
ENGROSSED SUBSTITUTE HOUSE BILL 2866

State of Washington

57th Legislature

2002 Regular Session

By House Committee on Natural Resources (originally sponsored by Representatives Doumit, Sump, Reardon, Schoesler, Linville, Kessler, Morris, Mulliken, Hatfield, Pearson, Grant, Armstrong and McMorris)

Read first time 02/08/2002. Referred to Committee on .

1 AN ACT Relating to hydraulic permits; amending RCW 77.55.100,
2 77.55.110, 77.55.170, and 77.55.220; adding new sections to chapter
3 77.55 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that hydraulic project
6 approvals should ensure that fish life is properly protected, but
7 conditions attached to the approval of these permits must reasonably
8 relate to the potential harm that the projects may produce. The
9 legislature is particularly concerned over the current overlap of
10 agency jurisdiction regarding storm water projects, and believes that
11 there is an immediate need to address this issue to ensure that project
12 applicants are not given conflicting directions over project design.
13 Requiring a major redesign of a project results in major delays,
14 produces exponentially rising costs for both public and private project
15 applicants, and frequently produces only marginal benefits for fish.

16 The legislature recognizes that the department of ecology is
17 primarily responsible for the approval of storm water projects. The
18 legislature believes that once the department of ecology approves a
19 proposed storm water project, it is inappropriate for the department of

1 fish and wildlife to require a major redesign of that project in order
2 for the applicant to obtain hydraulic project approval. The
3 legislature further believes that it is more appropriate for the
4 department of fish and wildlife to defer the design elements of a storm
5 water project to the department of ecology and focus its own efforts on
6 determining reasonable mitigation or conditions for the project based
7 upon the project's potential harm to fish. It is the intent of the
8 legislature to restore some balance over conditions attached to
9 hydraulic permits, and to minimize overlapping state regulatory
10 authority regarding storm water projects in order to reduce waste in
11 both time and money while still providing ample protection for fish
12 life.

13 **Sec. 2.** RCW 77.55.100 and 2000 c 107 s 16 are each amended to read
14 as follows:

15 (1) 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
19 shall, before commencing construction or work thereon and to ensure the
20 proper protection of fish life, secure the approval of the department
21 as to the adequacy of the means proposed for the protection of fish
22 life. This approval shall not be unreasonably withheld or conditioned.

23 (2)(a) The department shall grant or deny approval of a standard
24 permit within forty-five calendar days of the receipt of a complete
25 application and notice of compliance with any applicable requirements
26 of the state environmental policy act, made in the manner prescribed in
27 this section. The permit must contain provisions allowing for minor
28 modifications to the plans and specifications without requiring
29 reissuance of the permit.

30 (b) The applicant may document receipt of application by filing in
31 person or by registered mail. A complete application for approval
32 shall contain general plans for the overall project, complete plans and
33 specifications of the proposed construction or work within the mean
34 higher high water line in salt water or within the ordinary high water
35 line in fresh water, and complete plans and specifications for the
36 proper protection of fish life.

37 (c) The forty-five day requirement shall be suspended if:

1 (i) After ten working days of receipt of the application, the
2 applicant remains unavailable or unable to arrange for a timely field
3 evaluation of the proposed project;

4 (ii) The site is physically inaccessible for inspection; or

5 (iii) The applicant requests delay. Immediately upon determination
6 that the forty-five day period is suspended, the department shall
7 notify the applicant in writing of the reasons for the delay.

8 (d) For purposes of this section, "standard permit" means a written
9 permit issued by the department when the conditions under subsections
10 (3) and (5)(b) of this section are not met.

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

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

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

29 (d) The department or the county legislative authority may
30 determine if an imminent danger exists. The county legislative
31 authority shall notify the department, in writing, if it determines
32 that an imminent danger exists.

33 (4) Approval of a standard permit is valid for a period of up to
34 five years from date of issuance. The permittee must demonstrate
35 substantial progress on construction of that portion of the project
36 relating to the approval within two years of the date of issuance. If
37 the department denies approval, the department shall provide the
38 applicant, in writing, a statement of the specific reasons why and how
39 the proposed project would adversely affect fish life. Protection of

1 fish life shall be the only ground upon which approval may be denied or
2 conditioned. Chapter 34.05 RCW applies to any denial of project
3 approval, conditional approval, or requirements for project
4 modification upon which approval may be contingent.

