

HOUSE BILL REPORT

HB 1760

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to off-site mitigation for projects permitted under chapter 77.55 RCW.

Brief Description: Concerning off-site mitigation for projects permitted under chapter 77.55 RCW.

Sponsors: Representatives Blake, Orcutt, Chapman and Buys.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/14/17, 2/16/17 [DPS].

Brief Summary of Substitute Bill

- Limits the scope of conditions and mitigation requirements that may be imposed in connection with Hydraulic Project Approvals for maintenance of publicly owned bridges and culverts, to certain specified conditions and forms of mitigation.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Blake, Chair; Chapman, Vice Chair; Buys, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Chandler, Kretz, Orcutt, Pettigrew, Schmick, Springer and J. Walsh.

Minority Report: Do not pass. Signed by 4 members: Representatives Fitzgibbon, Lytton, Robinson and Stanford.

Staff: Robert Hatfield (786-7117).

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.

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.

Aquatic Resources Mitigation.

The Department of Ecology and the WDFW are authorized to condition the issuance of certain permits, including HPAs, on mitigating the impacts of a project. Conditions imposed on a permit must be reasonably related to the project. Mitigation may occur on-site or, under certain circumstances, off-site. A project proponent may use a mitigation plan to propose compensatory mitigation that will improve overall biological functions and values. Off-site mitigation may include, among other things, funding the forestry riparian easement program, the riparian easement program, the riparian open space program, or the family forest fish passage program.

Summary of Substitute Bill:

For the purposes of maintaining, repairing, and preserving existing publicly owned bridges and culverts that, at the time of the Hydraulic Project Approval (HPA) application, do not create new impacts to fish life, limitations are created on the conditions and forms of mitigation that may be required as part of an HPA.

For off-site mitigation requirements imposed in connection with an HPA, the range of mitigation actions that are considered to be reasonably related to maintenance, repair, and preservation activities is limited to specified forms of mitigation. There is an exception for projects that function as replacement projects or that cause a long-term impact to fish life.

For conditions that may be imposed in connection with an HPA, only on-site conditions relating to timing of the work activity, or other condition relating directly to the work activity, are considered reasonably related to the work activity. There is an exception for projects that function as replacement projects or that cause a long-term impact to fish life.

Mitigation plans that fund projects related to the riparian open space program, or the family forest fish passage program or that remove fish passage barriers, are presumed to be reasonably related to the project and are to be given preferred treatment by the Washington Department of Fish and Wildlife if the proposed off-site mitigation is in the same watershed as the project. This presumption does not apply to mitigation for hydraulic projects located in marine environments.

Substitute Bill Compared to Original Bill:

The substitute bill modifies the scope of mitigation plans that are presumed to be reasonably related to the project for which a permit is sought. It excludes projects located in marine

environments from the scope of projects that are subject to the list of mitigation actions that are presumptively related to the project for which a permit is sought.

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) Counties have approximately 3,000 fish passage barriers in their fish passage database. It is important to look at removal of fish passage barriers as mitigation for projects. There are very few fish passage barrier removal projects used as mitigation for Hydraulic Project Approvals (HPAs). There is a need for the Legislature to provide guidance on this issue.

This bill solves counties' problems of getting HPAs permitted and barriers removed. It increases funding for important projects.

(Opposed) None.

(Other) There are understandable challenges facing counties in maintaining their infrastructure with limited resources. There needs to be creativity and new tools for counties. There are benefits to developing the mechanisms that are implied in the bill, but the current language of the bill is confusing.

The bill is poorly drafted, and is hard to read and interpret. It may have unintended consequences and may generate lawsuits. The bill needs much more work in order to be clear. There is a concern that simply funding certain off-site mitigation measures will do nothing to mitigate impacts to the marine environment. The bill is not ready yet.

The bill creates unintended consequences as currently drafted. Salmon in Puget Sound are suffering a death by a thousand cuts, and HPAs are an important tool in protecting salmon habitat. Counties are important partners in salmon recovery.

Persons Testifying: (In support) Gary Rowe, Washington Association of Counties; and Heather Hansen, Washington Farm Forestry Association.

(Other) Bruce Wishart, Sound Action; Margen Carlson, Department of Fish and Wildlife; and Jeff Parsons, Puget Sound Partnership.

Persons Signed In To Testify But Not Testifying: None.