
SECOND SUBSTITUTE SENATE BILL 5442

State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Swecker, Loveland, Anderson, Stevens, Haugen, Prince, Hale, Franklin, Sheldon, Benton, Rasmussen and Zarelli)

Read first time 03/10/97.

1 AN ACT Relating to flood damage reduction; amending RCW 75.20.100;
2 creating a new section; making an appropriation; and declaring an
3 emergency.

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

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

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

17 In the event that any person or government agency desires to
18 construct any form of hydraulic project or perform other work that will

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

1 the requirements or conditions as are made a part of such approval, the
2 person or director of the agency is guilty of a gross misdemeanor. If
3 any such person or government agency is convicted of violating any of
4 the provisions of this section and continues construction on any such
5 works or projects without fully complying with the provisions hereof,
6 such works or projects are hereby declared a public nuisance and shall
7 be subject to abatement as such.

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

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

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

27 ~~((In case of an emergency arising from weather or stream flow~~
28 ~~conditions or other natural conditions)) In instances arising from
29 weather or stream flow conditions or other natural conditions that are
30 not an emergency, but where normal processing within the next forty-
31 five days would result in loss of public or private property, cause an
32 unanticipated extreme hardship for the applicant, or cause unacceptable
33 environmental damage, the department shall, upon receipt of a written
34 application, issue an expedited hydraulic project approval. Expedited
35 hydraulic project approvals take precedence over nonemergency hydraulic
36 project approvals and must be issued within seven days of the request:
37 PROVIDED, a county declares the project meets the definition of an
38 emergency in chapter 43.21C RCW.~~

1 In instances arising from weather or stream flow conditions, or
2 other natural conditions that constitute an emergency for which action
3 must be taken immediately or within a time too short to allow full
4 compliance with the requirements of chapter 43.21C RCW, the department,
5 through its authorized representatives, shall issue immediately upon
6 request oral approval for removing any obstructions, repairing existing
7 structures, restoring stream banks, or to protect property threatened
8 by the stream or a change in the stream flow without the necessity of
9 obtaining a written approval prior to commencing work. Conditions of
10 an oral approval shall be reduced to writing within thirty days and
11 complied with as provided for in this section. Oral approval shall be
12 granted immediately upon request, for ((a)) stream crossing during an
13 emergency situation.

14 This section shall not apply to the construction of any form of
15 hydraulic project or other work which diverts water for agricultural
16 irrigation or stock watering purposes authorized under or recognized as
17 being valid by the state's water codes, or when such hydraulic project
18 or other work is associated with streambank stabilization to protect
19 farm and agricultural land as defined in RCW 84.34.020. These
20 irrigation or stock watering diversion and streambank stabilization
21 projects shall be governed by RCW 75.20.103.

22 NEW SECTION. Sec. 3. One million dollars is appropriated from the
23 public works assistance account to the flood control assistance account
24 for the purpose of completing flood control projects that were awarded
25 grant funds by the department of ecology during the 1995-97 biennium.
26 These funds shall be spent only to complete projects that could not be
27 completed during the 1995-97 biennium due to delays caused by weather
28 or delays in the permitting process.

29 NEW SECTION. Sec. 4. This act is necessary for the immediate
30 preservation of the public peace, health, or safety, or support of the
31 state government and its existing public institutions, and takes effect
32 immediately.

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