

SENATE BILL REPORT

SB 6448

As Reported by Senate Committee On:
Natural Resources, Ocean & Recreation, February 3, 2010
Ways & Means, February 9, 2010

Title: An act relating to providing the department of fish and wildlife authority to improve permitting of hydraulic projects.

Brief Description: Concerning permitting of hydraulic projects.

Sponsors: Senator Jacobsen.

Brief History:

Committee Activity: Natural Resources, Ocean & Recreation: 1/20/10, 2/03/10 [DPS-WM, DNP].

Ways & Means: 2/08/10, 2/09/10 [DPS(NROR), DNP, w/oRec].

SENATE COMMITTEE ON NATURAL RESOURCES, OCEAN & RECREATION

Majority Report: That Substitute Senate Bill No. 6448 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Jacobsen, Chair; Ranker, Vice Chair; Fraser, Hargrove and Hatfield.

Minority Report: Do not pass.

Signed by Senators Morton, Ranking Minority Member; Stevens.

Staff: Curt Gavigan (786-7437)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6448 as recommended by Committee on Natural Resources, Ocean & Recreation be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Tom, Vice Chair, Operating Budget; Fairley, Hobbs, Keiser, Kline, Kohl-Welles, McDermott, Murray, Pridemore, Regala and Rockefeller.

Minority Report: Do not pass.

Signed by Senators Honeyford and Schoesler.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: That it be referred without recommendation.

Signed by Senators Zarelli, Ranking Minority Member; Brandland, Carrell, Hewitt, Parlette and Pflug.

Staff: Maria Hovde (786-7710)

Background: Hydraulic Project Approvals (HPA). An HPA is required 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. HPAs are issued by the Department of Fish and Wildlife (DFW) to ensure the proper protection of fish life. There is currently no fee for an HPA.

Programmatic HPAs. Generally, a person must apply for and obtain an HPA for each hydraulic project conducted. However, in two circumstances the Legislature has provided DFW with the authority to adopt rules and publish a pamphlet that serves as the HPA. These activities are removing and controlling noxious weeds, and small scale prospecting and mining.

HPA Enforcement. A person is subject to a gross misdemeanor for certain HPA-related violations, which include conducting a hydraulic project without an HPA or violating a requirement or condition of an HPA. DFW may also impose civil penalties of up to \$100 per day for violations of the statutory provision that sets out the HPA requirement and basic permitting process.

Summary of Bill (Recommended Substitute): Programmatic HPAs. DFW may continue any currently authorized general HPA permits, which generally cover multiple hydraulic activities at unspecified sites throughout a geographic area. In addition, DFW may issue up to four pilot general permits authorizing water crossing structure installation, removal, and replacement to private sector applicants. The pilot runs until July 1, 2014.

DFW's existing authority to issue pamphlet permits for removing and controlling noxious weeds and small scale prospecting and mining remains unchanged.

HPA Fees. DFW must generally charge fees for HPAs according to a statutory fee schedule, which is adjusted annually for inflation. The language indicates that the fees are based on the scale and complexity of the project, and specifies examples of low, medium, and high complexity projects. Among other fees, the schedule includes:

- an application submittal fee of \$250;
- in addition to the application submittal fee, a permit processing fee of \$275 for a medium complexity project and \$1,200 for a high complexity project;
- in addition to the application submittal fee, a permit processing fee of \$5,250 for a general permit unless negotiated to a lesser amount; and
- a fee of \$150 for a permit modification requested by the permittee.

Exempts from the fees activities conducted under: the Family Forest Fish Passage Program; a pamphlet permit for removing and controlling noxious weeds or small scale prospecting and mining; and an approved forest practices permit.

An appropriated account is created to hold HPA fees collected that are used to fund DFW's HPA-related activities.

HPA Enforcement. The criminal HPA enforcement provision is modified to specify that a violation of a programmatic HPA condition is a gross misdemeanor. The actions for which DFW may seek civil penalties are amended to mirror criminal HPA violations. Additionally, DFW may seek civil penalties where a person receiving an expedited or emergency HPA subsequently fails to pay the required fee.

Forest Practices and HPA Integration. DFW and the Forest Practices Board must collaborate with stakeholders and jointly adopt rules for specified forest practices in order to protect fish life. Examples of these activities include new beaver dam removal and modification, timber felling and yarding, and activities relating to certain water crossing structures. DFW and the Forest Practices Board must incorporate those rules into forest practices permits for the specified activities, which do not require an HPA.

Terms are defined.

