

HOUSE BILL REPORT

HB 1346

As Reported by House Committee On:
Natural Resources, Ecology & Parks

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: Representatives Buck, B. Sullivan, Kretz, DeBolt, Blake, Eickmeyer and Takko.

Brief History:

Committee Activity:

Natural Resources, Ecology & Parks: 2/11/05, 3/1/05 [DPS].

Brief Summary of Substitute Bill

- Establishes legislative intent to clarify the Department of Fish and Wildlife's authority under the Hydraulics Code and streamline the hydraulic project approval process to improve consistency and predictability while ensuring the protection of fish life.

HOUSE COMMITTEE ON NATURAL RESOURCES, ECOLOGY & PARKS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives B. Sullivan, Chair; Upthegrove, Vice Chair; Buck, Ranking Minority Member; Kretz, Assistant Ranking Minority Member; Blake, DeBolt, Dickerson, Eickmeyer, Orcutt and Williams.

Minority Report: Do not pass. Signed by 1 member: Representative Hunt.

Staff: Jeff Olsen (786-7157).

Background:

A person must obtain a 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. The HPAs are issued by the Department of Fish and Wildlife (WDFW) to ensure the proper protection of fish life.

The WDFW is statutorily authorized to issue programmatic HPAs for small scale mining and prospecting, and for activities or projects conducted solely for the removal or control of certain aquatic weeds. The programmatic approval is in lieu of an applicant obtaining an individual

HPA. Under the programmatic approval process, the WDFW publishes a pamphlet that states the rules for that activity.

The HPA decisions may be appealed to the Director of the WDFW (Director) under the provisions of the Administrative Procedure Act. The appeal may be heard by the Director or an administrative law judge, but final appeal decisions are made by the Director. Certain appeals related to agriculture or off-site mitigation are heard by the Hydraulic Appeals Board (Board), consisting of the directors of the WDFW, the Department of Ecology, and the Department of Agriculture.

Engrossed Substitute Senate Bill 6387, Section 307 (23) passed by the 2002 Legislature created the Hydraulic Project Approval Task Force (Task Force). The Task Force was directed to conduct an evaluation of the HPA program and make recommendations to the Legislature by November 30, 2002. The Task Force recommended all formal HPA appeals should be the jurisdiction of the Board. The Task Force also recommended that the WDFW cooperate with other regulatory agencies to avoid duplicate reviews and project delays.

Summary of Substitute Bill:

Legislative intent is established to clarify the Department of Fish and Wildlife's (WDFW) authority under the Hydraulics Code and streamline the hydraulic project approval process to improve consistency and predictability while ensuring the protection of fish life.

Substitute Bill Compared to Original Bill:

The substitute bill establishes legislative intent to clarify the WDFW's authority under the Hydraulics Code and streamline the HPA process to improve consistency and predictability while ensuring the protection of fish life. The substitute bill removes the reorganization and recodification of the Hydraulics Code and the creation of an intent and definition section. The substitute bill removes the ability for project applicants to apply for review of certain permits as equivalent to the HPA. The substitute bill removes the expedited dispute resolution process to review HPA permit decisions. The substitute bill removes the consolidation of HPA appeals under the Hydraulics Appeals Board. The substitute bill removes requirements for the WDFW to develop general permits and renewable five year permits.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support of original bill) The Hydraulics Code is 56 years old and has been amended many times and is hard to read and understand. The equivalency process, which is determined by the Department of Fish and Wildlife, would avoid some duplication in

current permitting requirements. The reorganization of the chapter is much improved over the existing language.

(With concerns on original bill) The Northwest Indian Fisheries Commission is concerned about some of the changes in the bill but would like to work with the prime sponsor to address those concerns. Changes in the intent section and to ordinary high water mark may exclude current projects, like bulkheads and streambank projects, which are currently subject to the hydraulic project approval process. The Gold and Fish Pamphlet needs to be updated. The hydraulic approval is being used to restore systems, not to protect fish. General permits, five year permits, and equivalency are new concepts that need more discussion. Irrigation districts activities are excluded by definition, but further clarification is required.

Testimony Against: None.

Persons Testifying: (In support of original bill) Representative Buck, prime sponsor; Jeff Morisen, Whatcom County; and Eric Johnson, Washington Public Ports Association; Greg Christensen.

(With concerns on original bill) Mike Schwasow, Washington State Water Resource Association; Greg Hueckel, Washington State Department of Fish and Wildlife; and Heath Packard, Audubon.

Persons Signed In To Testify But Not Testifying: None.