
**Agriculture & Natural Resources
Committee**

HB 3037

Brief Description: Concerning permitting of hydraulic projects.

Sponsors: Representatives Darneille, Upthegrove, Dunshee, Hudgins and Kenney.

Brief Summary of Bill

- Directs the Department of Fish and Wildlife to assess permit submission and application fees for hydraulic project approvals.
- Expands the instances when the Department of Fish and Wildlife may levy a civil penalty for violations of the Hydraulics Code.
- Authorizes the Department of Fish and Wildlife to adopt rules that allow certain types of individual hydraulic projects to move forward without the necessity of obtaining an individual project approval.

Hearing Date: 2/2/10

Staff: Jason Callahan (786-7117).

Background:

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

To receive a HPA, the applicant must provide certain information to the WDFW. This information includes general plans for the overall project, complete plans and specifications for any construction that is proposed to occur within the mean higher high water line (saltwater) or ordinary high water line (freshwater), and complete plans for the proper protection of fish life. There is no fee associated with applying for or receiving a HPA.

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.

With a few exceptions, the WDFW must issue an approval or denial of a HPA application within 45 days of receiving the application. If approved, the HPA is valid for five years, and the applicant is required to demonstrate substantial progress on the construction within two years. If conditions change from the application, both the holder of the HPA and the WDFW can request modifications to the HPA.

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 the intended activity.

A person who unlawfully undertakes a project in violation of the HPA requirements may be prosecuted for a gross misdemeanor. Prosecution is available if a person conducts a project without an HPA, or if a person violates the conditions the operative HPA.

Summary of Bill:

HPA Fees.

The WDFW is directed to collect fees for HPA issuance from July 1, 2010 until June 30, 2012. The fees are to allow the WDFW to recover a portion of their existing costs of processing and issuing HPA decisions, all new costs for collecting the fee, and costs related to compliance monitoring and enforcement.

The amount of the fee charged ranges from \$100 to \$5,250 dollars depending on the complexity of the HPA application. Single site projects with low impact are not required to pay a processing fee. The actual fee schedule for the processing fees is as follows:

- \$100 for pamphlet permits.
- \$275 medium complexity, single site projects.
- \$1,200 for high complexity single site projects.
- \$5,200 for general permits.
- \$150 for any permit modifications.
- 20% of other fees for additional sites beyond single site.

In addition to the processing fee, each HPA applicant must pay a \$250 application fee. Unlike the processing fees, low impact, single site projects are required to pay the application fee.

Corresponding to 2012 the expiration date of the WDFW's authority to collect HPA fees, the WDFW must collaborate with stakeholders to develop a fee schedule in rule. The schedule must set forth fee criteria and amounts for the various types of HPAs. These fees can be adjusted no more than once every two years.

New Account.

The Hydraulic Project Approval Account (Account) is created. The new account is an appropriated account that receives all HPA fees paid to the WDFW. Revenue in the account may only be used by the WDFW to fund the processing, issuance, compliance monitoring, enforcement, appeal participation, and associated administrative costs of HPAs and the HPA program.

Pamphlet Permits.

The WDFW may adopt rules that allow certain types of individual hydraulic projects to move forward without the necessity of obtaining a HPA. The WDFW may require the project proponent to carry in his or her possession a pamphlet that outlines the rules related to the type of project being undertaken.

The alternative rule-based hydraulic project permission is only to be made available for low-risk, repetitive projects where well understood and proven mitigation measures are available. The implementing rules must identify the time, manner, locations, methods, and conditions under which the alternative process is available.

Civil Penalties.

The WDFW is authorized to assess a civil penalty of up to \$100 per day for any person who constructs a hydraulic project without first obtaining a HPA, violates a condition of the HPA, fails to pay the applicable HPA fee, or violates any other rules relating to hydraulic projects

Appropriation: None.

Fiscal Note: Available.

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