
HOUSE BILL 1418

State of Washington

58th Legislature

2003 Regular Session

By Representatives Quall, Schoesler, Blake, Sump, Morris, Grant, Hatfield, Sehlin, Bailey and Linville

Read first time 01/24/2003. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to drainage infrastructure; and amending RCW
2 77.55.060, 77.15.320, and 77.55.100.

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

4 **Sec. 1.** RCW 77.55.060 and 1998 c 190 s 86 are each amended to read
5 as follows:

6 (1)(a) A dam or other obstruction across or in a stream shall be
7 provided with a durable and efficient fishway approved by the director.
8 Plans and specifications shall be provided to the department prior to
9 the director's approval. The fishway shall be maintained in an
10 effective condition and continuously supplied with sufficient water to
11 freely pass fish.

12 (b) If a person fails to construct and maintain a fishway or to
13 remove the dam or obstruction in a manner satisfactory to the director,
14 then within thirty days after written notice to comply has been served
15 upon the owner, his or her agent, or the person in charge, the director
16 may construct a fishway or remove the dam or obstruction. Expenses
17 incurred by the department constitute the value of a lien upon the dam
18 and upon the personal property of the person owning the dam. Notice of

1 the lien shall be filed and recorded in the office of the county
2 auditor of the county in which the dam or obstruction is situated. The
3 lien may be foreclosed in an action brought in the name of the state.

4 (c) If, within thirty days after notice to construct a fishway or
5 remove a dam or obstruction, the owner, his or her agent, or the person
6 in charge fails to do so, the dam or obstruction is a public nuisance
7 and the director may take possession of the dam or obstruction and
8 destroy it. No liability shall attach for the destruction.

9 (2)(a) Subsection (1) of this section does not apply to drainage
10 infrastructure that was originally installed on or before the effective
11 date of this section or the repair, improvement, or replacement of such
12 drainage infrastructure.

13 (b) For the purposes of this subsection, "drainage infrastructure"
14 includes dikes, drains, tide gates, flood gates, pumps, drainage tiles,
15 and drainage pipe that protect land used for agricultural uses.

16 **Sec. 2.** RCW 77.15.320 and 2000 c 107 s 241 are each amended to
17 read as follows:

18 (1) A person is guilty of unlawful failure to provide, maintain, or
19 operate a fishway for dam or other obstruction if the person owns,
20 operates, or controls a dam or other obstruction to fish passage on a
21 river or stream, a fishway is required for the dam or obstruction by
22 RCW 77.55.060, and:

23 (a) The dam or obstruction is not provided with a durable and
24 efficient fishway approved by the director as required by RCW
25 77.55.060;

26 (b) The person fails to maintain a fishway in efficient operating
27 condition; or

28 (c) The person fails to continuously supply a fishway with a
29 sufficient supply of water to allow the free passage of fish.

30 (2) Unlawful failure to provide, maintain, or operate a fishway for
31 dam or other obstruction is a gross misdemeanor. Following written
32 notification to the person from the department that there is a
33 violation, each day of unlawful failure to provide, maintain, or
34 operate a fishway is a separate offense.

35 **Sec. 3.** RCW 77.55.100 and 2002 c 368 s 2 are each amended to read
36 as follows:

1 (1) In the event that any person or government agency desires to
2 construct any form of hydraulic project or perform other work that will
3 use, divert, obstruct, or change the natural flow or bed of any of the
4 salt or fresh waters of the state, such person or government agency
5 shall, before commencing construction or work thereon and to ensure the
6 proper protection of fish life, secure the approval of the department
7 as to the adequacy of the means proposed for the protection of fish
8 life. This approval shall not be unreasonably withheld or unreasonably
9 conditioned.

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

17 (b) The applicant may document receipt of application by filing in
18 person or by registered mail. A complete application for approval
19 shall contain general plans for the overall project, complete plans and
20 specifications of the proposed construction or work within the mean
21 higher high water line in salt water or within the ordinary high water
22 line in fresh water, and complete plans and specifications for the
23 proper protection of fish life.

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

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

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

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

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

35 (3)(a) The department may issue an expedited written permit in
36 those instances where normal permit processing would result in
37 significant hardship for the applicant or unacceptable damage to the
38 environment. In cases of imminent danger, the department shall issue

1 an expedited written permit, upon request, for work to repair existing
2 structures, move obstructions, restore banks, protect property, or
3 protect fish resources. Expedited permit requests require a complete
4 written application as provided in subsection (2)(b) of this section
5 and shall be issued within fifteen calendar days of the receipt of a
6 complete written application. Approval of an expedited permit is valid
7 for up to sixty days from the date of issuance.

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

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

15 (d) The department or the county legislative authority may
16 determine if an imminent danger exists. The county legislative
17 authority shall notify the department, in writing, if it determines
18 that an imminent danger exists.

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

30 (5)(a) In case of an emergency arising from weather or stream flow
31 conditions or other natural conditions, the department, through its
32 authorized representatives, shall issue immediately, upon request, oral
33 approval for removing any obstructions, repairing existing structures,
34 restoring stream banks, or to protect property threatened by the stream
35 or a change in the stream flow without the necessity of obtaining a
36 written approval prior to commencing work. Conditions of an oral
37 approval to protect fish life shall be established by the department

1 and reduced to writing within thirty days and complied with as provided
2 for in this section. Oral approval shall be granted immediately, upon
3 request, for a stream crossing during an emergency situation.

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

7 (c) The department or the county legislative authority may declare
8 and continue an emergency when one or more of the criteria under (b) of
9 this subsection are met. The county legislative authority shall
10 immediately notify the department if it declares an emergency under
11 this subsection.

12 (6) The department shall, at the request of a county, develop five-
13 year maintenance approval agreements, consistent with comprehensive
14 flood control management plans adopted under the authority of RCW
15 86.12.200, or other watershed plan approved by a county legislative
16 authority, to allow for work on public and private property for bank
17 stabilization, bridge repair, removal of sand bars and debris, channel
18 maintenance, and other flood damage repair and reduction activity under
19 agreed-upon conditions and times without obtaining permits for specific
20 projects.

21 (7) This section shall not apply to:

22 (a) The construction of any form of hydraulic project or other work
23 which diverts water for agricultural irrigation or stock watering
24 purposes authorized under or recognized as being valid by the state's
25 water codes, or when such hydraulic project or other work is associated
26 with streambank stabilization to protect farm and agricultural land as
27 defined in RCW 84.34.020. These irrigation or stock watering diversion
28 and streambank stabilization projects shall be governed by RCW
29 77.55.110; or

30 (b) The repair, improvement, or replacement of drainage
31 infrastructure as described in RCW 77.55.060(2) that protects land used
32 for agricultural uses and was originally installed on or before the
33 effective date of this section.

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

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

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

--- END ---