
General Government Appropriations & Oversight Committee

HB 2008

Brief Description: Regarding the administration of natural resources programs.

Sponsors: Representatives Dunshee, Tharinger, Hudgins and Fitzgibbon; by request of Department of Fish and Wildlife and Department of Natural Resources.

Brief Summary of Bill

- Makes changes to the Washington Department of Fish and Wildlife's hydraulic project approval (HPA) permits, including the direction to assess fees, the provision of civil enforcement authority, and changes to the elements of criminal violations to the Hydraulics Code.
- Excuses forest practices permitted by the Department of Natural Resources from HPA permitting.
- Requires the Forest Practices Board to integrate the pertinent provisions of the Hydraulics Code into the Forest Practices Rules.
- Increases forest practices approval fees.
- Extends the length of time a forest practices permittee has to conduct the permitted forest practice.
- Creates two new accounts: (1) the Hydraulic Project Approval Account; and (2) the Forest Practices Application Account.

Hearing Date: 3/15/11

Staff: Jason Callahan (786-7117) and Owen Rowe (786-7391).

Background:

Hydraulic Project Approvals.

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.

Before beginning a construction project, a person must obtain a 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. Hydraulic project approvals are issued by the Washington Department of Fish and Wildlife (WDFW) to ensure the proper protection of fish life.

To receive an HPA, the applicant must provide certain information to the WDFW. This information includes general plans for the overall project, complete plans and specifications for any construction that is proposed to occur within the mean higher high water line (saltwater) or ordinary high water line (freshwater), and complete plans for the proper protection of fish life. There is no fee associated with applying for or receiving an HPA.

With a few exceptions, the WDFW must issue an approval or denial of an HPA application within 45 days of receiving the application. If approved, the HPA is valid for five years, and the applicant is required to demonstrate substantial progress on the construction within two years. If conditions change from the application, both the holder of the HPA and the WDFW can request modifications to the HPA.

The WDFW is statutorily authorized to issue programmatic HPAs for small scale mining and prospecting, and for activities or projects conducted solely for the removal or control of certain aquatic weeds. The programmatic approval is in lieu of an applicant obtaining an individual HPA. Under the programmatic approval process, the WDFW publishes a pamphlet that states the rules for that activity.

A person who unlawfully undertakes a project in violation of the HPA requirements may be prosecuted for a gross misdemeanor. Prosecution is available if a person conducts a project without an HPA, or if a person violates the conditions of the operative HPA.

Forest Practices Approvals.

A forest practices approval (FPA) must be obtained from the Department of Natural Resources (DNR) prior to conducting a forest practice such as tree thinning, chemical application, forest road building, or tree harvest. The application for an FPA is submitted to the DNR, and if approved, the FPA is valid for conducting the allowable forest practices for a period of two years from the date of approval. If the permitted forest practices are not completed within that two-year time period, then the applicant must apply for a new FPA.

The Forest Practices Act establishes four classes of forest practices based on the potential for the proposed operation to adversely affect public resources. The Forest Practices Board establishes standards that determine which forest practices are included in each class. The different classes determine the level of DNR involvement in the permitting process.

The four classes are:

- Class I forest practices are those determined by the Forest Practices Board to have no direct potential for damaging a public resource; these have no fees.
- Class II forest practices have a less than ordinary potential for damaging a public resource; these are charged a \$50 fee that is deposited into the State General Fund.

- Class III forest practices are more substantial than Class II forest practices, but less substantial than Class IV forest practices; these are charged a \$50 fee that is deposited into the State General Fund.
- Class IV forest practices activities have the potential for substantial environmental impacts and require compliance with the State Environmental Policy Act (SEPA); these are charged a \$50 fee that is deposited into the State General Fund, except for forest practices resulting in a conversion to a non-forestry land use, which are charged a \$500 fee.

Summary of Bill:

Hydraulic Project Approvals - Fees.

The WDFW is directed to recover a portion of the cost incurred in processing and issuing decisions on HPA applications through the assessment of fees on HPA applicants. Every HPA application, other than pamphlet HPAs (including mineral prospecting) and HPAs submitted for a forest practice, must be accompanied by a submittal fee and a processing fee. The submittal fee for all applicable HPAs is \$150. The initial processing fee, to be increased annually with inflation, must be assessed as follows:

- \$850 for a single HPA;
- \$4,850 for a general permit (an HPA for multiple hydraulic projects occurring over a defined area with undesignated specific project sites and for which the impacts are understood and mitigation measures exist);
- \$850 for a multiple site HPA, plus \$170 for each site covered by the multiple HPA after the first site; and
- \$100 for permit modification.

Certain projects are exempt from fees. These include certain fish passage barrier projects, fish habitat improvement projects, and projects when the applicant funds a contract with the WDFW to pay for permit processing. The WDFW may lower the processing fee for a proposed project that the WDFW determines will require less work for the WDFW to process. The WDFW must issue a refund of 50 percent of fees paid to applicants that have their application denied or not processed within the required timelines. A 100 percent refund is mandated if, after the WDFW collects a fee, it is determined that an HPA was not required for the proposed work.

All fees are to be deposited into a new appropriated account created for these purposes. This account, the Hydraulic Project Approval Account, may be used by the WDFW for the implementation of the HPA program. This includes permit processing decision issuance, enforcement actions, compliance and effectiveness monitoring, conducting or participating in appeals, and providing technical assistance to environmental engineers.

