

# SENATE BILL REPORT

## SB 5375

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As Reported By Senate Committee On:  
Parks, Fish & Wildlife, March 3, 2003  
Ways & Means, March 10, 2003

**Title:** An act relating to regulatory reform of the hydraulic project approval program.

**Brief Description:** Improving the efficiency and predictability of the hydraulic project approval program.

**Sponsors:** Senators Doumit, Oke, Haugen, Swecker, Prentice, Hale, Reardon and Rasmussen.

**Brief History:**

**Committee Activity:** Parks, Fish & Wildlife: 2/10/03, 3/3/03 [DPS-WM].  
Ways & Means: 3/7/03, 3/10/03 [DPS (PFW), DNP].

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### SENATE COMMITTEE ON PARKS, FISH & WILDLIFE

**Majority Report:** That Substitute Senate Bill No. 5375 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Oke, Chair; Sheahan, Vice Chair; Doumit, Esser, Morton and Swecker.

**Staff:** Kari Guy (786-7437)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 5375 as recommended by Committee on Parks, Fish & Wildlife be substituted therefor, and the substitute bill do pass.

Signed by Senators Rossi, Chair; Hewitt, Vice Chair; Zarelli, Vice Chair; Doumit, Hale, Honeyford, Johnson, Parlette, Roach, Sheahan and Winsley.

**Minority Report:** Do not pass.

Signed by Senators Brown, Fraser, Poulsen and Regala.

**Staff:** Richard Ramsey (786-7412)

**Background:** A person must obtain an hydraulic project approval (HPA) for any project 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 construction. HPA permits are issued by the Department of Fish and Wildlife to ensure the proper protection of fish life.

The bed of state waters is defined in the hydraulic code as land below the ordinary high water lines of state waters. An HPA is required both for work that will change the bed of any waters, or would change the natural flow of state waters.

Under the federal Endangered Species Act, federal agencies must consult with a federal fish and wildlife agency before authorizing any activity that may jeopardize a listed species. Any project receiving a federal permit must go through this consultation process. The result of the consultation may be a biological opinion, letter of concurrence, or other decision document by the federal agency to authorize the activity. Any in-water project that requires a federal permit and is within an area where a salmon species is listed as threatened or endangered will require a federal ESA consultation.

Most HPA decisions may be appealed to the director of the Department of Fish and Wildlife under the provisions of the Administrative Procedure Act. The appeal may be heard by the director or an administrative law judge, but final decisions on the appeal are made by the director. Certain projects related to agricultural irrigation or off-site mitigation are heard by the Hydraulic Appeals Board, consisting of the directors of Fish and Wildlife, Ecology, and Agriculture.

There have been concerns raised about the consistency in application of HPA permit conditions, and potential overlaps with other permit requirements.

**Summary of Substitute Bill:** The Department of Fish and Wildlife must develop general HPA permits for common or routine activities by December 2004. The permits must contain conditions necessary to protect fish life. The Department of Fish and Wildlife must publish a description of activities covered by each general permit, the conditions a project applicant must follow to receive coverage under the permit, and a notice of intent form for use by project applicants. A project applicant may receive coverage under a general permit by sending the notice of intent to the Department of Fish and Wildlife 21 days before construction is to begin.

Any project that is reviewed by a federal agency under the federal Endangered Species Act, and does not impact food fish habitat, is exempt from HPA permit requirements. A project applicant must notify the Department of Fish and Wildlife 14 days prior to construction of the intent to proceed under the provisions of the federal Endangered Species Act consultation.

At the request of a city, county, or private party, the department must develop five-year renewable maintenance or mitigation agreements for flood damage repair or reduction under agreed-upon conditions. The HPA must allow for bank stabilization, bridge repair, removal of sandbars, channel maintenance, and other flood damage repair and reduction activities. Individual permits are not required for specific projects covered by the maintenance HPA.

The Department of Fish and Wildlife must develop procedures to ensure that HPA conditions are applied consistently. The procedures must include common technical conditions, including allowable in-water work windows.

An expedited dispute resolution process is created. An applicant may request dispute resolution at any point prior to HPA issuance. The Department of Fish and Wildlife must convene a review committee including the project applicant, applicant's engineer, department engineer, department regional program manager, and an engineer from the local government with jurisdiction over the project. The review committee may accept the draft permit conditions, propose alternative conditions, or return the permit to the department for further review. Decisions of the review committee are binding on the department.

The requirement for an HPA permit is limited to work that occurs within the bed of any state waters.

**Substitute Bill Compared to Original Bill:** General permits must be developed by December 2004. A five-year maintenance approval for flood damage repair and reduction activities is authorized.

**Appropriation:** None.

**Fiscal Note:** Requested on January 23, 2003.

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

**Testimony For (Parks, Fish & Wildlife):** The general permits and equivalency provisions will simplify the permit process for permit applicants. It is appropriate to focus the HPA program in areas not covered by another regulatory program. The dispute resolution process is needed, and may avert appeals of permit conditions. This will help achieve consistency in project conditions, and provide greater predictability for project applicants.

**Testimony Against (Parks, Fish & Wildlife):** The state should not rely on federal permits for equivalency. The existing HPA program does not adequately protect fish life, and the state shouldn't weaken the program. There is significant overlap between the HPA program and local critical areas ordinances; the bill should include provisions to allow WDFW to defer to the local process.

**Testified (Parks, Fish & Wildlife):** David Kimble, Committee to Restore Duncan Creek (con); Doug Myers, Puget Sound Water Quality Action Team (con); Greg Hueckel, WDFW (pro w/concerns); Lea Maxwell, Washington PEER (con); Willy O'Neil, AGC of WA (pro); Robyn Meenach, WA Farm Bureau (pro); Grant Nelson, AWB (pro); Eric Johnson, Ports Assn. (pro); Bruce Wishart, People for Puget Sound (con); Jamie Glasgow, Washington Trout (con); Paul Parker, WA Assn. of Counties (pro).

**Testimony For (Ways & Means):** General permits for routine activities such as dock repairs, maintenance, and culvert replacement, enhances the predictability of the HPA process. The department should take advantage of the review of projects by federal agencies implementing the Endangered Species Act (ESA).

**Testimony Against (Ways & Means):** As currently drafted, rulemaking is required and will have costs above current activities. The HPA program has relatively small overlap with the ESA and it is not the state's intent to relinquish its authority. The bill requires two additional staff immediately; however, by fiscal year 2005, area habitat biologists can be removed from the field. The bill goes beyond the consensus points of the HPA task force. ESA equivalency is a bad idea because the federal agencies look to the area habitat biologists for guidance. Limiting the coverage of an HPA to the bed of state waters is a huge change.

**Testified (Ways & Means):** PRO: Senator Mark Doumit, prime sponsor; Eric Johnson, WA Public Ports Assn.; CON: Bruce Wishart, People for Puget Sound; PRO with concerns: Greg Huechel, Department of Fish and Wildlife.