

SENATE BILL REPORT

SB 5733

As Reported By Senate Committee On:
Natural Resources, Ocean & Recreation, February 28, 2007

Title: An act relating to flood protection.

Brief Description: Regarding hydraulic project permit approval for projects intended to reduce or eliminate damage from floods.

Sponsors: Senators Stevens and Jacobsen.

Brief History:

Committee Activity: Natural Resources, Ocean & Recreation: 2/19/07, 2/28/07 [DPS, DNP].

SENATE COMMITTEE ON NATURAL RESOURCES, OCEAN & RECREATION

Majority Report: That Substitute Senate Bill No. 5733 be substituted therefor, and the substitute bill do pass.

Signed by Senators Jacobsen, Chair; Rockefeller, Vice Chair; Morton, Ranking Minority Member; Hargrove, Poulsen, Spanel, Stevens and Swecker.

Minority Report: Do not pass.

Signed by Senator Fraser.

Staff: Kim Johnson (786-7346)

Background: A hydraulic project approval (HPA) is required 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.

HPAs are issued by the Washington Department of Fish and Wildlife (DFW) to ensure the proper protection of fish life. The DFW has the authority to issue expedited permits in cases of imminent danger for work to repair existing structures, move obstructions, restore banks, protect property, or protect fish resources. Imminent danger includes threats by weather, water flow, or other natural conditions that are likely to occur within 60 days of a request of a permit. Either the DFW or the county legislative authority may determine if an imminent danger exists.

In emergencies, the DFW must issue, upon request, oral approval for removing any obstructions, repairing existing structures, restoring stream banks, or protecting property threatened by the stream, without the necessity of a person obtaining a written approval prior

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to commencing work. An emergency means an immediate threat to life, the public, property, or environmental degradation.

Summary of Bill: The DFW is required to give equal consideration to the protection of public safety, private property, and fish life when reviewing applications for an HPA that is intended by the applicant to eliminate or reduce damages to upland properties from potential flooding.

A county is required to declare that a chronic danger exists for a particular property if that property has experienced at least two consecutive years of flooding or erosion. If a chronic danger is declared, then the DFW must issue an expedited written HPA that allows for obstructions to be removed, existing structures to be repaired, banks and road access to be restored, and private property and fish resources to be protected. The expedited HPA must be issued within 30 days, and is valid for 120 days.

The expedited permit may not be conditioned on the completion of a review under the State Environmental Policy Act; however, the DFW may require reasonable measures designed to protect fish life. Any conditions of the approval may not preclude the property owner from taking reasonable actions necessary to prevent future flooding or erosion.

EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Natural Resources, Ocean & Recreation): The requirement that DFW give equal consideration to the protection of public safety, private property, and fish life when reviewing applications for an HPA is removed.

The permit is subject to the full application requirements and must be issued within 45 days. The exemption from SEPA for "chronic danger" permits is removed.

Properties boarding a marine shoreline are not eligible for a "chronic danger" declaration and permit.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: Fish and Wildlife is told that they may issue a permit, but without a law to tell them that they have to issue the permit, the agency will not help these people protect their property. Our family has been trying to get this permit for 16 years. The river, because of a log jam, changed course and began to run directly at my parents' home. My mother was told that it would cost the department millions for them to fix. She finally got the permit after 16 years and with a piece of machinery and \$7,000 cleared the jam and the river went back to its banks.

CON: We're working with the farm bureau on this bill. We understand that there may be a need to declare something a chronic problem rather than waiting for something to become an emergency. The bill as written would create a category that requires that we issue a permit

immediately. We need more time, especially when this is not an emergency. These are complex issues that stretch across many jurisdictions and can't be fixed quickly. We also oppose this because it does not go through State Environmental Protection Act process.

People continue to move into these areas and expect the tax payers to bail them out, and we should not allow this to happen. We are trying to encourage people to use more environmentally friendly armoring that will protect their property than hard armor.

Persons Testifying: PRO: Steve Hammond, Citizen's Alliance for Property Rights; Lisa Dilley, Olympic View Dairy; Dan Wood, Farm Bureau.

CON: Greg Hueckel, DFW; Bruce Wishart, People For Puget Sound.