

HOUSE BILL REPORT

HB 1739

As Reported By House Committee On:

Government Operations

Title: An act relating to delegation to local municipal jurisdictions of hydraulic project approval authority.

Brief Description: Delegating to local municipal jurisdictions of hydraulic project approval authority.

Sponsors: Representatives Hymes, L. Thomas, Mielke, Fuhrman, G. Fisher, Grant and Reams.

Brief History:

Committee Activity:

Government Operations: 2/15/95, 2/22/95 [DPS].

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Reams, Chairman; Goldsmith, Vice Chairman; L. Thomas, Vice Chairman; Scott, Assistant Ranking Minority Member; Hargrove; Honeyford; Hymes; Mulliken; D. Schmidt and Van Luven.

Minority Report: Do not pass. Signed by 5 members: Representatives Rust, Ranking Minority Member; Chopp; R. Fisher; Sommers and Wolfe.

Staff: Bill Lynch (786-7092).

Background: If a person wants to construct a hydraulic project or perform other work that will use, divert, obstruct, or change the natural flow or bed of any waters of the state, then the person must obtain permission from the Department of Fish and Wildlife before starting the construction or work.

The applicant for a hydraulic project must submit general plans for the overall project, complete plans and specifications of the proposed construction or work within the mean higher high water line in salt water or within the ordinary high water line in fresh water, and complete plans and specifications for the proper protection of fish life. The protection of fish life is the only grounds upon which approval may be denied or conditioned.

The Board of Natural Resources acts as the Harbor Line Commission. The board has authority to make and enforce rules for carrying out the laws pertaining to aquatic lands. "Aquatic lands" are defined to include all state-owned tidelands, shorelands, harbor areas, and the beds of navigable waters.

Summary of Substitute Bill: The Department of Fish and Wildlife must delegate the authority to approve hydraulic projects located within harbor areas to cities, towns, and counties when certain conditions are met.

The Department of Fish and Wildlife must delegate this authority when: (1) The city, town, or county has made a written request to the department for this authority; (2) No challenges to the city, town, or county's comprehensive plan have been filed; and (3) The shoreline master program of the city, town, or county has been approved by the Department of Ecology.

The city, town, or county must exercise the delegated authority in accordance with the hydraulic code rules adopted by the Department of Fish and Wildlife. The city, town, or county must consult with the department in reviewing hydraulic project applications and take into account the department's recommendations in exercising its delegated authority.

The Department of Fish and Wildlife must adopt rules that include provisions that allow: (1) technical provisions applicable to a specific project to be modified or deleted by an approving authority when the applicant provides an alternative plan to the provision and demonstrates that it provides equal or greater protection for fish life; and (2) construction permits for a specific project to be issued if adequate assurances are provided that the alternative plan will be completed.

Substitute Bill Compared to Original Bill: Technical changes were made to clarify which units of local government can be delegated this authority. A reference to the state approving the local comprehensive plan is deleted and replaced with a requirement that no appeals to the comprehensive plan may be pending.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This will help preserve local authority. State agencies need to work better with local communities. Protections are provided for how the delegated

authority is exercised. The local governments must be in compliance with other state environmental mandates.

Testimony Against: This legislation will result in significantly less protection for fish and shellfish habitat in harbor areas. Many harbor areas are located at the mouth of rivers that are major feeding and spawning grounds. This should be part of a basin-wide plan.

Testified: Representative Hymes, prime sponsor; Martin Durkan, Jr, MJD Incorporated; Oly Wise, citizen; Ed Manary, Department of Fisheries and Wildlife; and Tim Flint, PRO-S.