

# SENATE BILL REPORT

## SB 5466

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As of February 2, 2017

**Title:** An act relating to construction projects in state waters.

**Brief Description:** Concerning construction projects in state waters.

**Sponsors:** Senators McCoy, Chase and Fortunato; by request of Department of Fish and Wildlife.

**Brief History:**

**Committee Activity:** Natural Resources & Parks: 2/02/17.

**Brief Summary of Bill**

- Establishes a Hydraulic Project Approval (HPA) fee schedule.
- Expands HPA enforcement authorities.
- Modifies other substantive and procedural HPA statutes.

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### SENATE COMMITTEE ON NATURAL RESOURCES & PARKS

**Staff:** Curt Gavigan (786-7437)

**Background:** Hydraulic Project Approvals in General. 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 Department of Fish and Wildlife (DFW) for the stated purpose of ensuring the proper protection of fish life.

HPA Fees and Fee Exemptions. DFW must generally charge an application fee of \$150 for an HPA located at or below the ordinary high water line. Exemptions from the application fee are provided for project types including:

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

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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.*

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

HPA Enforcement Authority. A person is subject to a gross misdemeanor for certain HPA-related violations, which include conducting a hydraulic project without an HPA or violating a requirement or condition of an HPA. DFW may also impose civil penalties of up to \$100 per day for violations of the statutory provision that sets out the HPA requirement and permitting process.

Permitting for Residential Bulkheads and Rockwalls. Current law directs DFW to issue an HPA for construction, replacement, or repair of a marine protective bulkhead or rockwall for single-family residences. Statute includes project limitations such as on waterward location and timing. Additionally, a construction or repair project may not create a permanent loss of critical habitat.

Fish Habitat Enhancement Process Permitting. Certain fish habitat enhancement projects may qualify for streamlined HPA review and approval process. The statute states that qualifying projects receive a decision regarding the associated HPA in 45 days and are exempt from any local government permitting and associated fees, although local governments have 15 days to provide review and comment.

To receive streamlined review, a project must meet project type criteria, such as for fish passage barriers removal, and meet approval criteria, such as approval by DFW, a city, or a county.

**Summary of Bill:** Establishes an HPA Fee Schedule. A statutory fee schedule is established based on the complexity of the project and effort required for application review. The fee schedule includes:

- an application submittal fee of \$150 for all projects until January 1, 2018—after that date, the submittal fee is \$150 for a low complexity HPA, \$250 for a medium complexity HPA, \$500 for a high complexity HPA, and \$1,000 for a general HPA; and
- additional fees for certain HPA modifications and permit end date extensions.

Fee exemptions are provided for fish habitat enhancement projects and minor permit modifications. Other fee exemptions remain as under current law.

DFW must provide complete or partial refunds in certain circumstances, including when DFW does not meet the statutory processing deadline or when no permit is required.

Expands HPA Enforcement Authorities. DFW's HPA enforcement authorities are modified as follows:

- voluntary compliance is specified as the first step for a violation, to include information and technical assistance;
- DFW may apply for an administrative inspection warrant to conduct compliance inspections or where there is a probable cause to believe there is a violation;
- DFW may issue a notice to comply which identifies the violation and necessary corrective action to prevent, correct, or compensate for adverse impacts;

- DFW may issue a stop work where there is a statutory or rule violation, a violation of the HPA, or immediate action is necessary to avoid material damage to fish life; and
- the maximum civil penalty for an HPA violation is increased to \$10,000 per violation from \$100 per day per violation, and DFW must develop a penalty schedule by January 1, 2018—DFW may recover reasonable fees and costs.

Modifies Certain Substantive and Procedural HPA Statutes. Several other provisions relating to HPA permitting are modified including:

- making permissive DFW's authority to issue an HPA for a residential marine bulkhead or rockwall, and establishing additional requirements including that applicants provide geotechnical analysis and the proposed project will provide greater protection than feasible nonstructural alternatives;
- expanding eligibility for streamlined fish habitat enhancement process review and approval to certain projects including dock removal, removal of shoreline armoring, and tribe sponsored fish habitat or restoration projects; and
- providing local governments 30 days instead of 15 days to review and comment on fish habitat enhancement projects, and allowing either DFW or a local government to determine that a project is not appropriate for streamlined review and approval.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony:** PRO: There is support for the HPA program, as it is one of the only programs focused specifically on fish protection. The state is investing lots of money in fish-related projects, and this will help protect that investment. The bill also supports the fishing industry which relies upon healthy fish populations. The changes included in the bill help modernize the regulatory structure of the program, including providing more useful civil enforcement and aligning the way shoreline permitting and the HPA handle bulkheads. The fee here is reasonable, staggered based on project complexity, and will help create more efficient HPA processing.

CON: There are concerns that this bill will not improve HPA processing time, and, even if it does, other required permits often lag behind the HPA and cause project delays. DFW has an inconsistent interpretation of when a HPA is required above the ordinary high water line, and a discussion on jurisdiction must be had if there is going to be additional talk of fees and enforcement. The residential bulkhead permitting process is an important way property owners can protect their land, and there is concern about creating a presumption bulkheads are bad. There is a need to provide incentives for sediment removal for impacted streams.

**Persons Testifying:** PRO: Senator John McCoy, Prime Sponsor; Bruce Wishart, Sound Action; Jeff Parsons, Puget Sound Partnership; Nick Chambers, Trout Unlimited; Zach Rhoades, Trout Unlimited/Emerald Water Anglers; Jim Hedrick, Muckleshoot Indian Tribe; Margen Carlson, Washington Department of Fish and Wildlife; Dawn Vivyan, Yakima

Puyallup and Sauk-Suiattle tribes.

CON: Don Russell, citizen; Michael Ennis, Association of Washington Business; Logan Brown, Marine Floats; Janet Spingath, citizen; Jan Himebaugh, Building Industry Association of Washington; Stephen Whitehouse, citizen; Gary Rowe, Washington State Association of Counties; Christine Brewer, The Avista Corporation.

**Persons Signed In To Testify But Not Testifying:** CON: Tom Davis, WA Farm Bureau.