5 (5)(a) In case of an emergency arising from weather or stream flow
6 conditions or other natural conditions, the department, through its
7 authorized representatives, shall issue immediately, upon request, oral
8 approval for removing any obstructions, repairing existing structures,
9 restoring stream banks, or to protect property threatened by the stream
10 or a change in the stream flow without the necessity of obtaining a
11 written approval prior to commencing work. Conditions of an oral
12 approval to protect fish life shall be established by the department
13 and reduced to writing within thirty days and complied with as provided
14 for in this section. Oral approval shall be granted immediately, upon
15 request, for a stream crossing during an emergency situation.

16 (b) For purposes of this section and RCW 77.55.110, "emergency"
17 means an immediate threat to life, the public, property, or of
18 environmental degradation.

19 (c) The department or the county legislative authority may declare
20 and continue an emergency when one or more of the criteria under (b) of
21 this subsection are met. The county legislative authority shall
22 immediately notify the department if it declares an emergency under
23 this subsection.

24 (6) The department shall, at the request of a county, develop five-
25 year maintenance approval agreements, consistent with comprehensive
26 flood control management plans adopted under the authority of RCW
27 86.12.200, or other watershed plan approved by a county legislative
28 authority, to allow for work on public and private property for bank
29 stabilization, bridge repair, removal of sand bars and debris, channel
30 maintenance, and other flood damage repair and reduction activity under
31 agreed-upon conditions and times without obtaining permits for specific
32 projects.

33 (7) This section shall not apply to the construction of any form of
34 hydraulic project or other work which diverts water for agricultural
35 irrigation or stock watering purposes authorized under or recognized as
36 being valid by the state's water codes, or when such hydraulic project
37 or other work is associated with streambank stabilization to protect
38 farm and agricultural land as defined in RCW 84.34.020. These

1 irrigation or stock watering diversion and streambank stabilization
2 projects shall be governed by RCW 77.55.110.

3 A landscape management plan approved by the department and the
4 department of natural resources under RCW 76.09.350(2), shall serve as
5 a hydraulic project approval for the life of the plan if fish are
6 selected as one of the public resources for coverage under such a plan.

7 (8) For the purposes of this section and RCW 77.55.110, "bed" means
8 the land below the ordinary high water lines of state waters. This
9 definition does not include irrigation ditches, canals, storm water
10 run-off devices, or other artificial watercourses except where they
11 exist in a natural watercourse that has been altered by man.

12 (9) The phrase "to construct any form of hydraulic project or
13 perform other work" does not include the act of driving across an
14 established ford. Driving across streams or on wetted stream beds at
15 areas other than established fords requires approval. Work within the
16 ordinary high water line of state waters to construct or repair a ford
17 or crossing requires approval.

18 **Sec. 3.** RCW 77.55.110 and 1998 c 190 s 88 are each amended to read
19 as follows:

20 In the event that any person or government agency desires to
21 construct any form of hydraulic project or other work that diverts
22 water for agricultural irrigation or stock watering purposes, or when
23 such hydraulic project or other work is associated with streambank
24 stabilization to protect farm and agricultural land as defined in RCW
25 84.34.020, and when such diversion or streambank stabilization will
26 use, divert, obstruct, or change the natural flow or bed of any river
27 or stream or will utilize any waters of the state or materials from the
28 stream beds, the person or government agency shall, before commencing
29 construction or work thereon and to ensure the proper protection of
30 fish life, secure a written approval from the department as to the
31 adequacy of the means proposed for the protection of fish life. This
32 approval shall not be unreasonably withheld or conditioned. ((~~Except~~
33 ~~as provided in RCW 75.20.1001,~~) The department shall grant or deny the
34 approval within forty-five calendar days of the receipt of a complete
35 application and notice of compliance with any applicable requirements
36 of the state environmental policy act, made in the manner prescribed in
37 this section. The permit must contain provisions allowing for minor
38 modifications to the plans and specifications without requiring

1 reissuance of the permit. The applicant may document receipt of
2 application by filing in person or by registered mail. A complete
3 application for an approval shall contain general plans for the overall
4 project, complete plans and specifications of the proposed construction
5 or work within ordinary high water line, and complete plans and
6 specifications for the proper protection of fish life. The forty-five
7 day requirement shall be suspended if (1) after ten working days of
8 receipt of the application, the applicant remains unavailable or unable
9 to arrange for a timely field evaluation of the proposed project; (2)
10 the site is physically inaccessible for inspection; or (3) the
11 applicant requests delay.

