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**Agriculture & Natural Resources  
Committee**

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**HB 1588**

**Brief Description:** Regarding hydraulic project approval.

**Sponsors:** Representatives Dunshee, Chandler, Van De Wege and Tharinger; by request of Department of Fish and Wildlife.

**Brief Summary of Bill**

- Requires the Department of Fish and Wildlife to charge fees for certain hydraulic project permits.
- Designates three classes of hydraulic projects.
- Provides the Department of Fish and Wildlife with civil and criminal enforcement authority over hydraulic projects.

**Hearing Date:** 2/8/11

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

To receive an 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 an HPA.

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*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 an 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 that 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 of the operative HPA.

### **Summary of Bill:**

Three classes of HPAs are created. Class I project permits are those authorizing the removal of aquatic noxious weeds or mineral prospecting under previously adopted programmatic rules. Class II project permits are those that authorize activities that are routine in nature and can be conducted without site-specific conditions or compensatory mitigation. Class III project permits authorize all projects not included in Class I or Class II.

Class I projects may be conducted without submitting an application or notification to the WDFW. For application submittal purposes, Class II and Class III projects are treated in the same manner, and must be submitted to the WDFW in writing at the WDFW's Olympia headquarters. Emergency permits may be submitted to a permitting biologist at a regional office. Common forest practices are exempted from the requirement of obtaining an HPA. These forest practices include timber felling and yarding, bridge repair, and the removal of woody debris.

The WDFW is required to conduct a pilot project to evaluate the effectiveness of a streamlined permitting process for Class II projects. The pilot project is to be run from January 1, 2012 until the end of the 2014 Legislative session. The WDFW must adopt rules establishing which project types may be included in the pilot project and the conditions that apply.

The WDFW is directed to charge fees for HPA Class II and Class III approval decisions. The fee schedule is set as follows, and may be raised by the WDFW to account for inflation:

- \$150 for Class II projects;
- \$150 application fee plus \$850 processing fee for Class III projects;
- \$150 application fee plus \$4,850 processing fee for general permits (which allows permittee to conduct multiple HPAs over a defined area);
- \$150 application fee plus the processing fee for the first permit, and 20 percent of the processing fee for each additional permit, included in a multiple-site HPA application; and
- \$100 for permit modifications.

Certain projects are exempt from fees. These include certain fish passage barrier projects, fish habitat improvement projects, and projects when the applicant funds contract with the WDFW to pay for permit processing. The WDFW may lower fees for projects that require less work for the WDFW to process. The WDFW must issue a refund of 50 percent of fees paid to applicants that have their application denied or not processed within the required timelines. All fees are to be deposited into a new account created for these purposes.

The WDFW is required to develop and implement a compliance monitoring program to determine the effectiveness of HPAs approved by the WDFW.

The WDFW is provided with the authority to issue notices to comply and stop work orders. Notices to comply require the recipient to take corrective action and a stop work order requires the recipient to stop all work on a hydraulic project.

The WDFW is also provided with the authority to levy civil fines of up to \$10,000 per violation. The WDFW may develop a penalty schedule with more specificity in rule. The schedule must consider the previous history of the violator, the severity of the impacts on fish life, the intent and cooperation of the violator, and whether the damage is repairable.

A new gross misdemeanor is created that is enforceable against a person who conducts a hydraulic project without approval from the WDFW, violates any conditions of an approved hydraulic approval, or violates a notice to comply or a stop work order issued by the WDFW. The WDFW is directed to offer technical assistance prior to bringing an enforcement action to instances when irreparable harm to fish life is not eminent.

**Appropriation:** None.

**Fiscal Note:** Available.

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