
Natural Resources Committee

HB 2866

Brief Description: Limiting overlapping jurisdiction regarding the permitting of storm water projects.

Sponsors: Representatives Doumit, Sump, Reardon, Schoesler, Linville, Kessler, Morris, Mulliken, Hatfield, Pearson, Grant, Armstrong and McMorris.

Brief Summary of Bill

- Prohibits hydraulic projects from being unreasonably conditioned.
- Allows cumulative impacts to fish to be addressed as a condition to approving a proposed hydraulic project, but no project may be required to address more than its proportionate share of cumulative impacts for the watershed. The Department of Fish and Wildlife is directed to develop a method for calculating how cumulative impacts can be apportioned within a watershed.
- Prohibits the Department of Fish and Wildlife from requiring the redesign of a proposed storm water project already approved by the Department of Ecology as a condition to obtain a hydraulics permit.
- Allows marine terminals in existence on June 6, 1996, or marine terminals that have received a hydraulic project approval for its initial construction, to obtain upon request a renewable five-year hydraulic project approval for regular maintenance activities of the marine terminal.
- Increases the membership of the Hydraulics Appeals Board by adding three members representing local governments.

Hearing Date: 2/5/02

Staff: Bill Lynch (786-7092).

Background:

A person must obtain hydraulic project approval for any project or work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state before beginning the construction or work. Hydraulic permits are issued to ensure the

proper protection of fish life and are issued by the Department of Fish and Wildlife (DFW).

Hydraulic project approvals cannot be unreasonably withheld. Some concerns have been expressed that the conditions being attached to hydraulic permits are not in proportion to the impact of the proposed project. The imposition of impact fees by local governments requires that the fees must reasonably relate to the increased service demands caused by the development activity. The local ordinance imposing the fee must develop a method for calculating the amount of impact fees based upon the proportionate share of the cost of public facility improvements required for each type of development activity. There is no similar type of guidelines used for attaching conditions to hydraulic permits.

Additional concerns have been raised by applicants seeking approval for storm water projects that there are inconsistent directions being given by the Department of Ecology and the DFW.

Marinas in existence on June 6, 1996, or that have received a hydraulic project approval for its initial construction, may obtain upon request a renewable five-year hydraulic project approval for regular maintenance activities of the marina. This type of renewable five-year approval for regular maintenance is not available for marine terminals.

The Hydraulics Appeals Board consists of three members. One member is the Director of the Department of Ecology or the director's designee, one member is the Director of the Department of Agriculture or the director's designee, and the remaining member is the Director of the DFW or the director's designee. The board is responsible for hearing those hydraulic appeals related to diversions of water for agricultural irrigation or stock watering, streambank stabilization to protect farm and agricultural land, and proposals pertaining to off-site mitigation. There are no representatives of local government on this board.

Summary of Bill:

Hydraulic projects may not be unreasonably conditioned. Conditions imposed upon obtaining a hydraulic project approval must reasonably relate to the project. The Department of Fish and Wildlife (DFW) may not impose conditions that attempt to optimize fish life that are out of proportion to the impact of the proposed project. Conditions may address cumulative impacts to fish within a watershed, but no project may be required to address more than its proportionate share of cumulative impacts for the watershed. The DFW is directed to develop a method for calculating how cumulative impacts can be apportioned within a watershed.

Hydraulic permits must contain provisions that allow for minor modifications to the plans and specifications without requiring a permit to be reissued.

A process is established to address overlapping jurisdiction between the Department of Ecology and the DFW regarding the design of storm water projects. The Department of Ecology is recognized as having the primary responsibility for the design of storm water projects. If the Department of Ecology approves the design of a proposed storm water project, the DFW cannot require the redesign of that project as a condition to obtain a hydraulics permit.

If the DFW denies a hydraulic permit for a proposed storm water project already approved by the Department of Ecology, and the denial is based upon the design of the project, then the DFW must make specific findings of deficiency concerning the storm water project that describe how the proposed project is inadequate to protect fish life and transmit these findings to the Department of Ecology. The Department of Ecology must review these findings and either modify the original permit to address these findings or issue an order dismissing the findings. If the hydraulic permit is denied by the DFW following the consideration by the Department of Ecology of the DFW findings of deficiency, the denial must be made by the director of the DFW or the director's designee.

The provisions of any storm water manual developed by the Department of Ecology are to be considered only as advisory by the DFW when reviewing a proposed storm water project for purposes of issuing a hydraulics permit. Any impact to flows resulting from a storm water project must be considered in relation to its impact to fish for purposes of hydraulic project approval.

Marine terminals in existence on June 6, 1996, or marine terminals that have received a hydraulic project approval for their initial construction, may obtain upon request a renewable five-year hydraulic project approval for regular maintenance activities of the marine terminal.

The membership of the Hydraulics Appeals Board is increased by three members representing local governments. One of these members represents cities, one member represents counties, and one member represents port districts. The local government representatives are appointed by and serve at the pleasure of their respective state associations.

Appropriation: None.

Fiscal Note: Not Requested.

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