

SSB 5375 - S AMD 123

By Senators Doumit, Oke

ADOPTED 03/19/2003

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that one of the  
4 state's primary fish habitat protection statutes is the hydraulic  
5 project approval program. This program is one of the state's oldest  
6 environmental regulatory programs, and as a consequence it has been  
7 developed in an incremental manner over many decades.

8 The legislature further finds that federal review of proposed in-  
9 water projects under provisions of the endangered species act are in  
10 most conditions the equivalent of requirements under the state's  
11 hydraulic project approval process, and that requiring projects to  
12 receive dual approvals causes project delays, is redundant, and may  
13 lead to conflicting project conditions.

14 The legislature further finds that it would benefit the department  
15 of fish and wildlife, the regulated community, and the fisheries  
16 resources of the state if this important regulatory program were  
17 improved with measures to improve its efficiency and predictability, as  
18 well as its coordination with the many local, state, and federal fish  
19 and habitat protection statutes and regulatory programs that have been  
20 created since the inception of the hydraulic project approval program.

21 The legislature therefore intends to improve the process of  
22 regulating construction in state waters with policy measures that  
23 improve predictability for entities that work in state waters, and make  
24 the best use of limited state resources by ensuring that regulatory  
25 reviews of in-water construction are made in an efficient manner.

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

28 (1)(a) The department must develop general permits for common or

1 routine activities to improve the predictability and efficiency of the  
2 hydraulic project approval program. At a minimum, the department must,  
3 by December 2004, develop general permits for the following activities:

4 (i) Routine repair and maintenance of existing over-water  
5 serviceable structures, including replacement of up to sixty pilings;

6 (ii) Minor dredging of up to ten yards of sediment from an existing  
7 channel, berthing area, or boat ramp;

8 (iii) Routine repair and maintenance of tide gates;

9 (iv) Construction of mooring dolphins and fender pilings;

10 (v) Routine repair, maintenance, or replacement of road and highway  
11 structures such as culverts and ditches;

12 (vi) Routine repair and maintenance of bridges; and

13 (vii) Geotechnical or exploratory work conducted as part of project  
14 planning or development.

15 (b) The department may develop additional general permits for in-  
16 water construction activities as available resources allow.

17 (2) General permits must contain conditions necessary to protect  
18 fish life, and must clearly delineate predictable conditions and  
19 restrictions that project applicants may incorporate into project  
20 design and construction. The department must develop, in consultation  
21 with an advisory committee, common technical provisions that must be  
22 incorporated into general conditions for each general permit.

23 (3) The department shall post electronically and otherwise make  
24 generally available the following information for each general permit:

25 (a) A description of activities covered;

26 (b) The conditions and practices a project applicant must follow to  
27 receive coverage under the permit; and

28 (c) A notice of intent form for use by applicants to include  
29 information on project location and habitat types affected.

30 (4) To receive coverage under a general permit, a project applicant  
31 must:

32 (a) Send a notice of intent to follow the conditions of a general  
33 permit to the department twenty-one days before construction is to  
34 begin; and

35 (b) Post the general permit prominently at the worksite.

36 (5) Within ten days of receipt of a notice of intent from a project  
37 applicant, the department must notify the applicant of the status of  
38 general permit coverage.

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

3        (1) Certain federal, state, and local regulatory review processes  
4 may provide review and protection of fish life that is equivalent to  
5 the review provided by the department under this chapter. This may  
6 include, among other permits, federal review of a project under the  
7 endangered species act (16 U.S.C. Sec. 1531 et seq.), a federal permit  
8 under section 404 of the federal water pollution control act (33 U.S.C.  
9 Sec. 1251 et seq.), state review of a project under section 401 of the  
10 federal water pollution control act (33 U.S.C. Sec. 1251 et seq.), or  
11 local government review of a project to protect critical areas under  
12 RCW 36.70A.060 or shorelines under chapter 90.58 RCW.

