

SENATE BILL REPORT

SB 5529

As of February 9, 2011

Title: An act relating to hydraulic project approval.

Brief Description: Regarding hydraulic project approval.

Sponsors: Senators Pridemore and Ranker; by request of Department of Fish and Wildlife.

Brief History:

Committee Activity: Natural Resources & Marine Waters: 2/09/11.

SENATE COMMITTEE ON NATURAL RESOURCES & MARINE WATERS

Staff: Curt Gavigan (786-7437)

Background: Hydraulic Project Approvals (HPA). 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) to ensure the proper protection of fish life. There is currently no fee for an HPA, and DFW typically processes about 4000 applications per year.

Pamphlet HPAs. Generally, a person must apply for and obtain an HPA for each hydraulic project conducted. However, in two circumstances the Legislature has provided DFW with the authority to adopt rules and publish a pamphlet that serves as the HPA. These activities are removing and controlling noxious weeds, and small scale prospecting and mining.

HPA Enforcement. A person is subject to a gross misdemeanor for certain HPA-related violations, which include conducting a hydraulic project without an HPA or violating a requirement or condition of an HPA. DFW may also impose civil penalties of up to \$100 per day for violations of the statutory provision that sets out the HPA requirement and basic permitting process.

Summary of Bill: Establishes a Classification System for HPAs.

- *Class I HPAs*. Authorization is continued for aquatic weed control and small scale prospecting and mining activities through a pamphlet permit provided at no charge.
- *Class II HPAs*. On a pilot basis, a new class of streamlined HPAs are established that are routine in nature that can be conducted without site specific conditions or mitigation requirements. DFW must work with interested parties to develop rules to

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identify eligible projects and applicable conditions for the pilot, which runs from January 1, 2012, through the end of the 2014 regular legislative session.

- *Class III HPAs.* An HPA application and written approval from DFW is required, which is generally consistent with HPA processing under current law.
- *General and Multiple-site permits.* DFW is authorized to issue a general permit for multiple projects at unspecified sites across a defined area in one permit. DFW may also issue multiple-site permits, which provides site-specific permitting for multiple projects.

Establishes an HPA Fee System to Provide Dedicated Funding for the HPA Program. DFW must generally charge fees for HPAs according to a statutory fee schedule that varies by HPA classification, which is adjusted annually for inflation. The fees include:

- a notification or application submittal fee that is not charged for class I, and is generally \$150 for other permits;
- in addition to a notification or application fee, a permit processing fee that is not charged for classes I and II, is \$850 for class III, and is \$4,850 for a general permit. The fee for multiple site permits is the applicable permit processing fee plus 20 percent for each additional site; and
- a permit modification fee of \$100.

An appropriated account is created to hold HPA fees collected that are used to fund DFW's HPA-related activities.

Provides Specified Fee Exemptions and Refunds.

- *Fee Exemptions:* Fee exemptions are provided for: projects to remove fish passage barriers under the Family Forest Fish Passage Program; aquatic weed control and small scale prospecting and mining activities permitted through a pamphlet; fish passage barrier activities under a forest practices permit; DFW authorized Fish Habitat Enhancement Projects; and HPAs approved under applicant funded contracts.
- *Fee Refunds.* DFW must refund a portion or all of the application submittal and permit processing fee in certain circumstances including where DFW fails to process an application by the statutory deadline or denies a permit.

HPA Exemption for Certain Forest Practices. Certain approved forest practices are exempt from the requirement to obtain an HPA, including timber felling and yarding, bridge repair, and removal of certain woody debris. The Forest Practices Board must consult with specified entities and adopt rules necessary to protect fish life.

Modifies Civil and Criminal Enforcement Provisions.

- *Voluntary compliance.* DFW's first step in HPA enforcement must be to seek voluntary compliance, including providing information and technical assistance. However, if a violation is causing irreparable harm DFW must take immediate action.
- *Stop work orders.* DFW is authorized to issue a notice to comply or stop work order for HPA related violations, and specifies the required content of both.
- *Civil penalties.* DFW is authorized to levy civil penalties of up to \$10,000 for each HPA related violations, and establishes a process for notice and collection. DFW must establish a civil penalty schedule that considers factors including the impact of the violation and whether a person has a history of violations.

- *Criminal penalties.* HPA violations include a violation of a stop work order or a DFW rule establishing condictions under which an HPA is approved.

Establishes Monitoring and Reporting Requirements. DFW must implement a program to monitor the effectiveness of the HPA program, including compliance and fish life protection. By December 31, 2013, DFW must report to the Legislature on matters including the impact of the HPA classification system, the impact of fees, and recommendations resulting from the class II pilot.

Definitions are provided and amended. An intent section is included.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

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: The proposed Governor's operating budget puts HPA program activities in jeopardy, meaning protections for fish could disappear. The HPA program has a long history of fish protection in the state. If the state wants to recover its fish populations, it must continue to provide protections under the HPA program. This proposal will allow DFW to keep the skilled staff to run this important program. In turn, this program benefits the economy by helping fish that drive the fishing industry. Costs are appropriately born in part by the user groups who benefit from the permit. Some do have concerns about implementing class II, however, as it is not defined in the bill.

CON: The gold mining community opposes the bill, as many would have to apply for and pay for HPAs at certain times of the year and for certain equipment types. Some fish enhancement activities are exempt, but miners feel that these can disturb the streams more than mining. While some support imposing fees and civil penalties, there are concerns that permit streamlining could erode site specific protections. Industry does not want to pay new fees while still seeking certainty about how high up the bank HPA jurisdiction extends. Forest landowners are concerned about civil penalty authority, which the Department of Natural Resources (DNR) already has, and about fees on top of regulatory expenses.

OTHER: Counties receive many HPAs, and want to make sure the new system has the staffing to function adequately. In particular, there is concern about not knowing what constitutes class II until rulemaking occurs. DNR is generally supportive, but has some suggestions for specific portions of the bill. Before imposing HPA fees, the state must define more clearly how high up the bank HPA jurisdiction extends.

Persons Testifying: PRO: Senator Pridemore, prime sponsor; Bryon Quinton, WA Federation of State Employees; Joe Ryan, Puget Sound Partnership; Lisa Veneroso, DFW; Tom Clingman, Department of Ecology; Bruce Wishart, People for Puget Sound.

CON: William Thomas, Washington Prospectors; Robert Cunningham, NW Treasure Supply; Laren Monson, prospector; Tim Hyatt, Skagit River System Cooperative; Bruce Beatty, miner; Jack Field, WA Cattlemen's Assn.; Debora Munguia, WA Forest Protection Assn.

OTHER: Gary Rowe, WA State Assn. of County Engineers; Bridget Moran, DNR; Johan Hellman, WA Public Ports Assn.; Dawn Vyvyan, Yakama Nation; Miguel Perez-Gibson, Colville Tribes.