A one-time report is due to the Legislature from the WDFW regarding the impact of fee collections on the HPA program. The report must also include recommendations developed with stakeholders for improving HPA streamlining and the HPA fee schedule.

Hydraulic Project Approvals - Civil Enforcement.

The WDFW is provided with the authority to issue notices to comply and stop work orders for any person who conducts a hydraulic project without first obtaining an HPA or violates a condition of a specific HPA or a rule governing all HPAs. A stop work order requires the recipient to stop all work on an unlawful hydraulic project until a corrective action has been taken. A notice to comply requires the recipient to take corrective action after conducting an unlawful hydraulic project.

The WDFW is also provided with the authority to levy civil fines of up to \$10,000 per violation. The WDFW may develop a penalty schedule with more specificity in rule. The schedule must consider the previous history of the violator, the severity of the impacts on fish life, the intent and cooperation of the violator, and whether the damage is repairable.

The WDFW is given specific authority to apply for an administrative inspection warrant in either Thurston County or the county where the suspect hydraulic project is occurring. The warrant may be issued in instances when personnel with the WDFW needs to inspect a project site to ensure compliance with HPA requirements or has reason to believe the HPA requirements are being violated.

Hydraulic Project Approvals - Criminal Enforcement.

The elements of the existing gross misdemeanor of unlawful conducting of a hydraulic project are changed. The new elements of the crime are:

- construing a hydraulic project without first obtaining an HPA;
- violating the condition of a HPA;
- violating a stop work order or a notice to comply; or
- violating a rule of the WDFW regarding hydraulic projects.

The Fish and Wildlife Commission may identify in rule certain acts that are exempt from criminal prosecution. These acts may be punished as civil infractions.

Hydraulic Project Approvals - Permit Modifications.

An HPA must be allowed to be modified without requiring a reissuance of the HPA to accommodate minor adjustments to a project's timing. The minor deviation in the timing window established in the permit is only required to be allowed without a permit reissuance at times when there are no spawning or incubating fish present in the project's vicinity.

Hydraulic Project Approvals - Compliance Monitoring.

The WDFW is required to develop and implement a compliance monitoring program to determine the effectiveness of HPAs approved by the WDFW by January 1, 2012. The program must monitor the effectiveness of project standards in protecting fish life. The WDFW must use adaptive management principles to ensure fish life is protected if the monitoring program discovers that fish life is not being protected.

Forest Practices Act - Fees.

Forest practices fees are increased as follows:

- from \$50 to \$150 for Class II forest practices;
- from \$50 to \$150 for Class III forest practices involving 20 acres or less;
- from \$50 to \$250 for Class III forest practices involving more than 20 acres;
- from \$50 to \$250 for Class IV forest practices when the landowner signs an agreement not to convert the affected land to a non-forestry use;
- from \$50 to \$2,500 for Class IV forest practices with a potential for a substantial impact on the environment and may be subject to a detailed statement under the SEPA; and
- from \$500 to \$5000 for Class IV forest practices on lands being converted to a non-forestry use.

The money collected through forest practices fees are redirected from the State General Fund to a new appropriated account. The account, called the Forest Practices Application Account, may be used by the DNR to implement forest-related regulations.

The DNR is no longer directed to refund fees for denied applicants or applicants whom withdraw their application due to restrictions placed on the application by the DNR.

Forest Practices Act - FPA Administration.

The DNR is given an additional 15 days (from 30 to 45) to review Class III and Class IV FPA applications. Once approved, the permittee is provided with two additional years (from the two years provided by current law to four years) to actually conduct the permitted forest practice. Once issued, the four-year FPA may be subject to additional conditions if, between the time of approval and harvest, the Board makes changes to any applicable rules relating to endangered species.

Forest Practices Act/Hydraulic Project Approvals Intersection.

Any hydraulic project that requires an FPA to be issued by the DNR is not required to obtain a HPA from the WDFW. The WDFW and the DNR are directed to enter into a memorandum of agreement that describes how to implement the integration of HPAs into the FPA process.

The Fish and Wildlife Commission must amend their pertinent administrative rules to reflect the integration of the programs. Meanwhile, the Forest Practices Board must incorporate into the Forest Practices Rules those elements in the Hydraulics Code relevant to forest practices. If changes are made to the Hydraulics Code after the first rule incorporation, then the Fish and Wildlife Commission must notify the Forest Practices Board to incorporate the new rules. The WDFW must notify the DNR if the Fish and Wildlife Commission considers changes to the Hydraulics Code affecting forest practices.

Any application for a FPA that includes elements related to a hydraulic project must contain complete plans and specification for the overall project and proposed measures for the proper protection of fish life. When an application for a FPA is submitted to the DNR, the WDFW must review the application if it potentially affects the waters of the state and submit written comments to the DNR within 30 days about any included hydraulic project. The WDFW may conduct a site visit prior to submitting comments. If the FPA application is approved, then the WDFW is responsible for effectiveness monitoring for any included hydraulic projects.

The WDFW representative's conditional membership on the Forest Practices Board is changed to remove the condition that the WDFW may send a representative only if the Forest Practices Board makes substantial progress towards an integration of the HPA and FPA programs.

Appropriation: None.

Fiscal Note: Available.

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