

SENATE BILL REPORT

ESSB 5375

As Passed Senate, March 19, 2003

Title: An act relating to regulatory reform of the hydraulic project approval program.

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 History:

Committee Activity: Parks, Fish & Wildlife: 2/10/03, 3/3/03 [DPS-WM].

Ways & Means: 3/7/03, 3/10/03 [DPS (PFW), DNP].

Passed Senate: 3/19/03, 33-16.

SENATE COMMITTEE ON PARKS, FISH & WILDLIFE

Majority Report: That Substitute Senate Bill No. 5375 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Oke, Chair; Sheahan, Vice Chair; Doumit, Esser, Morton and Swecker.

Staff: Kari Guy (786-7437)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5375 as recommended by Committee on Parks, Fish & Wildlife be substituted therefor, and the substitute bill do pass.

Signed by Senators Rossi, Chair; Hewitt, Vice Chair; Zarelli, Vice Chair; Doumit, Hale, Honeyford, Johnson, Parlette, Roach, Sheahan and Winsley.

Minority Report: Do not pass.

Signed by Senators Brown, Fraser, Poulsen and Regala.

Staff: Richard Ramsey (786-7412)

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 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. An HPA is required both for work that will change the bed of any waters, or would change the natural flow of state waters.

Most HPA decisions may be appealed to the director of the Department of Fish and Wildlife 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 Fish and Wildlife, Ecology, and Agriculture.

There have been concerns raised about the consistency in application of HPA permit conditions, and potential overlaps with other permit requirements.

Summary of Bill: The Department of Fish and Wildlife must develop general HPA permits for common or routine activities by December 2004. The permits must contain conditions necessary to protect fish life. The Department of Fish and Wildlife 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 Department of Fish and Wildlife 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 department, HPAs are not required for projects within that jurisdiction. If certification is denied, the department 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 department denies the request, the department must identify why the other regulatory reviews do not adequately protect fish life.

At the request of a city, county, or private party, the department 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 Department of Fish and Wildlife 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 Department of Fish and Wildlife must convene a review committee including the project, applicant's engineer, department engineer, department 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 department for further review. Decisions of the review committee are binding on the department.

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

Appropriation: None.

Fiscal Note: Requested on January 23, 2003.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For (Parks, Fish & Wildlife): The general permits and equivalency provisions will simplify the permit process for permit applicants. It is appropriate to focus the HPA program in areas not covered by another regulatory program. The dispute resolution process is needed, and may avert appeals of permit conditions. This will help achieve consistency in project conditions, and provide greater predictability for project applicants.

Testimony Against (Parks, Fish & Wildlife): The state should not rely on federal permits for equivalency. The existing HPA program does not adequately protect fish life, and the state shouldn't weaken the program. There is significant overlap between the HPA program and local critical areas ordinances; the bill should include provisions to allow WDFW to defer to the local process.

Testified (Parks, Fish & Wildlife): David Kimble, Committee to Restore Duncan Creek (con); Doug Myers, Puget Sound Water Quality Action Team (con); Greg Hueckel, WDFW (pro w/concerns); Lea Maxwell, Washington PEER (con); Willy O'Neil, AGC of WA (pro); Robyn Meenach, WA Farm Bureau (pro); Grant Nelson, AWB (pro); Eric Johnson, Ports Assn. (pro); Bruce Wishart, People for Puget Sound (con); Jamie Glasgow, Washington Trout (con); Paul Parker, WA Assn. of Counties (pro).

Testimony For (Ways & Means): General permits for routine activities such as dock repairs, maintenance, and culvert replacement, enhances the predictability of the HPA process. The department should take advantage of the review of projects by federal agencies implementing the Endangered Species Act (ESA).

Testimony Against (Ways & Means): As currently drafted, rulemaking is required and will have costs above current activities. The HPA program has relatively small overlap with the ESA and it is not the state's intent to relinquish its authority. The bill requires two additional staff immediately; however, by fiscal year 2005, area habitat biologists can be removed from the field. The bill goes beyond the consensus points of the HPA task force. ESA equivalency is a bad idea because the federal agencies look to the area habitat biologists for guidance. Limiting the coverage of an HPA to the bed of state waters is a huge change.

Testified (Ways & Means): PRO: Senator Mark Doumit, prime sponsor; Eric Johnson, WA Public Ports Assn.; CON: Bruce Wishart, People for Puget Sound; PRO with concerns: Greg Hueckel, Department of Fish and Wildlife.