

SENATE BILL REPORT

SB 6095

AS REPORTED BY COMMITTEE ON WAYS & MEANS, FEBRUARY 10, 1992

Brief Description: Facilitating the construction of flood control measures.

SPONSORS: Senators Bailey, Skratek, Anderson and Barr

SENATE COMMITTEE ON AGRICULTURE & WATER RESOURCES

Majority Report: Do pass as amended.

Signed by Senators Barr, Chairman; Anderson, Vice Chairman; Bailey, Conner, Hansen, and Newhouse.

Staff: John Stuhlmiller (786-7446)

Hearing Dates: January 23, 1992; February 4, 1992

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6095 be substituted therefor, and the substitute bill do pass.

Signed by Senators McDonald, Chairman; Craswell, Vice Chairman; Amondson, Bailey, Bauer, Bluechel, Cantu, Matson, Newhouse, Saling, L. Smith, and West.

Staff: Michael Groesch (786-7715)

Hearing Dates: February 6, 1992; February 10, 1992

BACKGROUND:

Widespread flooding in the fall and winter of 1990 led the Legislature to examine the causes of flooding and measures which might reduce both its likelihood and any subsequent damage. With this heightened awareness came a sense of urgency from the public in flood-prone areas to address these issues as quickly as possible.

Areas of concern expressed in public forums have focused on the complexity of the permit process and the time required to complete applications for flood control projects. Also of concern is the time required by the various agencies to complete the permit approval or denial process.

SUMMARY:

Hydraulic Permits:

The Department of Fisheries and Department of Wildlife shall give equal consideration to the protection of human life, public land and/or private property, and fish life in deliberating permit approval for all hydraulic projects.

Equal consideration means that when a project is found to provide substantial benefit to the protection of life or property and minor or unproven impact on fish, the project shall be approved.

Following a flood equal to or greater than a five-year event, applications for hydraulic permits shall be decided within 15 days of receipt of a completed application.

Interagency Cooperation and Coordination:

The Departments of Fisheries, Wildlife, Natural Resources, and Ecology are required to coordinate their activities and improve their interaction in terms of permit deliberation and requirements in order to minimize duplication and create a comprehensive, streamlined permit process that is easily understandable by permit applicants.

Gravel Removal:

The Department of Natural Resources is authorized to reduce or eliminate royalties when making contracts for the removal of material from a stream, if the material is to be used for flood control purposes. Royalties may be paid as the material is sold rather than all up front.

The Department of Fisheries and Department of Wildlife's gravel removal administrative code is codified with the changes suggested by a number of counties. This includes: (1) establishment of an excavation line parallel to the water's edge (currently required to be two feet vertically above the water level); (2) establishment of the minimum gradient upward from the excavation line at 1/2 percent (currently required to be 2 percent); and, (3) allowing excavated materials to be stored within the high water mark from June 15 to October 15.

The Department of Natural Resources' river management administrative code is codified with the changes suggested by several counties. This includes allowing sand and gravel removal: (1) regardless of the availability of alternative upland sources; (2) if it will contribute to increased flood protection value to private or public land; (3) when detached bars and islands are involved on a case by case basis; and, (4) that has accumulated due to lack of dredging or scalping in an amount equal to the annual deposit of a stream multiplied by the number of years since the last removal operation.

State Flood Control Assistance:

The flood control assistance account is increased from \$4 million to \$6 million per biennium.

A new priority is created for the dispersement of flood control funds by the Department of Ecology such that flood damage repair projects will have a higher priority than all other requests except flood control management plans.

A flood protection project is defined as work necessary to preserve, restore, or improve natural or human-made stream banks or flood control facilities.

State Environmental Policy Act (SEPA):

Flood prevention and minimization is specifically added to the list of responsibilities of the state under SEPA.

For projects that are not considered substantial development, the SEPA process is to be completed within 30 days of receipt of a completed application, unless a detailed statement must be made, in which case the decision must come within 60 days.

Following a flood equal to or greater than a five-year event, the SEPA process is to take no longer than 15 days, unless a detailed statement must be made, in which case the decision must come within 30 days.

Shoreline Management Act:

The Shoreline Management Act is modified such that the floor determining whether a project is a substantial development or not is raised from \$2,500 to \$5,000. Within the substantial development definition, the exemption for emergency construction is clarified such that emergency construction is defined as including flood control and restoration necessary to protect property from damage by the elements.

The list of items master programs must include is expanded to include equal consideration language.

SUMMARY OF PROPOSED AGRICULTURE & WATER RESOURCES AMENDMENT:

Repair of flood damage is added to the list of responsibilities of the state under SEPA. The governmental agency working a SEPA permit shall provide sufficient technical data to support disapproval or conditioning of the permit process.

Hydraulic permits are automatically approved if the Department of Fisheries or Wildlife does not provide written notice of the suspension of the 45-day permit process within 10 working days.

Authorizes hydraulic permit holders to remove sand and gravel from streams in an amount equal to the annual deposit of a stream, and in instances where gravel removal has not taken place for more than one year, an amount equal to the annual deposit times the number of years since the last removal operation may be removed.

Language relating to negative water quality as a reason for not allowing sand and gravel removal is deleted. Also authorized is the removal of sand and gravel from outside of the wetted perimeter of river beds to prevent detrimental accumulation of aggregate in the river beds.

Sections relating to regulation of lands by the Department of Natural Resources are shifted from section 79.01 (trust lands) to 79.90 (aquatic lands) to clarify that only state aquatic lands are covered.

EFFECT OF PROPOSED SUBSTITUTE:

The increase in the general fund subsidy to the flood control assistance account is removed from the bill.

The enactment of the bill is made contingent upon funding in the budget.

Appropriation: none

Revenue: none

Fiscal Note: available

Effective Date: The bill contains an emergency clause and takes effect immediately.

TESTIMONY FOR:

The state cannot afford to delay the clean-up of rivers and repair of flood damage. The permit process has become increasingly difficult to understand and to work through and as a result projects have become more costly. A better relationship between agencies and permit applicants; currently this relationship is often adversarial. Speeding up the SEPA and hydraulic permit process is very important; increase in FCAP funding is vital.

TESTIMONY AGAINST:

Need to wait for the Joint Select Committee on Flood Damage Reduction to finish its work before proceeding with legislation. The bill speeds up the permit process and this action will cost more money. State trust lands should not be included in the bill.

TESTIFIED: Pat McElroy, Department of Natural Resources (con); Roger Lemon (pro); Ed Manary, Washington State Department of Fisheries (con); Jacqueline Hartley (pro); Richard Larson (pro); Ted Cowan, Washington Rivers Coalition (pro); Maxine Keesling (pro); Roger Finley, Washington State Cattlemen's Association (pro); Jacklyn Booth (pro); Albert Hover (pro); Wiard Groeneveld (pro); Barney Bagwell (pro); John Gintz, Snohomish County Cattlemen's Association (pro); Dan Coyne, Washington State Dairy Federation (pro); Art Schacher, Deschutes River Association (pro); Virgil Drewry, Deschutes River Association (pro); Fred Satter, Deschutes River Association (pro); Marlyta Deck, Washington State Cattlemen's Association (pro); Ovidia Harting, Snohomish County Property Rights Association (pro); Wes Johnson, Skokomish Flood Control Advisory Committee (pro)