

SENATE BILL REPORT

SB 5451

As of February 6, 2019

Title: An act relating to the definition of hydraulic project in relation to the hydraulic project approval permits.

Brief Description: Concerning the definition of hydraulic project in relation to the hydraulic project approval permits.

Sponsors: Senator King.

Brief History:

Committee Activity: Agriculture, Water, Natural Resources & Parks: 2/05/19.

Brief Summary of Bill

- Provides that a hydraulic project means the construction or performance of work at or below the ordinary high water line for purposes of issuing permits for construction projects in state waters.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Staff: Jeff Olsen (786-7428)

Background: A person must obtain a hydraulic project approval (HPA) permit prior to commencing any construction project that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. Hydraulic project approvals are issued by the Department of Fish and Wildlife (DFW) to ensure the proper protection of fish life. To receive an HPA, the applicant must provide certain information to DFW including general plans for the overall project and complete plans for the proper protection of fish life.

The term ordinary high water line means the mark on the shores of all waters that will be found by examining the bed and banks and ascertaining where the presence and action of waters are common and usual.

A recent court case by Spokane County and other local jurisdictions sought to determine the geographic scope of DFW's permit authority for hydraulic projects occurring exclusively

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above the ordinary high-water line. In December 2018, the Washington State Supreme Court in *Spokane County et al, v. Washington Department of Fish and Wildlife*, held that under the plain language of the statute, DFW's jurisdictional grant of permitting authority includes upland projects that meet the effects test set forth in the statute.

Summary of Bill: The definition of a hydraulic project for the purposes of regulating construction projects in state waters means the construction or performance of work at or below the ordinary high water line.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: This is a relatively simple bill that provides clarity regarding jurisdiction and makes it clear to the regulated community when a permit is necessary. If you need a permit, you should know when and where to apply, and at times it can be very random.

CON: A recent Washington Supreme Court decision clarified DFW's jurisdiction under the hydraulic project approval program and this bill would reduce the current level of fish protection. For example, bulkheads, dikes, and levees that are above the ordinary high water line would not require a permit under the bill. Regulating bulkheads protects the near shore habitat, which is important for forage fish, salmon, and orcas. The changes in the bill would exclude many projects from the hydraulic project approval program that could harm critical habitat. DFW has provided guidance regarding the jurisdiction of the HPA program and what types of projects need permits. The southern resident orca is in peril, and this bill goes in the opposite direction of the action necessary to recover orcas.

OTHER: Culverts and bridges are designed for 100 year flood events plus debris passage, and this is necessary to protect fish habitat and water quality, and this bill could change that standard.

Persons Testifying: PRO: Senator Curtis King, Prime Sponsor; Jan Himebaugh, Building Industry Association of Washington; Cindy Alia, Citizens Alliance for Property.

CON: Jeff Davis, Washington Department of Fish and Wildlife; Dave Herrera, Northwest Indian Fisheries Commission; Jay Manning, Puget Sound Partnership, Leadership Council; Bruce Wishart, Sound Action.

OTHER: Stephen Bernath, Deputy for Forest Practices, DNR.

Persons Signed In To Testify But Not Testifying: No one.