

HOUSE BILL REPORT

ESSB 5393

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: Senate Committee on Natural Resources & Parks (originally sponsored by Senators Warnick, Lias, Takko and Pearson).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 3/21/17, 3/29/17 [DPA].

Brief Summary of Engrossed Substitute Bill (As Amended by Committee)

- 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.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass as amended. Signed by 14 members: Representatives Blake, Chair; Chapman, Vice Chair; Buys, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Chandler, Fitzgibbon, Lytton, Orcutt, Pettigrew, Robinson, Schmick, Springer, Stanford and J. Walsh.

Staff: Robert Hatfield (786-7117).

Background:

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.

Hydraulic Project Approvals.

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 that eliminate human-made or human-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.

Integration of Forest Practices and Hydraulic Project Permitting.

In 2012 the Legislature directed the integration of the hydraulic project review process into forest practices permitting. The integration process included:

- the Forest Practices Board incorporating fish protection standards into the Forest Practices Rules as well as approving technical guidance;
- the ability for the WDFW to continue to review and comment on any Forest Practices Application (FPA); and
- a requirement that the WDFW review certain FPAs relating to fish-bearing waters, shorelines of the state, and water crossing structures.

Forest Practices Applications.

An 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 an HPA in addition to an approved FPA.

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.

Summary of Amended 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 DNR, rather than the WDFW. To obtain approval of a forest practices hydraulic project, an applicant must prepare a FPA.

Rather than prepare a Joint Aquatic Resource Permit Application to submit to local government, applicants for forest practices hydraulic projects that remove fish passage barriers must submit a copy of their FPA to the DNR. The DNR must forward a copy of the FPA to the appropriate local government within 48 hours of receipt of the application.

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.

Amended Bill Compared to Engrossed Substitute Bill:

Rather than prepare a 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 the DNR. The DNR must forward a copy of the FPA to the appropriate local government within 48 hours of receipt of the application.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 30, 2017.

Effective Date of Amended 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) This bill allows more fish passage barriers to be removed, faster, at less expense to the landowner. The amendment is important to make sure that this is truly a streamlined process. It is important that the processes happen in parallel, rather than in sequence. There is a process in place for interested parties, including local governments, to obtain notice of pending forest practice applications. But if a person doesn't sign up for notifications, he or she wouldn't otherwise get notice of a pending forest practice.

(Opposed) None.

Persons Testifying: Jason Callahan, Washington Forest Protection Association; and Stephen Bernath, Department of Natural Resources.

Persons Signed In To Testify But Not Testifying: None.