of state waters. The HPA program needs adequate funding and fees or dedicated revenues should be considered. The HPA code does not need a major revision. Language in the proposed substitute is vague regarding the classification system and programmatic permits. Changes to civil penalties and compliance should be considered in any changes to the HPA.

Testified: (In support) Representative Cooper, prime sponsor; Doug Myers, Puget Sound Water Quality Action Team; and Jeff Koeings, Department of Fish and Wildlife

(In support with concerns) Bill Garvin, Washington Forest Protection Association, Eric Johnson, Washington Public Ports Association; Kristen Sawin, Association of Washington Business; and Willy O'Neil, Association of General Contractors of Washington.

(Opposed) Bruce Wishart, People for Puget Sound; Lea Mitchell, Public Employees for Environmental Responsibility; and Nina Carter, Audubon Society.