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SENATE BILL 5408

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State of Washington

57th Legislature

2001 Regular Session

By Senators Jacobsen, Constantine and Spanel

Read first time 01/22/2001. Referred to Committee on Natural Resources, Parks & Shorelines.

1 AN ACT Relating to processing and compliance with hydraulic project  
2 approvals; amending RCW 77.15.300; adding new sections to chapter 77.55  
3 RCW; and repealing RCW 77.15.140.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 77.55 RCW  
6 to read as follows:

7 The department must annually establish service levels for the  
8 processing and monitoring of hydraulic project applications and  
9 approvals under this chapter. The service levels must include minimum  
10 goals as follows:

11 (1) Performing a field visit for a minimum of fifty percent of the  
12 applications filed;

13 (2) Performing a field visit following completion of work under the  
14 approval to ensure compliance with conditions in the approval and  
15 performance of any required mitigation work, for a minimum of fifty  
16 percent of the approvals for which work is completed; and

17 (3) Making decisions upon all completed applications within the  
18 applicable deadlines required under this chapter.

1 By December 31st of each year, the department must report to the  
2 office of financial management and the fish and wildlife standing  
3 committees of the senate and house of representatives concerning its  
4 estimates of expected applications during the succeeding calendar year  
5 and resources necessary to meet the service levels established for the  
6 year.

7 NEW SECTION. **Sec. 2.** A new section is added to chapter 77.55 RCW  
8 to read as follows:

9 The department must establish procedures to track the status of  
10 applications and approvals under this chapter. The procedures must  
11 facilitate the department's compliance with the service level goals  
12 established under section 1 of this act. The department must make  
13 available to the public information regarding the status of  
14 applications and approvals, including a register that is accessible  
15 electronically through the worldwide web or other electronic network.

16 NEW SECTION. **Sec. 3.** A new section is added to chapter 77.55 RCW  
17 to read as follows:

18 When an approval issued under this chapter is conditioned upon the  
19 completion of compensatory mitigation for unavoidable impacts to fish  
20 habitat, the department must ensure by field inspection or other  
21 effective means that the mitigation objectives are substantially  
22 achieved prior to commencing construction or activities under the  
23 hydraulic project approval.

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

26 The department must adopt financial requirements that include  
27 performance bonding or other mechanisms that are required as a  
28 condition of approval under this chapter to ensure a source of funding  
29 for completing mitigation projects and achieving mitigation objectives  
30 when compensatory mitigation is required under an approval and the  
31 applicant does not timely meet such conditions.

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

34 (1) If any person or government agency fails to follow the  
35 requirements of obtaining a hydraulic project approval under this

1 chapter or fails to carry out any of the requirements or conditions of  
2 a hydraulic project approval issued under this chapter, the department  
3 may issue an order to that person or government agency. The order may  
4 require the person or government agency to stop work on any or all of  
5 the activities subject to the hydraulic project approval, to correct or  
6 to restore the nonconforming site, or to both stop work and to correct  
7 or to restore the nonconforming site. Within twenty days of service of  
8 such an order or as provided by rule of the department extending the  
9 time, the person may file a written petition with the department  
10 appealing the order, and this petition must be treated as an  
11 application for an adjudicative proceeding under chapter 34.05 RCW. In  
12 the event of an appeal, a person or government agency may seek interim  
13 relief from an order under this section as provided in chapter 34.05  
14 RCW.

15 (2) The department may adopt rules to designate that certain  
16 violations of the terms or conditions of a hydraulic project approval  
17 are an infraction to be punished as provided by RCW 77.15.160. Any  
18 punishment under chapter 77.15 RCW is supplemental to the remedy  
19 provided by subsection (1) of this section.

20 **Sec. 6.** RCW 77.15.300 and 2000 c 107 s 239 are each amended to  
21 read as follows:

22 (1) A person is guilty of unlawfully undertaking hydraulic project  
23 activities if the person:

24 (a) Constructs any form of hydraulic project or performs other work  
25 on a hydraulic project and(~~+~~

26 ~~(a))~~ fails to have a hydraulic project approval required under  
27 chapter 77.55 RCW for such construction or work; (~~or~~)

28 (b) Violates any requirements or conditions of the hydraulic  
29 project approval for such construction or work;

30 (c) Violates any stop work or correction order issued under section  
31 5 of this act; or

32 (d) Violates any rule governing hydraulic project activities  
33 addressed in a pamphlet that serves as a hydraulic project approval.

34 (2) Unlawfully undertaking hydraulic project activities is a gross  
35 misdemeanor.

1        NEW SECTION.    **Sec. 7.**    RCW 77.15.140 (Unclassified fish or  
2 wildlife--Unlawful taking--Penalty) and 1998 c 190 s 15 are each  
3 repealed.

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