12 Immediately upon determination that the forty-five day period is
13 suspended, the department shall notify the applicant in writing of the
14 reasons for the delay.

15 An approval shall remain in effect without need for periodic
16 renewal for projects that divert water for agricultural irrigation or
17 stock watering purposes and that involve seasonal construction or other
18 work. Approval for streambank stabilization projects shall remain in
19 effect without need for periodic renewal if the problem causing the
20 need for the streambank stabilization occurs on an annual or more
21 frequent basis. The permittee must notify the appropriate agency
22 before commencing the construction or other work within the area
23 covered by the approval.

24 The permittee must demonstrate substantial progress on construction
25 of that portion of the project relating to the approval within two
26 years of the date of issuance. If the department denies approval, the
27 department shall provide the applicant, in writing, a statement of the
28 specific reasons why and how the proposed project would adversely
29 affect fish life. Protection of fish life shall be the only ground
30 upon which approval may be denied or conditioned. Issuance, denial,
31 conditioning, or modification shall be appealable to the hydraulic
32 appeals board established in RCW 43.21B.005 within thirty days of the
33 notice of decision. The burden shall be upon the department to show
34 that the denial or conditioning of an approval is solely aimed at the
35 protection of fish life.

36 The department may, after consultation with the permittee, modify
37 an approval due to changed conditions. The modifications shall become
38 effective unless appealed to the hydraulic appeals board within thirty
39 days from the notice of the proposed modification. The burden is on

1 the department to show that changed conditions warrant the modification
2 in order to protect fish life.

3 A permittee may request modification of an approval due to changed
4 conditions. The request shall be processed within forty-five calendar
5 days of receipt of the written request. A decision by the department
6 may be appealed to the hydraulic appeals board within thirty days of
7 the notice of the decision. The burden is on the permittee to show
8 that changed conditions warrant the requested modification and that
9 such modification will not impair fish life.

10 In case of an emergency arising from weather or stream flow
11 conditions or other natural conditions, the department, through its
12 authorized representatives, shall issue immediately upon request oral
13 approval for removing any obstructions, repairing existing structures,
14 restoring stream banks, or to protect property threatened by the stream
15 or a change in the stream flow without the necessity of obtaining a
16 written approval prior to commencing work. Conditions of an oral
17 approval shall be reduced to writing within thirty days and complied
18 with as provided for in this section.

19 For purposes of this chapter, "streambank stabilization" shall
20 include but not be limited to log and debris removal, bank protection
21 (including riprap, jetties, and groins), gravel removal and erosion
22 control.

23 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.55 RCW
24 to read as follows:

25 (1) The regulation of storm water projects is the primary
26 responsibility of the department of ecology and local governments under
27 chapter 90.48 RCW. Notwithstanding any other provision of this
28 chapter, all hydraulic project approvals related to storm water
29 discharges must follow the provisions established in this section.

30 (2) Once the department of ecology or a local government has
31 approved a storm water project that is consistent with the guidelines
32 contained in the department of ecology's adopted storm water manual, or
33 its equivalent, a hydraulic project approval is only required for the
34 actual construction of any storm water outfall or associated structures
35 pursuant to this chapter. The department may not in these instances
36 deny or condition hydraulic project approvals for water quality or
37 quantity impacts arising from storm water discharges for which the
38 structure is being installed.

1 (3)(a) In any other location the department may issue hydraulic
2 project approvals that contain provisions that protect fish life from
3 adverse effects, such as scouring or erosion of the bed of the water
4 body, resulting from the direct hydraulic impacts of the discharge.

5 (b) Prior to the issuance of a hydraulic project approval issued
6 under this subsection (3), the department must:

7 (i) Make a finding that the discharge from the outfall will cause
8 harmful effects to fish life;

9 (ii) Transmit the findings to the applicant and to the city or
10 county where the project is being proposed; and

11 (iii) Allow the applicant an opportunity to use local ordinances or
12 other mechanisms to avoid the adverse effects resulting from the direct
13 hydraulic discharge.

14 (c) After following the procedures set forth in (b) of this
15 subsection, the department may issue a hydraulic project approval that
16 prescribes the discharge rates from an outfall structure that will
17 prevent adverse effects to the bed or flow of the waterway. The
18 department may recommend, but not specify, the measures required to
19 meet these discharge rates. The department may not require changes to
20 the project design above the mean higher high water mark of marine
21 waters, or the ordinary high water mark of fresh waters of the state.
22 Nothing in this section alters any authority the department may have to
23 regulate other types of projects under this chapter.

