

SENATE BILL REPORT

SB 6368

As Reported By Senate Committee On:
Parks, Fish & Wildlife, February 3, 2004

Title: An act relating to compliance with the hydraulic project approval requirements.

Brief Description: Concerning stop work orders on projects that require hydraulic project approval.

Sponsors: Senators Haugen, Oke and Spanel.

Brief History:

Committee Activity: Parks, Fish & Wildlife: 1/26/04, 2/3/04 [DPS].

SENATE COMMITTEE ON PARKS, FISH & WILDLIFE

Majority Report: That Substitute Senate Bill No. 6368 be substituted therefor, and the substitute bill do pass.

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

Staff: Jennifer Arnold (786-7543)

Background: The Department of Fish and Wildlife (DFW) is responsible for the enforcement of the Hydraulic Code, which provides that any person or government agency must obtain a permit 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." Under current law, failure to obtain Hydraulic Project Approval (HPA) before commencing work or failure to follow the conditions set forth in the HPA is punishable under criminal law as a gross misdemeanor and/or a civil penalty of up to \$100 per day. The current statutes contain no provisions for issuing stop work orders or for civil infractions for projects in violation of a HPA.

Summary of Substitute Bill: The Department of Fish and Wildlife is authorized to issue civil stop work orders to persons or government agencies that fail to obtain a permit or that are out of compliance with permit requirements for hydraulic projects. An order will be issued by the Department's regional program manager responsible for overseeing the regional hydraulic project activities at any point prior to the approval. The order must include the specific nature, extent and time of the violation, damage caused, notice to cease and desist, as well as any corrective remedial actions required. A stop work order may be appealed within 20 days, subject to the Administrative Procedure Act.

It is a gross misdemeanor to unlawfully undertake hydraulic project activities in violation of a stop work order. However, if all requirements of the order are met, criminal penalties are not applicable. Further, the Department of Fish and Wildlife is authorized to issue civil infractions for violations of the hydraulics code. If such an infraction is issued, the department cannot seek criminal penalties.

It is clarified that a government agency, in addition to persons, may be found guilty of unlawfully undertaking hydraulic project activities.

A provision of the Fish and Wildlife enforcement code authorizing the department to issue civil penalty fines in the amount of \$100 per day is repealed.

Substitute Bill Compared to Original Bill: It is clarified that criminal sanctions are not applicable if in compliance with a stop work order. Stop work orders will be issued by the department's regional program manager responsible for overseeing the regional hydraulic project activities at any point prior to the approval. The department is given the authority to issue civil infractions for violations of the hydraulics code. A government agency, in addition to persons, may be found guilty of unlawfully undertaking hydraulic project activities. A provision of the Fish and Wildlife enforcement code authorizing the department to issue civil penalty fines in the amount of \$100 per day is repealed.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Last year a company constructed a large boat in good faith; but, in spite of their intentions, criminal charges were filed against the company leadership. These charges were filed after the company had worked through a lengthy process of negotiations and litigation, as well as paid significant sums in fines, to reach a settlement, which the company believed fully resolved the issues at hand. This bill provides a more appropriate and humane remedy than criminal charges to situations in which a good faith effort is made to comply with the law. If citizens work in good faith to come to an agreement they should not be criminally charged. If a cloud of criminal activity is held over a party, it is very difficult for counties to work with applicants to take corrective behavior. Corrective remedies are better than tying up the courts.

Concerns: The bill should address procedural issues of agency negotiating to prevent these situations. The concept of a cease and desist order is supported as it gives the department a broader choice of tools, allowing it to do more appropriate actions, but the criminal penalties should not be removed. There are concerns that the DFW jurisdictional line is unclear, as is. Thus, it is also unclear whether this bill would extend HPA to dry land. DFW opposes not allowing criminal charges if no HPA is obtained and only having authority to issue a stop work order in a no permit situation. Giving DFW new authority for those out of permit compliance could drive costs up for projects; may give too much authority to field biologists.

Testimony Against: None.

Testified: PRO: Senator Haugen; Scott Merriman, WSAC; PRO W/CONCERNS: Eric Johnson, Washington Public Ports Association; Jim Zimmerman, Troutlodge & WA Fish Growers Association; Chief Bruce Bjork, DFW; Bruce Wisart, People for Puget Sound; Greg Hueckel, DFW.