13        (2) At any point in project development or permitting, an applicant  
14 may submit to the department a notice of intent to proceed under an  
15 equivalent regulatory review. The notice must include a description of  
16 the project, the habitat impacted, and the equivalent permits required  
17 for the project. The department's regional manager of the hydraulic  
18 project approval program shall make a determination regarding the  
19 equivalency of other regulatory permits within fifteen days of  
20 receiving the notice. If the notice of equivalency is approved, the  
21 project is exempt from the requirement to receive hydraulic project  
22 approval under this chapter. If the notice of equivalency is denied,  
23 the department must provide the applicant, in writing, specific reasons  
24 why the other regulatory reviews will not adequately protect fish life.

25        (3) Upon request by a county or city, the department shall certify  
26 that a county or city, through its implementation of critical areas  
27 protections, including fish and wildlife habitat conservation areas,  
28 under RCW 36.70A.060, or development regulations implementing an  
29 adopted and approved shoreline master program under chapter 90.58 RCW,  
30 provides equivalent review and protection for fish life to that  
31 otherwise provided by the department through issuance of a hydraulic  
32 project approval. A city or county may request certification for all  
33 hydraulic projects or certain hydraulic project types. If  
34 certification is approved, project types specified in the certification  
35 and within the jurisdiction of the city or county are exempt from the  
36 requirement to receive hydraulic project approval under this chapter.  
37 If the department rejects the request for certification, it shall

1 provide in writing a statement of how and why the regulations do not  
2 provide equivalent protection for fish life, and provide  
3 recommendations that would result in equivalency.

4 (4) Any person aggrieved by a decision under subsection (2) or (3)  
5 of this section may appeal the decision according to the provisions of  
6 chapter 34.05 RCW.

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

9 The department must develop procedures to ensure consistency of  
10 application of hydraulic project approval conditions, to include the  
11 following:

12 (1) Common technical conditions for saltwater and freshwater  
13 projects. These common technical conditions must, at a minimum,  
14 address allowable in-water work periods, and must recognize the need to  
15 maintain an economically competitive waterfront business and port  
16 community, and must meet the needs of infrastructure development as  
17 defined in RCW 90.74.010;

18 (2) Internal departmental permit review procedures that promote  
19 consistency within and between regions; and

20 (3) Habitat protection guidance for regional staff that result in  
21 predictable permit conditions for project applicants.

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

24 (1) An expedited dispute resolution process is created to resolve  
25 disputes regarding hydraulic project approvals issued under this  
26 chapter. The expedited dispute resolution process may be initiated by  
27 a project applicant at any point prior to issuance of the final  
28 hydraulic project approval. When a project applicant requests review  
29 under the expedited dispute resolution process, the forty-five day  
30 period for permit issuance is suspended until the review process is  
31 complete.

32 (2) When a project applicant requests the expedited dispute  
33 resolution process, the department must convene an expedited dispute  
34 resolution process committee within fourteen days. The expedited  
35 dispute resolution process committee consists of four members:

36 (a) The project contractor or engineer;

- 1 (b) A department engineer;  
2 (c) The department's regional program manager; and  
3 (d) An engineer or public works official designated by the local  
4 government with jurisdiction over the project.

5 (3) The expedited dispute resolution process committee must conduct  
6 a project review to determine whether the conditions in the proposed  
7 hydraulic project approval are reasonable and necessary to protect fish  
8 life. By majority vote, the committee may accept the permit  
9 conditions, reject the permit conditions and return the permit to the  
10 department for subsequent review, or determine alternative conditions  
11 to be included in the final hydraulic project approval permit.  
12 Decisions of the committee are binding on the department.

13 (4) The department must provide to each project applicant notice of  
14 the applicant's right to an expedited dispute resolution conference,  
15 and the procedures for informal and formal appeal. This information  
16 must also include:

17 (a) Contact information for the department employee who will be  
18 reviewing the project;

19 (b) Contact information for the department's regional program  
20 manager responsible for overseeing the regional hydraulic project  
21 activities at any point prior to the approval or denial of a hydraulic  
22 project approval;

23 (c) The proper address to which requests for expedited dispute  
24 resolution must be sent; and

25 (d) The proper address to which informal or formal appeals must be  
26 sent.