24 NEW SECTION. **Sec. 5.** A new section is added to chapter 77.55 RCW
25 to read as follows:

26 Conditions imposed upon hydraulic project approvals must be
27 reasonably related to the project. The conditions must ensure that the
28 project provides proper protection for fish life, but the department
29 may not impose conditions that attempt to optimize conditions for fish
30 life that are out of proportion to the impact of the proposed project.

31 **Sec. 6.** RCW 77.55.170 and 2000 c 107 s 20 are each amended to read
32 as follows:

33 (1) There is hereby created within the environmental hearings
34 office under RCW 43.21B.005 the hydraulic appeals board of the state of
35 Washington.

36 (2) The hydraulic appeals board shall consist of ~~((three))~~ six
37 members: The director of the department of ecology or the director's

1 designee, the director of the department of agriculture or the
2 director's designee, (~~and~~) the director or the director's designee of
3 the department whose action is appealed under subsection (6) of this
4 section, and three local government members. One of the local
5 government members must be appointed by the Washington state
6 association of counties, one of the local government members must be
7 appointed by the association of Washington cities, and one of the local
8 government members must be appointed by the Washington public ports
9 association. The local government members serve at the pleasure of
10 their respective associations. A decision must be agreed to by at
11 least (~~two~~) four members of the board to be final.

12 (3) The board may adopt rules necessary for the conduct of its
13 powers and duties or for transacting other official business.

14 (4) The board shall make findings of fact and prepare a written
15 decision in each case decided by it, and that finding and decision
16 shall be effective upon being signed by (~~two~~) four or more board
17 members and upon being filed at the hydraulic appeals board's principal
18 office, and shall be open to public inspection at all reasonable times.

19 (5) The board has exclusive jurisdiction to hear appeals arising
20 from the approval, denial, conditioning, or modification of a hydraulic
21 approval issued by the department: (a) Under the authority granted in
22 RCW 77.55.110 for the diversion of water for agricultural irrigation or
23 stock watering purposes or when associated with streambank
24 stabilization to protect farm and agricultural land as defined in RCW
25 84.34.020; or (b) under the authority granted in RCW 77.55.230 for off-
26 site mitigation proposals.

27 (6)(a) Any person aggrieved by the approval, denial, conditioning,
28 or modification of a hydraulic approval pursuant to RCW 77.55.110 may
29 seek review from the board by filing a request for the same within
30 thirty days of notice of the approval, denial, conditioning, or
31 modification of such approval.

32 (b) The review proceedings authorized in (a) of this subsection are
33 subject to the provisions of chapter 34.05 RCW pertaining to procedures
34 in adjudicative proceedings.

35 **Sec. 7.** RCW 77.55.220 and 1996 c 192 s 2 are each amended to read
36 as follows:

37 (1) The definitions in this subsection apply throughout this
38 section unless the context clearly requires otherwise.

1 (a) "Marina" means a public or private facility providing boat
2 moorage space, fuel, or commercial services. Commercial services
3 include but are not limited to overnight or live-aboard boating
4 accommodations.

5 (b) "Marine terminal" means a public or private commercial wharf
6 located in the navigable water of the state and used, or intended to be
7 used, as a port or facility for the storing, handling, transferring, or
8 transporting of goods to and from vessels.

9 (2) For a marina or marine terminal in existence on June 6, 1996,
10 or a marina or marine terminal that has received a hydraulic project
11 approval for its initial construction, a renewable, five-year hydraulic
12 project approval shall be issued, upon request, for regular maintenance
13 activities of the marina or marine terminal.

14 (3) Upon construction of a new marina or marine terminal that has
15 received hydraulic project approval, a renewable, five-year hydraulic
16 project approval shall be issued, upon request, for regular maintenance
17 activities of the marina or marine terminal.

18 (4) For the purposes of this section, regular maintenance
19 activities are only those activities necessary to restore the marina or
20 marine terminal to the conditions approved in the initial hydraulic
21 project approval. These activities may include, but are not limited
22 to, dredging, piling replacement, and float replacement.

23 (5) The five-year permit must include a requirement that a
24 fourteen-day notice be given to the department before regular
25 maintenance activities begin.

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