
Environment Committee

HB 2013

Brief Description: Concerning environmental standards related to transportation projects.

Sponsors: Representatives Orcutt, Hargrove, Hayes and Pike.

Brief Summary of Bill

- Prohibits the Department of Ecology from adopting or maintaining any rule or permit that requires transportation projects to meet a water quality standard that is more stringent than would be required for a similar project in an abutting jurisdiction that is subject to the federal Clean Water Act.
- Exempts transportation projects from review under the State Environmental Policy Act if a project was reviewed under the National Environmental Policy Act.
- Exempts transportation projects from the requirement to obtain a hydraulics project approval if the project was reviewed by another state or federal environmental program.

Hearing Date: 1/28/16

Staff: Jason Callahan (786-7117).

Background:

Projects of the Department of Transportation.

The Washington State Department of Transportation (WSDOT) must obtain various state and local permits associated with many of the transportation projects it oversees, including permitting under the Clean Water Act (CWA) and the requirement to obtain a hydraulics project approval. Certain WSDOT projects and activities are also subject to review under the State Environmental Policy Act (SEPA), the National Environmental Policy Act (NEPA), or both.

CWA permitting.

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.

It is unlawful for anyone to allow unpermitted discharges to reach the waters of the state. The Department of Ecology (ECY), as the state agency delegated the responsibility for implementing the federal CWA in Washington, is responsible for permitting transportation projects in regards to this and other water quality regulations. This includes the responsibility for issuing federal water quality permits and state water quality permits.

Under the federal CWA, the National Pollutant Discharge Elimination System (NPDES) regulates point sources that discharge pollutants into United States waters, including stormwater runoff. Three point sources for stormwater runoff are regulated under the NPDES: municipal separate storm sewer systems (MS4s); construction activities; and industrial activities. The MS4s are conveyances, or a system of conveyances, such as roads and streets with drainage systems, catch basins, ditches, man-made channels, and storm drains.

The ECY administers the NPDES regulations in Washington, and approved permits covering stormwater discharges to any state waters for which the Environmental Protection Agency has approved a total maximum daily load (TMDL). Under this permit, the WSDOT is required to manage storm water discharges for state highways, rest areas, park and ride lots, ferry terminals, and maintenance facilities.

Hydraulic Project Approvals.

The hydraulic project approval (HPA) program is a permitting process managed by the Washington Department of Fish and Wildlife (WDFW). Any activity that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state must first obtain an HPA from the WDFW. The HPA process specifically analyses and conditions projects based on the anticipated effect on fish life. The protection of fish life is the only ground upon which an HPA may be denied or conditioned.

The National and State Environmental Policy Acts.

The NEPA establishes a review process to identify environmental impacts of certain decisions by the federal government, including for projects that require the issuance of a permit. Likewise, the SEPA establishes a review process for state and local governments to evaluate environmental impacts from project permits and other government decisions. Both the NEPA and the SEPA exempt certain actions from requirements to submit an environmental checklist or to prepare an environmental impact statement. An agency conducting a SEPA review may adopt a NEPA environmental analysis if the NEPA analysis is consistent with SEPA requirements, including the scope of environmental elements analyzed under the SEPA. Certain activities of the WSDOT are exempt from NEPA requirements, SEPA requirements, or requirements of both NEPA and SEPA.

Work Group on Environmental Review Processes.

The 2015 Legislature tasked the WSDOT to coordinate a state agency work group to identify issues, laws, and regulations relevant to consolidating and coordinating the review processes under the NEPA and the SEPA, and to streamline the review of and to avoid delays to state highway projects. The work group must include the WSDOT and the ECY. The findings and recommendations of the work group are expected to be reported to the Joint Transportation Committee by December 31, 2016.

Summary of Bill:

The ECY is prohibited from adopting or maintaining any rule or permit that requires transportation projects to meet a water quality standard that is more stringent than would be required for a similar project in an abutting jurisdiction that is subject to the federal Clean Water Act. If a rule or permit that affects more than just a transportation project, then the requirement of not being more stringent than a neighboring state only applies as it affects the transportation project.

Transportation projects are exempt from review under the SEPA if any part of the project was reviewed at the federal level under the NEPA. This includes the design, funding, permitting, construction, and maintenance of the transportation project. In addition, transportation projects are not required to obtain an HPA from the WDFW if the project is designed, permitted, constructed, and maintained under the provisions of the federal CWA, federal Clean Air Act, federal Endangered Species Act, Shorelines Management Act, Growth Management Act, Forest Practices Act, the SEPA, the NEPA, or the state's proprietary discretion in aquatic lands leasing.

These provisions apply to either capital or operating projects undertaken by the state with the primary purpose of preserving or facilitating the safe transport of people or goods via any mode of travel. It does not include projects that are primarily for recreational purposes.

Appropriation: None.

Fiscal Note: Requested on January 20, 2016.

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