

SENATE BILL REPORT

SB 6448

As of January 21, 2010

Title: An act relating to providing the department of fish and wildlife authority to improve permitting of hydraulic projects.

Brief Description: Concerning permitting of hydraulic projects.

Sponsors: Senator Jacobsen.

Brief History:

Committee Activity: Natural Resources, Ocean & Recreation: 1/20/10.

SENATE COMMITTEE ON NATURAL RESOURCES, OCEAN & RECREATION

Staff: Curt Gavigan (786-7437)

Background: Hydraulic Project Approvals (HPA). 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) to ensure the proper protection of fish life. There is currently no fee for an HPA.

Programmatic HPAs. Generally, a person must apply for and obtain an HPA for each hydraulic project conducted. However, in two circumstances the Legislature has provided DFW with the authority to adopt rules and publish a pamphlet that serves as the HPA. These activities are removing and controlling noxious weeds, and small scale prospecting and mining.

HPA Enforcement. 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 basic permitting process.

Summary of Bill: Programmatic HPAs. DFW's authority to issue programmatic permits is expanded. DFW may adopt rules allowing certain activities without an HPA, for repetitive, low-risk activities where impacts to fish are well understood and proven mitigation measures are available.

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.

DFW may also issue general permits, which cover multiple routine hydraulic activities at unspecified sites throughout a wide geographic area.

HPA Fees. DFW must charge fees for HPAs issues between July 1, 2010, and June 30, 2012, according to a statutory fee schedule. The fee schedule is based on the complexity of the project and effort required for application review. Among other fees, the schedule includes:

- an application submittal fee of \$250, which applies to all applications except applications for pamphlet permits;
- in addition to the application submittal fee, a permit processing fee of \$275 for a medium complexity project and \$1,200 for a high complexity project;
- in addition to the application submittal fee, a permit processing fee of \$5,250 for a general permit;
- a fee of \$100 for a pamphlet permit; and
- a fee of \$150 for a permit modification requested by the permittee.

By July 1, 2012, DFW must establish a fee schedule by rule. As with the statutory fee schedule, the fees set in rule must be based on the complexity of the project and effort required for application review. Once adopted, DFW may only adjust the fee schedule once every two years.

An appropriated account is created to hold HPA fees collected that are used to fund DFW's HPA-related activities.

HPA Enforcement. The criminal HPA enforcement provision is modified to specify that a violation of a programmatic HPA condition is a gross misdemeanor. The actions for which DFW may seek civil penalties are amended to mirror criminal HPA violations. Additionally, DFW may seek civil penalties where a person receiving an expedited or emergency HPA subsequently fails to pay the required fee.

Terms are defined.

Appropriation: None.

Fiscal Note: Requested on January 21, 2010.
[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This bill is one of the Governor's proposals on natural resources reform, which will allow streamlined permitting for low impact projects and allow DFW to prioritize its limited resource for project review, compliance monitoring, and enforcement. DFW will continue to work with stakeholders on the bill language and fee schedule.

CON: Charging mineral prospectors for the gold and fish pamphlet and individual permits will greatly impact them, and the revenue they currently provide to the state through their activities. The state and DFW should improve the program, not charge fees to make up for their inefficiencies. Mining brings people enjoyment, allows the use of the state's natural resources, and improves the environment when the miner's collect mercury. The HPA permit is protecting a public resource, and should be paid for by the public and not landowners. Forest and agricultural landowners should receive incentives to stay on the land, not additional fees. For the forest industry, DFW should focus on following legislative intent and integrate HPAs into forest practices permits. The state must ensure that the HPA program adequately protects fish, particularly those federally listed and protected by treaty.

OTHER: Concerns exist about DFW's ability to protect in stream resources if programmatic and general permits are more broadly utilized because these permit types would reduce site specific review and conditioning. The state must uphold the work tribes are doing to restore salmon runs. Ports support permit streamlining, but concerns exist about DFW being authorized to set fees by rule. The Department of Natural Resources supports the proposal, but recognizes there is a cost to the trusts.

Persons Testifying: PRO: John Mankowski, Governor's Office; Joe Stohr, Peter Birch, DFW.

CON: William Thomas, Resources Coalition; Barbara Kovacs, Gold Prospectors Association of America; Rob Matthews, Western Washington Gold Prospectors Association; Nic Trimble, North Central Washington Prospectors; Rick Dunning, Washington Farm Forestry Association; Kristen Sawin, Weyerhaeuser; John Stuhlmiller, Washington Farm Bureau; Ross Logan, Northwest Mineral Prospectors; Bruce Beatty, citizen.

OTHER: Dawn Vyvyan, Yakama Nation, Puyallup Tribe; Bruce Wishart, People for Puget Sound; Ric Abbett, Trout Unlimited; Steve Robinson, Northwest Indian Fisheries Commission; Eric Johnson, Washington Public Ports Association; Clay Sprague, Department of Natural Resources.