27 **Sec. 6.** RCW 77.55.100 and 2002 c 368 s 2 are each amended to read  
28 as follows:

29 (1) In the event that any person or government agency desires to  
30 construct any form of hydraulic project or perform other work within  
31 the bed of any state waters that will use, divert, obstruct, or change  
32 the natural flow or bed of any of the salt or fresh waters of the  
33 state, such person or government agency shall, before commencing  
34 construction or work thereon and to ensure the proper protection of  
35 fish life, secure the approval of the department as to the adequacy of  
36 the means proposed for the protection of fish life. This approval  
37 shall not be unreasonably withheld or unreasonably conditioned.

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

8 (b) The applicant may document receipt of application by filing in  
9 person or by registered mail. A complete application for approval  
10 shall contain general plans for the overall project, complete plans and  
11 specifications of the proposed construction or work within the mean  
12 higher high water line in salt water or within the ordinary high water  
13 line in fresh water, and complete plans and specifications for the  
14 proper protection of fish life.

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

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

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

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

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

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

37 (b) For the purposes of this subsection, "imminent danger" means a

1 threat by weather, water flow, or other natural conditions that is  
2 likely to occur within sixty days of a request for a permit  
3 application.

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

7 (d) The department or the county legislative authority may  
8 determine if an imminent danger exists. The county legislative  
9 authority shall notify the department, in writing, if it determines  
10 that an imminent danger exists.

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

22 (5)(a) In case of an emergency arising from weather or stream flow  
23 conditions or other natural conditions, the department, through its  
24 authorized representatives, shall issue immediately, upon request, oral  
25 approval for removing any obstructions, repairing existing structures,  
26 restoring stream banks, or to protect property threatened by the stream  
27 or a change in the stream flow without the necessity of obtaining a  
28 written approval prior to commencing work. Conditions of an oral  
29 approval to protect fish life shall be established by the department  
30 and reduced to writing within thirty days and complied with as provided  
31 for in this section. Oral approval shall be granted immediately, upon  
32 request, for a stream crossing during an emergency situation.

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

36 (c) The department or the county legislative authority may declare  
37 and continue an emergency when one or more of the criteria under (b) of

1 this subsection are met. The county legislative authority shall  
2 immediately notify the department if it declares an emergency under  
3 this subsection.

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

13 (b) The department shall, at the request of any person or  
14 government agency, develop a renewable five-year maintenance approval  
15 agreement or a hydraulic project approval mitigation agreement to allow  
16 for work on public and private property for bank stabilization, bridge  
17 repair, removal of sandbars and debris, channel maintenance, and other  
18 flood damage repair and reduction activity under reasonable agreed-upon  
19 conditions and times without obtaining permits for specific projects.

20 (7) This section shall not apply to the construction of any form of  
21 hydraulic project or other work which diverts water for agricultural  
22 irrigation or stock watering purposes authorized under or recognized as  
23 being valid by the state's water codes, or when such hydraulic project  
24 or other work is associated with streambank stabilization to protect  
25 farm and agricultural land as defined in RCW 84.34.020. These  
26 irrigation or stock watering diversion and streambank stabilization  
27 projects shall be governed by RCW 77.55.110.

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

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

37 (9) The phrase "to construct any form of hydraulic project or  
38 perform other work" does not include the act of driving across an



1 established ford. Driving across streams or on wetted stream beds at  
2 areas other than established fords requires approval. Work within the  
3 ordinary high water line of state waters to construct or repair a ford  
4 or crossing requires approval.

5 (10) For the purposes of this section, "sandbars" includes, but is  
6 not limited to, sand, gravel, rock, silt, and sediments."

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By Senators Doumit, Oke

**ADOPTED 03/19/2003**

7 On page 1, line 2 of the title, after "program;" strike the  
8 remainder of the title and insert "amending RCW 77.55.100; adding new  
9 sections to chapter 77.55 RCW; and creating a new section."

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