

HOUSE BILL REPORT

HB 2530

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

Title: An act relating to studying the effectiveness of the existing hydraulic project approval process under chapter 77.55 RCW in protecting fish life.

Brief Description: Studying the effectiveness of the existing hydraulic project approval process under chapter 77.55 RCW in protecting fish life.

Sponsors: Representatives Nelson, Cody and Upthegrove.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/17/08, 1/30/08 [DPS];
Appropriations: 2/8/08 [DP2S(w/o sub AGNR)].

Brief Summary of Second Substitute Bill

- Requires the Washington Department of Fish and Wildlife to conduct a study regarding the effectiveness of the existing hydraulics project approval permitting system.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Blake, Chair; Van De Wege, Vice Chair; Kretz, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Eickmeyer, Grant, Lantz, Loomis, McCoy, Nelson, Newhouse and Orcutt.

Staff: Jason Callahan (786-7117).

Background:

Before beginning a construction project, a person must obtain a hydraulic project approval (HPA) for any project that will use, divert, obstruct, or change the natural flow or bed of any

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of the salt or fresh waters of the state. The HPAs are issued by the Washington Department of Fish and Wildlife (WDFW) to ensure the proper protection of fish life.

The WDFW is statutorily authorized to issue programmatic HPAs for small scale mining and prospecting, and for activities or projects conducted solely for the removal or control of certain aquatic weeds. The programmatic approval is in lieu of an applicant obtaining an individual HPA. Under the programmatic approval process, the WDFW publishes a pamphlet that states the rules for that activity.

The HPA decisions may be appealed to the Director of the WDFW under the provisions of the Administrative Procedure Act. Certain appeals related to agriculture or off-site mitigation are heard by the Hydraulic Appeals Board.

Summary of Substitute Bill:

The WDFW is required to conduct a study regarding the effectiveness of the existing HPA permitting system. The study must consider the effectiveness of legislative enactments, the implementation by the WDFW, and the impact that historic funding levels have had on the program's effectiveness. When reviewing the HPA program, the WDFW must focus on both the level of compliance as well as the actual fish protection offered in instances of full compliance.

The study is not required to be completed by a certain date, but must be done as readily as funds allow. The WDFW may pay for the study using direct appropriations specified for the study, non-designated funds within the control of the WDFW, or private donations. The report cannot be deemed final until the Fish and Wildlife Commission has voted to affirm the study's completeness.

Substitute Bill Compared to Original Bill:

The original bill prohibited the WDFW from approving or renewing any HPAs within the Maury Island Aquatic Reserve for any commercial, industrial, or barge-loading facilities.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The Puget Sound is in peril, and the Legislature has had to make large investments in its health in recent years. The Legislative effort has included accountability in its agencies for the funds that are spent on Puget Sound restoration.

The HPA system is broken, and we do not know why. The appeals process is very complicated, funding may be too low, staffing resources unavailable, or perhaps the mission of the program just needs new direction. The HPA is important in protecting both fish life and the fishing industry. Initial information gathered by the WDFW from just one of its regions suggests that even when the HPA law is fully complied with, there is still not a lot of protection being offered to fish life. In light of the one small-scale study, a broader study is required.

The HPA program does not provide for no net loss of fish, and for one permitted project off of Maury Island, it allowed for the destruction of a large herring breeding ground that has resulted in a high mortality of fish life. The approved HPA off of Maury Island impacted an area with every habitat value necessary for Orcas. In issuing the HPA, the WDFW ignored the science and even the current regulations in place to protect that delicate habitat.

There is increasing concern that, while HPAs are being issued, there is little funding available to go back and ensure that permit conditions are being fully complied with. There is pressure to service applicants on the front end, but little ability to follow up after the project is completed. Any bill that advances fish protection is to be supported.

(With concerns) Tribal co-managers should have notification of HPA applications in order to be an effective co-manager.

(Opposed) The Maury Island Aquatic Reserve has 22 authorized uses, but this bill only singles out one. The HPA for the Maury Island project is already issued, but the bill could complicate revisions to the permit.

Persons Testifying: (In support) Representative Nelson, prime sponsor; Naki Stevens and Dave Mann, People for Puget Sound; and Steve Robinson, Northwest Indian Fisheries Commission.

(With concerns) Greg Hueckel, Washington Department of Fish and Wildlife.

(Opposed) Steve Gano and Pete Stoltz, Glacier Northwest.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Agriculture & Natural Resources. Signed by 29 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Alexander, Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Chandler, Cody, Conway, Darneille, Ericks, Fromhold, Green, Haigh, Hinkle, Hunt, Kagi, Kessler, Kretz, Linville, McIntire, Morrell, Pettigrew, Priest, Ross, Schmick, Schual-Berke, Seaquist, Sullivan and Walsh.

Staff: Alicia Dunkin (786-7178).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Agriculture & Natural Resources:

A null and void clause was added, making the bill null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 8, 2008.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) The hydraulic project approval permit is the principal permit to protect fish life. The Department of Fish and Wildlife has committed resources to streamline the approval of these permits but not towards issues to make the permits more effective. The Department completed a study last year and saw compliance problems. The state has invested a lot of money in this program and we want to make sure that these permits are effective. The cost of the bill could be scaled back.

(Opposed) None.

Persons Testifying: Bruce Wishart, People for Puget Sound.

Persons Signed In To Testify But Not Testifying: None.