

SENATE BILL REPORT

SB 6287

As Reported by Senate Committee On:
Natural Resources & Parks, February 4, 2016
Ways & Means, February 9, 2016

Title: An act relating to the definition of hydraulic project in relation to the hydraulic project approval permits.

Brief Description: Concerning the definition of hydraulic project in relation to the hydraulic project approval permits.

Sponsors: Senators Honeyford, Ericksen, Dansel, Pearson, Bailey, Schoesler, Brown, Parlette, Roach, Hobbs and Hewitt.

Brief History:

Committee Activity: Natural Resources & Parks: 1/28/16, 2/04/16 [DP-WM, DNP].
Ways & Means: 2/08/16, 2/09/16 [DP, DNP, w/oRec].

SENATE COMMITTEE ON NATURAL RESOURCES & PARKS

Majority Report: Do pass and be referred to Committee on Ways & Means.
Signed by Senators Pearson, Chair; Dansel, Vice Chair; Hewitt and Warnick.

Minority Report: Do not pass.
Signed by Senators Jayapal, Ranking Member; Chase and Fraser.

Staff: Bonnie Kim (786-7316)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.
Signed by Senators Hill, Chair; Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Bailey, Becker, Brown, Hewitt, O'Ban, Padden, Parlette, Schoesler and Warnick.

Minority Report: Do not pass.
Signed by Senators Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Ranking Minority Member, Operating; Billig, Conway, Darneille, Hasegawa, Nelson, Pedersen and Rolfes.

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 Senator Hargrove, Ranking Member.

Staff: Sherry McNamara (786-7402)

Background: Hydraulic Project Approvals (HPAs), Generally. 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 Washington Department of Fish and Wildlife (WDFW) for the stated purpose of ensuring the proper protection of fish life.

HPA Fees and Fee Exemptions. WDFW must charge an application fee of \$150 for an HPA located at or below the ordinary high water line. "Ordinary high water line" means the mark on the shores of all water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are common and usual.

Exemptions from the application fee are provided for project types including:

- pamphlet permits for aquatic noxious weed control and certain mineral prospecting activities;
- applicant-funded contracts;
- HPAs on farm and agricultural lands;
- forestry-related projects regulated under the Forest Practices Act; and
- mineral prospecting and mining activities.

The authority to impose the application fee expires June 30, 2017.

Summary of Bill: Hydraulic projects requiring an HPA are limited to the construction or performance of work at or below the ordinary high water line that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony (Natural Resources & Parks): PRO: This bill clarifies that HPAs are required at or below the ordinary high water line. The amendment clarifies HPA jurisdiction. WDFW promulgated a rule last July and we view that rule as an overreach of jurisdiction. Because of that rule, we would need an HPA to replace a guardrail on a bridge. Sometimes we have to do double mitigation for both the county and the HPA to perform basic road repairs. The bill provides much needed clarity and certainty over what is or is not a hydraulic project. Without this clarity, counties are challenged when planning repair and other important projects. We asked WDFW for more clarification on where the ordinary high water line would be for a potential project but did not receive a clear enough answer allowing us to prepare properly. The line for where a permit is needed is unclear. This bill draws a bright line. The vast majority of HPAs are at or below the high water line.

CON: We need to protect salmon from human encroachment. This bill would harm salmon habitat, which relies on riparian habitat. We review all HPAs and we have yet to see an unreasonable reach of WDFW jurisdiction. This bill will restrict WDFW's ability to protect fish habitat. There have been no formal appeals of the new rules that went into effect in July. Using ordinary high water mark as an absolute line when dealing with culverts will impair our ability to install culverts properly. This bill would exempt projects that could significantly degrade habit.

OTHER: There is a lot of fear from the fishing community about changing the HPA process. There might be better science to determine outcomes of the process changes.

Persons Testifying (Natural Resources & Parks): PRO: Senator Honeyford, prime sponsor; Cindy Alia, Citizens Alliance for Property Rights; Tom Davis, WA Farm Bureau; Gary Rowe, WA State Assn. of Counties; Scott Lindblom, Thurston County; Brian Stacy, Pierce County/County Engineer/WSACE; Melissa McFadden, Mason County Public Works.

CON: Joel Kawahara, WA Trollers Assn.; Amy Carey, Sound Action; Mark Cedergreen, Coastal Coalition of Fisheries and Westport Charterboat Assn; Randi Thurston, WA Dept. Fish and Wildlife; Jim Weber, Northwest Indian Fisheries Commission; Jeff Parsons, Puget Sound Partnership.

OTHER: Carl Burke, Fish NW, NSIA and Puget Sound Anglers.

Persons Signed In To Testify But Not Testifying: No one.

Staff Summary of Public Testimony (Ways & Means): PRO: With the number of roads and bridges that a county deals with, an HPA is needed on a recurring basis. There is overlapping of permitting projects. This bill clarifies and defines HPA jurisdiction. Without this bill, a county would need an HPA to replace a guardrail on a bridge.

CON: This bill would eliminate all upland HPAs and would cause significant harm to salmon. Making the ordinary high water mark the line for considering HPAs would upend the Hydraulic Code for the WDFW.

Persons Testifying (Ways & Means): PRO: Gary Rowe, Washington State Association of Counties.

CON: Dawn Vyvyan, Puyallup Tribe and Yakama Nation and Sauk-Suiattle Tribe; Randi Thurston, WDFW; Bruce Wishart, Sound Action.

Persons Signed In To Testify But Not Testifying: No one.