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ENGROSSED SUBSTITUTE HOUSE BILL 1443

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State of Washington

55th Legislature

1997 Regular Session

By House Committee on Agriculture & Ecology (originally sponsored by Representatives Mastin, Grant, Johnson, Quall, Koster, Linville, Wensman, Hatfield, Mielke and Smith)

Read first time 02/25/97.

1 AN ACT Relating to flood damage reduction; and amending RCW  
2 75.20.100.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 75.20.100 and 1993 sp.s. c 2 s 30 are each amended to  
5 read as follows:

6 (1) In the event that any person or government agency desires to  
7 construct any form of hydraulic project or perform other work that will  
8 use, divert, obstruct, or change the natural flow or bed of any of the  
9 salt or fresh waters of the state, such person or government agency  
10 shall, before commencing construction or work thereon and to ensure the  
11 proper protection of fish life, secure the (~~written~~) approval of the  
12 department as to the adequacy of the means proposed for the protection  
13 of fish life. This approval shall not be unreasonably withheld.

14 (2)(a) Except as provided in RCW 75.20.1001 (~~and 75.20.1002~~), the  
15 department shall grant or deny approval of a standard permit within  
16 forty-five calendar days of the receipt of a complete application and  
17 notice of compliance with any applicable requirements of the state  
18 environmental policy act, made in the manner prescribed in this  
19 section.

1       **(b)** The applicant may document receipt of application by filing in  
2 person or by registered mail. A complete application for approval  
3 shall contain general plans for the overall project, complete plans and  
4 specifications of the proposed construction or work within the mean  
5 higher high water line in salt water or within the ordinary high water  
6 line in fresh water, and complete plans and specifications for the  
7 proper protection of fish life.

8       **(c)** The forty-five day requirement shall be suspended if ~~((+1))~~:

9       **(i)** After ten working days of receipt of the application, the  
10 applicant remains unavailable or unable to arrange for a timely field  
11 evaluation of the proposed project;

12       ~~((+2))~~ **(ii)** The site is physically inaccessible for inspection; or

13       ~~((+3))~~ **(iii)** The applicant requests delay. Immediately upon  
14 determination that the forty-five day period is suspended, the  
15 department shall notify the applicant in writing of the reasons for the  
16 delay.

17       **(d)** For the purposes of this section, "standard permit" means a  
18 written permit issued by the department when the conditions under  
19 subsections (3) and (6)(b) of this section are not met.

20       **(3)(a)** The department may issue an expedited written permit in  
21 those instances where normal permit processing would result in  
22 significant hardship for the applicant or unacceptable damage to the  
23 environment. In cases of imminent danger, the department shall issue  
24 an expedited written permit, upon request, for work to repair existing  
25 structures, move obstructions, restore banks, protect property, or  
26 protect fish resources. Expedited permit requests require a complete  
27 written application as provided in subsection (2)(b) of this section  
28 and shall be issued within fifteen calendar days of the receipt of a  
29 complete written application. Approval of an expedited permit is valid  
30 for up to sixty days from the date of issuance.

31       **(b)** For the purposes of this subsection, "imminent danger" means a  
32 threat by weather, water flow, or other natural conditions that is  
33 likely to occur within sixty days of a request for a permit  
34 application.

35       **(c)** The department may not require the provisions of the state  
36 environmental policy act, chapter 43.21C RCW, to be met as a condition  
37 of issuing a permit under this subsection.

38       **(d)** The department or the county legislative authority may  
39 determine if an imminent danger exists. The county legislative

1 authority shall notify the department, in writing, if it determines  
2 that an imminent danger exists.

3 (4) Approval of a standard permit is valid for a period of up to  
4 five years from date of issuance. The permittee must demonstrate  
5 substantial progress on construction of that portion of the project  
6 relating to the approval within two years of the date of issuance. If  
7 the department denies approval, the department shall provide the  
8 applicant, in writing, a statement of the specific reasons why and how  
9 the proposed project would adversely affect fish life. Protection of  
10 fish life shall be the only ground upon which approval may be denied or  
11 conditioned. Chapter 34.05 RCW applies to any denial of project  
12 approval, conditional approval, or requirements for project  
13 modification upon which approval may be contingent.

