

HOUSE BILL REPORT

HB 1641

*As Reported By House Committee on:
Fisheries & Wildlife*

Title: An act relating to the protection of the food fish resource.

Brief Description: Protecting food fish resources by the department of fisheries.

Sponsor(s): Representatives R. King, Schmidt, Basich, Padden, Zellinsky, Fuhrman, Wilson, Orr, Hochstatter and Day.

Brief History:

Reported by House Committee on:
Fisheries & Wildlife, March 4, 1991, DPS.

**HOUSE COMMITTEE ON
FISHERIES & WILDLIFE**

Majority Report: *That Substitute House Bill No. 1641 be substituted therefor, and the substitute bill do pass.*
Signed by 8 members: Representatives R. King, Chair; Morris, Vice Chair; Fuhrman, Assistant Ranking Minority Member; Basich; Haugen; Hochstatter; Orr; and Padden.

Minority Report: *Do not pass.* Signed by 2 members: Representatives Cole and Spanel.

Staff: Keitlyn Watson (786-7310).

Background: The hydraulic code was passed into law in 1949. It is intended to protect fish life from damage by construction and other activities in all marine and fresh waters of the state. The hydraulic code is implemented through a permit called the Hydraulic Project Approval (HPA) obtained from the Washington Department of Fisheries for saltwaters or freshwaters containing salmon; or obtained from the Department of Wildlife for freshwaters without salmon. Agency rules with extensive technical provisions have been adopted by both departments to guide their administration of the code. Types of activities that require an HPA include streambank protection, construction of bridges, piers, bulkheads, ponds, marinas, docks, pile driving, channel change, culvert installation, dredging, logjam removal, and mineral prospecting.

Permit Process

An individual requiring an HPA makes application to the Department of Fisheries or the Department of Wildlife. The appropriate agency is required under current law to process these applications within 45 calendar days of receipt and the receipt of evidence of compliance with the State Environmental Policy Act. Many applications are reviewed on site by a biologist and, based on office and field review, conditions may be required by the agency with jurisdiction. The sole consideration in conditioning, issuing, or denying of a permit is the protection of fish life. Conditions may be based on the technical provisions in the rules, site-specific data, relevant research and literature, or the biologist's professional knowledge. Conditions may include timing restrictions.

Informal appeals processes are available to applicants who wish to contest denial of an HPA or permit conditions on an HPA. A formal appeals process is available for project applicants that divert water for stock watering or agricultural irrigation or are associated with streambank stabilization to protect farm and agricultural land. Formal appeals are made to the Hydraulic Appeals Board.

Summary of Substitute Bill: The substitute bill applies to permit applications to the Department of Fisheries for hydraulic project approvals for construction, replacement, or repair of marine beachfront protective bulkheads or rockwalls for single-family residences. The Department of Fisheries must approve applications that meet the following conditions, within 45 days of receipt of the application, and regardless of whether the process for compliance with the State Environmental Policy Act has been completed:

(1) The waterward face of a new bulkhead or rockwall must be only as far waterward as necessary to excavate for footings or place base rock but may not be located more than six feet waterward of the ordinary high water line.

(2) Any bulkhead or rockwall that replaces an existing structure must be placed along the same alignment as the existing structure, unless removal of the existing structure will cause environmental damage or is difficult to remove because of geologic, engineering, or safety considerations. In these situations, the replacement bulkhead may be placed waterward and abutting the existing structure.

(3) Construction, replacement, or repair of a bulkhead or rockwall that must extend waterward of the existing structure shall not result in the permanent loss of critical food fish or shellfish habitats.

(4) Timing restrictions as permit conditions may be applied on a case by case basis for the protection of critical habitats, including migration corridors, rearing and feeding areas, and spawning habitats.

Any person aggrieved by the approval, denial, conditioning, or modification of a hydraulic project approval under the act may seek review from the hydraulic appeals board.

Substitute Bill Compared to Original Bill: The substitute bill applies only to applications to the Department of Fisheries for hydraulic project approvals for construction, replacement, or repair of marine beachfront protective bulkheads or rockwalls for single-family residences that meet the four conditions described above. The scope of the original bill is broader, in that it applies to all types of projects for which a hydraulic project approval is required, in both marine and freshwaters, for single-family residences.

The substitute requires that the Department of Fisheries approve hydraulic project applications for construction, replacement, or repair of marine beachfront bulkheads or rockwalls for single-family residences that meet the three conditions, 45 days after receipt of the application. The original bill requires that the approval process be completed 30 days after receipt of the application. Both the original bill and the substitute remove the requirement in current law that the process for compliance with the State Environmental Policy Act be completed prior to hydraulic permit issuance.

The substitute predetermines the bulkhead project conditions that will qualify for issuance of a hydraulic project approval, with or without permit conditions. The substitute does not allow the Department to deny an application for a project that meets these conditions. The substitute allows timing restrictions as permit conditions if necessary for protection of critical habitats.

The original bill provides for department conditioning, approval, or denial of hydraulic applications. Denials are permitted only if the department can provide written scientific evidence that there will be damage to the food fish or shellfish resource.

The original bill requires that the director of the Department of Fisheries establish an advisory committee to develop new and review existing technical provisions for hydraulic project permit conditions. These recommendations are to be adopted by rule. A field manual illustrating and describing the technical provisions is to be developed and

made available to field personnel of the department. The substitute bill deletes the advisory committee and field manual requirements.

Both the substitute and the original bills allow for hydraulic project applicants, that are the subject of the act, to seek review directly from the hydraulic project appeals board if aggrieved by a denial or conditioning of a hydraulic project application.

Fiscal Note: Available. New fiscal note requested March 4, 1991.

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

Testimony For: (Original bill): The Department of Fisheries, for bulkhead hydraulic project approvals, has issued unjustified permit denials, has caused unnecessary delays in permit processing, has not produced scientific information to justify permit conditions or denials and has not been responsive to customers. Conditions on permits are imposed outside the technical provisions in the rules. Some of the activities that have been disapproved of by the Department of Fisheries do not affect marine life. There is not much marine life to affect. The standard permit process is too lengthy. Bulkheaders are already constrained by seasons and technical provisions. Additional paperwork is a hassle for bulkheaders. A formal appeals avenue is necessary for single-family residence situations. Personal property rights should not take second place to marine life.

Testimony Against: (Original bill): The sequential processing of compliance with the State Environmental Policy Act and processing of hydraulic permits works well, is efficient, and allows coordination between local government and the Department of Fisheries. This bill is a step backwards. There is opportunity to resolve issues by working with the bulkheaders. Testimony addressed in the substitute: 1) since the bill applies to more than bulkhead projects, the fiscal impacts would be extremely high (\$325,000/year); 2) the site specific burden of proof demanded in the bill for damage to marine life is not possible to meet.

Witnesses: (Original bill): John Woodring, Bainbridge Marine Services (in favor); Russ Trask, Bainbridge Marine Services (in favor); Glenn Waterman, private citizen (in favor); Cliff Thompson, Thompson Pile Driving Company (in favor); Ed Manary, Department of Fisheries (opposed); and Renee Beam, Kitsap County (opposed).