
**Fisheries, Ecology & Parks
Committee**

ESSB 5375

Brief Description: Improving the efficiency and predictability of the hydraulic project approval program.

Sponsors: Senate Committee on Parks, Fish & Wildlife (originally sponsored by Senators Doumit, Oke, Haugen, Swecker, Prentice, Hale, Reardon and Rasmussen).

Brief Summary of Engrossed Substitute Bill

- Limits the jurisdiction of the hydraulic project approval (HPA) permit to work that occurs within the bed of any state waters.
- Directs the Department of Fish and Wildlife to develop general permits for common activities including maintenance and repair of existing structures.
- Authorizes local governments to apply for certification of critical areas or shoreline regulations as equivalent to HPA requirements.
- Establishes an expedited dispute resolution process and a review committee to review HPA permit decisions and accept, reject, or determine alternative permit conditions.

Hearing Date: 4/3/03

Staff: Jeff Olsen (786-7157).

Background:

A person must obtain an hydraulic project approval (HPA) for any project 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 construction. HPA permits are issued by the Department of Fish and Wildlife (DFW) to ensure the proper protection of fish life. The bed of state waters is defined in the hydraulic code as land below the ordinary high water lines of state waters.

HPA decisions may be appealed to the Director of the DFW under the provisions of the Administrative Procedure Act. The appeal may be heard by the Director or an administrative law judge, but final decisions on the appeal are made by the Director. Certain

projects related to agricultural irrigation or off-site mitigation are heard by the Hydraulic Appeals Board, consisting of the directors of the DFW, Ecology, and Agriculture.

Summary of Bill:

The requirement for an HPA permit is limited to work that occurs within the bed of any state waters.

The DFW must develop general HPA permits for common or routine activities by December 2004. The permits must contain conditions necessary to protect fish life. The DFW must publish a description of activities covered by each general permit, the conditions a project applicant must follow to receive coverage under the permit, and a notice of intent form for use by project applicants. A project applicant may receive coverage under a general permit by sending the notice of intent to the DFW 21 days before construction is to begin.

Local governments may apply for certification of critical areas or shoreline regulations as equivalent to HPA requirements. If certification is approved by the DFW, HPAs are not required for projects within that jurisdiction. If certification is denied, the DFW must make recommendations to the local government that would make the local regulations equivalent.

Project applicants may request exemption from HPA requirements if equivalent review is provided through other regulatory permits. If the DFW denies the request, the DFW must identify why the other regulatory reviews do not adequately protect fish life.

At the request of a city, county, or private party, the DFW must develop five-year renewable maintenance or mitigation agreements for flood damage repair or reduction under agreed-upon conditions. The HPA must allow for bank stabilization, bridge repair, removal of sandbars, channel maintenance, and other flood damage repair and reduction activities. Individual permits are not required for specific projects covered by the maintenance HPA.

The DFW must develop procedures to ensure that HPA conditions are applied consistently. The procedures must include common technical conditions, including allowable in-water work windows.

An expedited dispute resolution process is created. An applicant may request dispute resolution at any point prior to HPA issuance. The DFW must convene a review committee including the project, applicant's engineer, DFW engineer, DFW regional program manager, and an engineer from the local government with jurisdiction over the project. The review committee may accept the draft permit conditions, propose alternative conditions, or return the permit to the DFW for further review. Decisions of the review committee are binding on the DFW.

Appropriation: None.

Fiscal Note: Requested on March 21, 2003.

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