14 (5) If any person or government agency commences construction on  
15 any hydraulic works or projects subject to this section without first  
16 having obtained ((written)) approval of the department as to the  
17 adequacy of the means proposed for the protection of fish life, or if  
18 any person or government agency fails to follow or carry out any of the  
19 requirements or conditions as are made a part of such approval, the  
20 person or director of the agency is guilty of a gross misdemeanor. If  
21 any such person or government agency is convicted of violating any of  
22 the provisions of this section and continues construction on any such  
23 works or projects without fully complying with the provisions hereof,  
24 such works or projects are hereby declared a public nuisance and shall  
25 be subject to abatement as such.

26 ((For the purposes of this section and RCW 75.20.103, "bed" shall  
27 mean the land below the ordinary high water lines of state waters.  
28 This definition shall not include irrigation ditches, canals, storm  
29 water run-off devices, or other artificial watercourses except where  
30 they exist in a natural watercourse that has been altered by man.

31 The phrase "to construct any form of hydraulic project or perform  
32 other work" shall not include the act of driving across an established  
33 ford. Driving across streams or on wetted stream beds at areas other  
34 than established fords requires approval. Work within the ordinary  
35 high water line of state waters to construct or repair a ford or  
36 crossing requires approval.))

37 (6)(a) In case of an emergency arising from weather or stream flow  
38 conditions or other natural conditions, the department, through its  
39 authorized representatives, shall issue immediately, upon request, oral

1 approval for removing any obstructions, repairing existing structures,  
2 restoring stream banks, or to protect property threatened by the stream  
3 or a change in the stream flow without the necessity of obtaining a  
4 written approval prior to commencing work. Conditions of an oral  
5 approval to protect fish life shall be established by the department  
6 and reduced to writing within thirty days and complied with as provided  
7 for in this section. Oral approval shall be granted immediately, upon  
8 request, for a stream crossing during an emergency situation.

9 (b) For purposes of this section and RCW 75.20.103, "emergency"  
10 means an immediate threat to life, the public, property, or of  
11 environmental degradation.

12 (c) The department or the county legislative authority may declare  
13 and continue an emergency when one or more of the criteria under (b) of  
14 this subsection are met. The county legislative authority shall  
15 immediately notify the department if it declares an emergency under  
16 this subsection.

17 (7) The department shall, at the request of a county, develop five-  
18 year maintenance approval agreements, consistent with comprehensive  
19 flood control management plans adopted under the authority of RCW  
20 86.12.200, or other watershed plan approved by a county legislative  
21 authority, to allow for work on public and private property for bank  
22 stabilization, bridge repair, removal of sand bars and debris, channel  
23 maintenance, and other flood damage repair and reduction activity under  
24 agreed-upon conditions and times without obtaining permits for specific  
25 projects.

26 (8) This section shall not apply to the construction of any form of  
27 hydraulic project or other work which diverts water for agricultural  
28 irrigation or stock watering purposes authorized under or recognized as  
29 being valid by the state's water codes, or when such hydraulic project  
30 or other work is associated with streambank stabilization to protect  
31 farm and agricultural land as defined in RCW 84.34.020. These  
32 irrigation or stock watering diversion and streambank stabilization  
33 projects shall be governed by RCW 75.20.103.

34 (9) For the purposes of this section and RCW 75.20.103, "bed" means  
35 the land below the ordinary high water lines of state waters. This  
36 definition does not include irrigation ditches, canals, storm water  
37 run-off devices, or other artificial watercourses except where they  
38 exist in a natural watercourse that has been altered by man.

1       (10) The phrase "to construct any form of hydraulic project or  
2 perform other work" does not include the act of driving across an  
3 established ford. Driving across streams or on wetted stream beds at  
4 areas other than established fords requires approval. Work within the  
5 ordinary high water line of state waters to construct or repair a ford  
6 or crossing requires approval.

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