

SENATE BILL REPORT

HB 2710

As Reported By Senate Committee On:
Natural Resources, Ocean & Recreation, February 23, 2006

Title: An act relating to clarifying the process for hydraulic permit appeals.

Brief Description: Clarifying the process for hydraulic permit appeals.

Sponsors: Representatives Buck and B. Sullivan.

Brief History: Passed House: 2/14/06, 96-0.

Committee Activity: Natural Resources, Ocean & Recreation: 2/22/06, 2/23/06 [DPA].

SENATE COMMITTEE ON NATURAL RESOURCES, OCEAN & RECREATION

Majority Report: Do pass as amended.

Signed by Senators Jacobsen, Chair; Doumit, Vice Chair; Oke, Ranking Minority Member; Hargrove, Morton, Spanel, Stevens and Swecker.

Staff: Curt Gavigan (786-7437)

Background: A person must obtain a hydraulic permit before beginning construction on 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. Hydraulic permits are issued by the Washington Department of Fish and Wildlife (WDFW) 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 line of state waters.

Hydraulic permit decisions may be formally appealed to the Director of the WDFW (Director) under the provisions of the Administrative Procedure Act. The appeal may be heard by the Director or an administrative law judge, but the final decision on the appeal is made by the Director. WDFW's rules also contain provisions allowing for an informal review of its permit decisions.

Certain projects related to agricultural irrigation, off-site mitigation, marine beach front bulkheads, and fish habitat enhancement projects may be formally appealed to the Hydraulic Appeals Board (HAB). The HAB is established within the Environmental Hearings Office and consists of three members: the Director of the Department of Ecology or the designee, the Director of the Department of Agriculture or the designee, and the Director of the WDFW or the designee. The HAB makes findings of fact and prepares a written decision on each case it hears. A decision of the HAB must be agreed to by at least two of its members.

Chapter 371, Laws of 2002 (Engrossed Substitute Senate Bill 6387, Section 307 subsection 23), created the Hydraulic Project Approval Task Force (Task Force). The Task Force was directed to conduct an evaluation of the Hydraulic Project Approval Program and make recommendations to the Legislature by November 30, 2002. The Task Force recommended that all formal hydraulic permit appeals should be the jurisdiction of the HAB.

Summary of Amended Bill: All hydraulic permit decisions issued by the WDFW, not just permits for certain types of projects related to agricultural irrigation, off-site mitigation, marine beach front bulkheads, and fish habitat enhancement, are appealable under the jurisdiction of the the HAB. Persons seeking review to the HAB must be offered an opportunity for voluntary informal review with the WDFW.

Amended Bill Compared to Original Bill: The amended bill specifies that persons seeking review to the HAB must be provided an opportunity for informal review with the WDFW. If, following this informal review process, the person seeking review still wishes to contest the agency action, he or she may proceed with the formal appeals process.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Testimony For: Centralizing the permit appeals process in the HAB is a good idea, but it is important to make sure that the informal review process within WDFW can continue.

Testimony Against: None.

Who Testified: PRO: Debora Munuia; WFPA.