EFFECT OF CHANGES MADE BY NATURAL RESOURCES, OCEAN & RECREATION COMMITTEE (Recommended Substitute): The proposed substitute bill:

- removes language expanding DFW's pamphlet permit authority;
- narrows language providing DFW the authority to issue general permits to authority for four pilot projects;
- removes language directing DFW to adopt an HPA fee schedule by rule in 2012, and provides that the statutory fees are adjusted annually for inflation;
- exempts from HPA fees pamphlet permits, Family Forest Fish Passage Projects, and activities conducted under an approved forest practices permit;
- specifically lists examples of low, medium, and high complexity projects; and
- exempts certain forest practices from the HPA process if the forest practice permit contains requirements for the protection of fish life.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on July 1, 2010.

Staff Summary of Public Testimony on Original Bill (Natural Resources, Ocean & Recreation): PRO: This bill is one of the Governor's proposals on natural resources reform, which will allow streamlined permitting for low impact projects and allow DFW to prioritize its limited resource for project review, compliance monitoring, and enforcement. DFW will continue to work with stakeholders on the bill language and fee schedule.

CON: Charging mineral prospectors for the gold and fish pamphlet and individual permits will greatly impact them, and the revenue they currently provide to the state through their

activities. The state and DFW should improve the program, not charge fees to make up for their inefficiencies. Mining brings people enjoyment, allows the use of the state's natural resources, and improves the environment when the miner's collect mercury. The HPA permit is protecting a public resource, and should be paid for by the public and not landowners. Forest and agricultural landowners should receive incentives to stay on the land, not additional fees. For the forest industry, DFW should focus on following legislative intent and integrate HPAs into forest practices permits. The state must ensure that the HPA program adequately protects fish, particularly those federally listed and protected by treaty.

OTHER: Concerns exist about DFW's ability to protect in stream resources if programmatic and general permits are more broadly utilized because these permit types would reduce site specific review and conditioning. The state must uphold the work tribes are doing to restore salmon runs. Ports support permit streamlining, but concerns exist about DFW being authorized to set fees by rule. The Department of Natural Resources supports the proposal, but recognizes there is a cost to the trusts.

Persons Testifying (Natural Resources, Ocean & Recreation): PRO: John Mankowski, Governor's Office; Joe Stohr, Peter Birch, DFW.

CON: William Thomas, Resources Coalition; Barbara Kovacs, Gold Prospectors Association of America; Rob Matthews, Western Washington Gold Prospectors Association; Nic Trimble, North Central Washington Prospectors; Rick Dunning, Washington Farm Forestry Association; Kristen Sawin, Weyerhaeuser; John Stuhlmiller, Washington Farm Bureau; Ross Logan, Northwest Mineral Prospectors; Bruce Beatty, citizen.

OTHER: Dawn Vyvyan, Yakama Nation, Puyallup Tribe; Bruce Wishart, People for Puget Sound; Ric Abbett, Trout Unlimited; Steve Robinson, Northwest Indian Fisheries Commission; Eric Johnson, Washington Public Ports Association; Clay Sprague, Department of Natural Resources.

Staff Summary of Public Testimony on Recommended Substitute (Ways & Means):

PRO: This bill represents natural resource reform and incorporates a cost recovery mechanism. The changes made in the bill recognize the important economic and environmental impact the forest industry plays in the state. The best way to keep industry in the state is to not increase their costs. Private forest landowners have agreed to the forest and fish agreement which leaves timber assets on the ground and repairs roads and fish barriers.

CON: This bill will raise about \$3.0 million per year, but elimination of the program will save approximately \$9.0 million per year. This bill discourages prospecting. Individuals who are small scale prospectors and miners will be subject to the fees if they deviate from the pamphlet HPA. A lot of these individuals are retirees who have fixed incomes and some of the fees established in the bill are high. This bill exempts forest practices from the HPA requirements and requires the Department of Natural Resources (DNR) to implement rules, which would be done outside of the cooperative fisheries co-management process.

OTHER: The HPA program was designed to protect critical fish habitat and this is the only natural resource permit that is currently not subject to a fee. It is time for applicants to bear a

portion of the costs of this program. However, there are concerns with exempting forest practices from this requirement.

Persons Testifying (Ways & Means): PRO: Deborah Mungia, Washington Forest Protection Association; Jed Herman, DNR; Tom Davis, DFW.

CON: William Willette, citizen; James Curtiss, Bedrock Prospectors; Barbara Kovacs, GPAA Bedrock; Dawn Vyvyan, Yakama Nation, Puyallup Tribe of Indians.

OTHER: Bruce Wishart, People for Puget Sound.