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HOUSE BILL 1443

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State of Washington

55th Legislature

1997 Regular Session

By Representatives Mastin, Grant, Johnson, Quall, Koster, Linville, Wensman, Hatfield, Mielke and Smith

Read first time 01/27/97. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to flood damage reduction; amending RCW 75.20.100  
2 and 86.26.007; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that flooding  
5 emergencies in recent years demonstrate the need for a more cooperative  
6 strategy among federal, state, and local emergency response agencies.  
7 The legislature further finds that regulatory processes may impede  
8 action by landowners and local government which can prevent or reduce  
9 flood damage. It is the intent of this act to streamline state  
10 regulatory requirements, encourage cooperative emergency response  
11 efforts, and provide additional funding for local flood prevention and  
12 dredging programs.

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

15 In the event that any person or government agency desires to  
16 construct any form of hydraulic project or perform other work that will  
17 use, divert, obstruct, or change the natural flow or bed of any of the  
18 salt or fresh waters of the state, such person or government agency

1 shall, before commencing construction or work thereon and to ensure the  
2 proper protection of fish life, secure the written approval of the  
3 department as to the adequacy of the means proposed for the protection  
4 of fish life. This approval shall not be unreasonably withheld.  
5 Except as provided in RCW 75.20.1001 (~~and 75.20.1002~~), the department  
6 shall grant or deny approval within forty-five calendar days of the  
7 receipt of a complete application and notice of compliance with any  
8 applicable requirements of the state environmental policy act, made in  
9 the manner prescribed in this section. The applicant may document  
10 receipt of application by filing in person or by registered mail. A  
11 complete application for approval shall contain general plans for the  
12 overall project, complete plans and specifications of the proposed  
13 construction or work within the mean higher high water line in salt  
14 water or within the ordinary high water line in fresh water, and  
15 complete plans and specifications for the proper protection of fish  
16 life. The forty-five day requirement shall be suspended if (1) after  
17 ten working days of receipt of the application, the applicant remains  
18 unavailable or unable to arrange for a timely field evaluation of the  
19 proposed project; (2) the site is physically inaccessible for  
20 inspection; or (3) the applicant requests delay. Immediately upon  
21 determination that the forty-five day period is suspended, the  
22 department shall notify the applicant in writing of the reasons for the  
23 delay. Approval is valid for a period of up to five years from date of  
24 issuance. The permittee must demonstrate substantial progress on  
25 construction of that portion of the project relating to the approval  
26 within two years of the date of issuance. If the department denies  
27 approval, the department shall provide the applicant, in writing, a  
28 statement of the specific reasons why and how the proposed project  
29 would adversely affect fish life. Protection of fish life shall be the  
30 only ground upon which approval may be denied or conditioned. Chapter  
31 34.05 RCW applies to any denial of project approval, conditional  
32 approval, or requirements for project modification upon which approval  
33 may be contingent. If any person or government agency commences  
34 construction on any hydraulic works or projects subject to this section  
35 without first having obtained written approval of the department as to  
36 the adequacy of the means proposed for the protection of fish life, or  
37 if any person or government agency fails to follow or carry out any of  
38 the requirements or conditions as are made a part of such approval, the  
39 person or director of the agency is guilty of a gross misdemeanor. If

1 any such person or government agency is convicted of violating any of  
2 the provisions of this section and continues construction on any such  
3 works or projects without fully complying with the provisions hereof,  
4 such works or projects are hereby declared a public nuisance and shall  
5 be subject to abatement as such.

6 The department shall, at the request of a county, develop five-year  
7 maintenance approval agreements, consistent with comprehensive flood  
8 control management plans adopted under the authority of RCW 86.12.200,  
9 to allow for work on public and private property for bank  
10 stabilization, bridge repair, removal of sand bars and debris, channel  
11 maintenance, and other flood damage repair and reduction activity under  
12 agreed-upon conditions and times without obtaining permits for specific  
13 projects.

14 For the purposes of this section and RCW 75.20.103, "bed" (~~shall~~)  
15 means the land below the ordinary high water lines of state waters.  
16 This definition shall not include irrigation ditches, canals, storm  
17 water run-off devices, or other artificial watercourses except where  
18 they exist in a natural watercourse that has been altered by man.

19 For purposes of this section and RCW 75.20.103, "emergency" means  
20 an immediate or imminent threat to life, the public, or property, or an  
21 immediate or imminent threat of environmental degradation.

22 The phrase "to construct any form of hydraulic project or perform  
23 other work" shall not include the act of driving across an established  
24 ford. Driving across streams or on wetted stream beds at areas other  
25 than established fords requires approval. Work within the ordinary  
26 high water line of state waters to construct or repair a ford or  
27 crossing requires approval.

28 In case of an emergency declaration by a county arising from  
29 weather or stream flow conditions or other natural conditions, the  
30 department, through its authorized representatives, shall issue  
31 (~~immediately upon request~~) immediate oral approval for removing any  
32 obstructions, repairing existing structures, restoring stream banks, or  
33 to protect property threatened by the stream or a change in the stream  
34 flow without the necessity of obtaining a written approval prior to  
35 commencing work. Conditions of an oral approval shall be reduced to  
36 writing within thirty days and complied with as provided for in this  
37 section. Oral approval shall be granted (~~immediately upon request,~~)  
38 for (~~a~~) stream crossing during an emergency situation declared by a  
39 county.

1 This section shall not apply to the construction of any form of  
2 hydraulic project or other work which diverts water for agricultural  
3 irrigation or stock watering purposes authorized under or recognized as  
4 being valid by the state's water codes, or when such hydraulic project  
5 or other work is associated with streambank stabilization to protect  
6 farm and agricultural land as defined in RCW 84.34.020. These  
7 irrigation or stock watering diversion and streambank stabilization  
8 projects shall be governed by RCW 75.20.103.

9 **Sec. 3.** RCW 86.26.007 and 1996 c 283 s 903 are each amended to  
10 read as follows:

11 The flood control assistance account is hereby established in the  
12 state treasury. At the beginning of the 1997-99 fiscal biennium and  
13 each biennium thereafter the state treasurer shall transfer from the  
14 general fund to the flood control assistance account an amount of money  
15 which, when combined with money remaining in the account from the  
16 previous biennium, will equal (~~four~~) ten million dollars. Moneys in  
17 the flood control assistance account may be spent only after  
18 appropriation for purposes specified under this chapter or (~~during~~  
19 ~~the 1995-97 biennium,~~) for state and local response and recovery costs  
20 associated with federal emergency management agency (FEMA) disasters  
21 (~~number 1079 (November/December 1995 storms), FEMA disaster number~~  
22 ~~1100 (February 1996 floods), and for prior biennia disaster recovery~~  
23 ~~costs. To the extent that moneys in the flood control assistance~~  
24 ~~account are not appropriated during the 1995-97 fiscal biennium for~~  
25 ~~flood control assistance, the legislature may direct their transfer to~~  
26 ~~the state general fund~~)).

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