

# HOUSE BILL REPORT

## HB 1275

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**As Reported by House Committee On:**  
Agriculture & Natural Resources

**Title:** An act relating to including fish passage barrier removal projects that comply with the forest practices rules in the streamlined permit process provided in RCW 77.55.181.

**Brief Description:** Including fish passage barrier removal projects that comply with the forest practices rules in the streamlined permit process provided in RCW 77.55.181.

**Sponsors:** Representatives Blake, Wilcox, Chapman, MacEwen, J. Walsh, Orcutt, Buys, Pettigrew, Fitzgibbon, Haler, Condotta and Muri.

**Brief History:**

**Committee Activity:**

Agriculture & Natural Resources: 1/26/17, 2/2/17, 2/9/17, 2/15/17 [DPS].

**Brief Summary of Substitute Bill**

- Creates, under the state hydraulic code, an additional category of fish habitat enhancement projects, for those projects that remove fish passage barriers and that comply with the state forest practices rules.
- Authorizes the Department of Natural Resources to permit, consistent with the forest practices rules, fish habitat enhancement projects that qualify as forest practices hydraulic projects.

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### HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Blake, Chair; Chapman, Vice Chair; Buys, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Fitzgibbon, Kretz, Lytton, Orcutt, Pettigrew, Robinson, Schmick, Springer, Stanford and J. Walsh.

**Staff:** Robert Hatfield (786-7117).

**Background:**

Hydraulic Project Approvals.

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*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.*

A person must obtain a hydraulic project approval (HPA) prior to commencing any construction 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 and complete plans for the proper protection of fish life. A person aggrieved by the issuance or denial of an HPA may appeal informally to the WDFW, and may appeal formally to the Pollution Control Hearings Board.

#### Hydraulic Project Approvals for Fish Habitat Enhancement.

Certain fish habitat enhancement projects may qualify for a streamlined administrative review and approval process by the WDFW. These projects are expected to result in beneficial impacts to the environment and, if they qualify for streamlined review, receive a decision regarding the associated HPA in 45 days. This streamlined review is available for projects of an adequate size or scale that either eliminate human made or caused fish passage barriers, restore eroded or unstable stream banks, or involve the placement of woody debris into the water.

Not all fish habitat enhancement projects are eligible for a streamlined review. To be eligible, the projects must also be approved for specific and limited purposes by the WDFW, a conservation district, the Washington State Department of Transportation, a city or county, or other formal review and approval processes. In addition to a streamlined HPA process, projects that meet the criteria for fish habitat enhancement projects are eligible for exemption from the State Environmental Policy Act and exemption from local government permits and fees. Applicants for fish habitat enhancement projects must submit a Joint Aquatic Resource Permit Application (JARPA) form.

#### The Joint Aquatic Resource Permit Application.

The JARPA process was developed by the Office for Regulatory Innovation and Assistance to assist in obtaining various local, state, and federal permits for activities associated with aquatic resources in Washington. The JARPA includes a standardized form application, but also requires submittal of additional documentation as necessary to meet the permitting requirements of each agency that uses the JARPA.

#### Forest Practices Applications.

A forest practices application (FPA) must be approved by 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 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.

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

Forest practices that use, divert, obstruct, or change the natural flow of water may also be required to obtain a HPA in addition to an approved FPA.

The Washington forest practices rules define a "forest practices hydraulic project" as a hydraulic project, as defined under Washington's hydraulic code, that requires an FPA or notification under Washington's forest practice rules. Washington's hydraulic code defines a hydraulic project as the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state. The DNR has permitting authority for forest practices hydraulic projects.

#### The Pollution Control Hearings Board.

The Pollution Control Hearings Board (PCHB) is an administrative appeals board with jurisdiction to hear appeals of certain decisions, orders, and penalties issued by certain state agencies. These include the WDFW for HPAs, and the DNR for FPAs. Parties aggrieved by a PCHB decision may obtain subsequent judicial review in superior court.

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#### **Summary of Substitute Bill:**

Fish passage barrier removal projects that comply with Washington's forest practices rules are added to the list of fish habitat enhancement projects that receive expedited permit review and approval.

Forest practices hydraulic projects that remove fish passage barriers are permitted by the Department of Natural Resources (DNR), rather than the Washington Department of Fish and Wildlife (WDFW). To obtain approval of a forest practices hydraulic project, an applicant must prepare a Forest Practices Application (FPA).

Rather than prepare a Joint Aquatic Resource Permit Application (JARPA) to submit to local government, applicants for forest practices hydraulic projects that remove fish passage barriers must submit a copy of their FPA to local government. Local governments must accept the FPA as notice of the proposed project.

The DNR must make permitting decisions for forest practices hydraulic projects that remove fish passage barriers consistent with Washington's forest practice rules.

A person aggrieved by the approval or disapproval of an FPA may not appeal informally to the WDFW under the hydraulic code. A person aggrieved by the approval or disapproval of an FPA, including a forest practices hydraulic project, may appeal to the Pollution Control Hearings Board.

#### **Substitute Bill Compared to Original Bill:**

The substitute bill makes clarifications regarding (1) the permitting authority for fish passage barrier removal projects that comply with the forest practices rules; (2) the period during which local governments may submit comments on fish habitat enhancement projects; (3) limitations on civil liability for the permitting of fish habitat enhancement projects; and (4) appeals of forest practices hydraulic projects. The substitute bill clarifies that a fish habitat enhancement project may be permitted in one of several enumerated ways. The substitute bill clarifies that appeals of forest practices hydraulic projects may be brought pursuant to the

forest practices rules. The substitute bill eliminates the obligation to prepare a joint aquatic resource permit application for forest practices hydraulic project applicants who are not otherwise required to prepare a joint aquatic resource permit application.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) Good forestry policy is good environmental policy. This bill takes road maintenance and abandonment plan projects and puts them in the same bucket as other environmentally friendly projects. The bill offers more benefit without a loss of protection. There is a tight timeline that in-stream projects must meet in order to comply with the timing requirements for fish protection, and so any streamlining is very valuable. There is a rigorous permitting process in place for forest practices hydraulic projects, so adding a requirement to obtain a Hydraulic Project Approval (HPA) is redundant and unnecessary. The requirement for local review in the current HPA review process is time-consuming and adds little value. This bill fulfills the Legislature's original goal when it transferred authority to permit forest practices hydraulic projects to the Department of Natural Resources from the Department of Fish and Wildlife. The bill would be good for fish and good for business.

(Opposed) None.

**Persons Testifying:** Jason Callahan, Washington Forest Protection Association; Mark Smalley, Rayonier; Frank Jongenburger, Weyerhaeuser; Dave Roberts, Port Blakely; Ken Miller, Washington Farm Forestry Association; Jeff Davis, Department of Fish and Wildlife; and Stephen Bernath, Department of Natural Resources.

**Persons Signed In To Testify But Not Testifying:** None.