

SENATE BILL REPORT

SB 5228

As Reported by Senate Committee On:
Natural Resources & Parks, February 14, 2017

Title: An act relating to the definition of hydraulic project in relation to the hydraulic project approval permits.

Brief Description: Concerning the definition of hydraulic project in relation to the hydraulic project approval permits. [**Revised for 1st Substitute:** Establishing the joint legislative task force on hydraulic project approval program jurisdiction.]

Sponsors: Senators Honeyford, Rivers, Fortunato, Becker, Bailey, Ericksen, Warnick and Pearson.

Brief History:

Committee Activity: Natural Resources & Parks: 1/26/17, 2/14/17 [DPS, DNP].

Brief Summary of Substitute Bill

- Creates a joint legislative task force to review issues relating to hydraulic project approval jurisdiction.

SENATE COMMITTEE ON NATURAL RESOURCES & PARKS

Majority Report: That Substitute Senate Bill No. 5228 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pearson, Chair; Hawkins, Vice Chair; Fortunato.

Minority Report: Do not pass.

Signed by Senators Van De Wege, Ranking Minority Member; McCoy.

Staff: Curt Gavigan (786-7437)

Background: Hydraulic Project Approvals (HPAs) in General. An 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 Department of Fish and Wildlife (DFW) for the stated purpose of ensuring the proper protection of fish life.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The term ordinary high water line describes the mark on the shores of all waters that will be found by examining the bed and banks and ascertaining where the presence and action of waters are common and usual.

HPA Fees and Fee Exemptions. DFW must generally charge an application fee of \$150 for an HPA located at or below the ordinary high water line. Exemptions from the application fee are provided for project types including:

- pamphlet permits for aquatic noxious weed control and certain mineral prospecting activities;
- applicant-funded contracts;
- HPAs on farm and agricultural lands;
- forestry-related projects regulated under the Forest Practices Act; and
- mineral prospecting and mining activities.

The authority to impose the application fee expires June 30, 2017.

Summary of Bill (First Substitute): A joint legislative task force is created to review issues relating to HPA jurisdiction including current law, current and historical practices by DFW, and alternative approaches. The task force must summarize its work and provide any recommendations to the Legislature by October 1, 2017.

The task force must consist of four members, one from each caucus of the Senate and House of Representatives, as well as the Director of DFW or a designee. The legislative members must appoint additional members representing stakeholders including business, local government, agricultural, and conservation interests. The members must also request representation from interested tribes.

EFFECT OF CHANGES MADE BY NATURAL RESOURCES & PARKS COMMITTEE (First Substitute):

- Removes substantive changes and creates a legislative task force to review issues relating to hydraulic project approval program jurisdiction.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: Yes.

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: DFW is bringing its own HPA bill that will not address the jurisdiction issue. This bill is meant to keep this important issue under discussion as the Legislature seeks a solution between the two bills. DFW has enforced this permit above the ordinary high water line, and this increases project costs and confusion as to when a permit is required. This has been an issue for many years, and this bill would provide clarity.

CON: This bill has been around for many years, but the difference this year is there is now an Attorney General's Opinion that supports a broad reading of HPA jurisdiction. It is clear this would be a change in the code.

OTHER: There are concerns about limiting program jurisdiction because a project outside of the ordinary high water line could still impact fish. While projects may still need other permits, this is the only one focused specifically on fish life.

Persons Testifying: PRO: Senator Jim Honeyford, Prime Sponsor; Mike Ennis, Association of Washington Business; Tom Davis, WA Farm Bureau; Cindy Alia, Citizens Alliance for Property Rights.

CON: Bruce Wishart, Sound Action.

OTHER: Margen Carlson, Deputy Assistant Director of the Habitat Program, Washington Department of Fish and Wildlife; Jeff Parsons, Puget Sound Partnership.

Persons Signed In To Testify But Not Testifying: No one.