

HOUSE BILL REPORT

HB 2525

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to mitigating flood damage.

Brief Description: Allowing for the mitigation of flood damage without obtaining a permit under chapter 77.55 RCW.

Sponsors: Representatives Pearson, Kretz, Kristiansen and Ross.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/21/08, 1/28/08 [DPS].

Brief Summary of Substitute Bill

- Allows gubernatorial declarations of states of emergency to trigger the authority of the Washington Department of Fish and Wildlife to issue emergency, oral hydraulic projects approvals.
- Allows counties to declare chronic flood dangers, and exempts certain projects to mitigate the dangers from review under the State Environmental Policy Act.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Blake, Chair; Van De Wege, Vice Chair; Kretz, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Eickmeyer, Grant, Lantz, Loomis, McCoy, Nelson, Newhouse and Orcutt.

Staff: Jason Callahan (786-7117).

Background:

Hydraulic Project Approvals

Before beginning a construction project, 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

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of the salt or fresh waters of the state. The HPAs are issued by the Washington Department of Fish and Wildlife (WDFW) to ensure the proper protection of fish life.

Generally, the WDFW has 45 days to decide on an HPA application. However, an immediate oral HPA is authorized for certain projects if the WDFW or a county legislative authority declares an emergency. If an oral permit is issued on an emergency basis, the conditions of the oral approval must be reduced to an actual paper permit with 30 days.

State of Emergency

The Governor has the authority to declare a state of emergency after making a finding that a public disorder, disaster, energy emergency, or riot exists within the state that affects life, health, property, or the public peace. The state of emergency can be issued statewide, or in any affected area of the state. The declaration of an emergency defines the geographic area of the affected portion of the state.

Summary of Substitute Bill:

State of Emergency

The instances when the WDFW is able to issue emergency oral approvals of HPA is expanded from just when the WDFW or a local county declares an emergency to include instances when the Governor declares a state of emergency due to flooding.

Chronic Flood Dangers

A county may declare that a chronic danger exists for a particular property not located on a marine shoreline if that property has experienced at least two consecutive years of flooding or erosion that threatens a property or its infrastructure. If a chronic danger is declared, then the WDFW must issue an approval under the HPA program to remove obstructions, restore banks and roads, repair structures, and protect property and fish resources.

Projects undertaken to mitigate a chronic flood danger are not required to undergo an analysis under the State Environmental Policy Act if the project is designed consistent with fish habitat enhancement projects that primarily utilize native vegetation to control flowing water.

Substitute Bill Compared to Original Bill:

The bill as introduced authorized activities conducted by a landowner to mitigate, repair, or prevent further damage from a flood event without having to receive an HPA during gubernatorial-declared states of emergencies.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) The state has in recent years been faced with horrible river flooding events. The most critical time to act during a flood is when it's just starting and before vast amounts of property are lost. Rivers must be managed wisely, and this bill represents a compromise to help riparian landowners protect their property. During an emergency, even the oral permits currently allowed can be too burdensome. The delay needed to obtain an oral permit results in even more flood damage. Once obtained, the permits can be costly and unworkable and come with expensive conditions.

Floods are very damaging to the environment and to wildlife. Floods can cause damage to salmon spawning beds.

The 2007 Capital Budget provided money to the WDFW so that they could protect their land. If the WDFW land is worthy of protection, private land should be also. Citizens should not be threatened with prison for simply trying to protect their property.

(With concerns) The WDFW already engages in outreach to counties to help them deal with flood emergencies and serves on the state team to address flood damage. One-hundred and fourteen emergency oral HPAs were issued during the floods of this past December, and zero permits were denied. Currently, the HPA is the only permit available that protects fish habitat.

(Opposed) The ability of the WDFW to protect fish life should not be removed. The expertise at the WDFW should be kept as part of the conversation. A balance must be struck between property protection and habitat preservation. If not, salmon restoration will be hindered and the door may be opened for liability under the Endangered Species Act.

Persons Testifying: (In support) Terry Williams; Celeste Bishop; and Dan Wood, Washington Farm Bureau.

(With concerns) Chris Cheney; and Jay Gordon, Washington State Dairy Federation.

(Opposed) Greg Hueckel, Washington Department of Fish and Wildlife; and Mo McBroom, Washington Environmental Council.

Persons Signed In To Testify But Not Testifying: None.