
**Agriculture & Natural Resources
Committee**

HB 1163

Brief Description: Regarding the construction of fish passage projects.

Sponsors: Representatives Blake, Morrell, McCune and Hinkle.

Brief Summary of Bill

- Allows certain hydroelectric generators to certify fish passage improvement projects with the Washington Department of Fish and Wildlife.
- Allows electricity produced from facilities with certified fish passage improvement projects to count toward the minimum percentage requirement for renewable energy in the facility owner's portfolio.

Hearing Date: 1/23/09

Staff: Jason Callahan (786-7117)

Background:

Renewable Resources Targets

Energy utilities with 25,000 or more customers are required to produce a certain percentage of their power from eligible renewable resources. By the start of 2010, at least 3 percent of the electricity delivered by a utility must be from renewable sources. The required minimum percentage of renewable power in a utility's portfolio increases in three steps, until at least 15 percent of a utility's power is generated from a renewable source by the year 2020. Eligible renewable resources include wind, solar, geothermal energy, landfill and sewage gas, wave and tidal power, and certain biomass and biodiesel fuels.

Hydraulic Project Approvals

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.

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

A person who unlawfully undertakes a project in violation of the HPA requirements may be prosecuted for a gross misdemeanor. Prosecution is available if a person conducts a project without an HPA, or if a person violates the conditions the operative HPA.

Diversion Devices and Fishways

Any device that is used to divert water must be equipped with a fish guard approved by the WDFW that prevents the passage of fish into the diversion device. Similarly, any dam or other river obstruction must be equipped with a fishway. The fishway must be maintained in working order and be supplied continuously with sufficient water to freely pass fish.

Summary of Bill:

Fish Passage Certification

Certain electric utilities have the option of certifying improvements to their fish passage infrastructure with the WDFW. Fish passage projects that may be the subject of an application for WDFW certification are limited to projects that are part of a hydroelectric generating facility that is rated to generate less than 30 megawatts of electricity. To qualify, projects also must generate electricity by diverting water from a river that is habitat to a salmonid species listed for protection under the Endangered Species Act.

The decision to submit a fish passage project for WDFW certification is not a required element of regulation and can only occur if an electric utility voluntarily submits an application to the WDFW. If an electric utility chooses to seek certification, the costs incurred by the WDFW in processing and evaluating the application for certification must be reimbursed by the utility.

Applications for certification must be submitted to the WDFW after the plan is developed but before construction begins. The WDFW may be solicited for input during the plan's development stage; however, feedback provided by the WDFW is not binding on future certification decisions.

The department is directed to certify plans for fish passage projects submitted by an electric utility if the project satisfies specific standards. These standards include the deployment of the best achievable outbound juvenile salmon passage technology, the achievement of fish passage and survivorship for outbound salmon that is superior to minimum regulatory standards, and the establishment of construction timelines that maximizes the protection of fish life. A fish passage project would also have to show that the required construction costs represent a more than insignificant investment given the revenue-generating capacity of the facility. This investment amount must be at least \$5 million.

Prior to making a certification decision, the WDFW must accept public comments on the application. Received comments become part of the WDFW's decision making process.

Benefits of Certification

Electric utilities that receive WDFW certification for a fish passage improvement project receive separate treatment in three different areas of state regulation: renewable energy generation, hydraulic project construction, and fish passage requirements.

In terms of renewable energy generation, the electricity generated by an electrical utility that installs a WDFW-certified fish passage improvement project is considered an eligible renewable resource. This means that the electricity that is produced by the facility counts toward the minimum percentage requirement for renewable energy in the facility owner's portfolio.

Certified fish passage improvement projects also are exempt from the requirement of obtaining an HPA during the construction and installation of the project. Certified projects also are recognized as adequate to satisfy the minimum standards required for water diversion devices and fishways.

Appropriation: None.

Fiscal Note: Available.

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