
SUBSTITUTE SENATE BILL 6265

State of Washington

58th Legislature

2004 Regular Session

By Senate Committee on Land Use & Planning (originally sponsored by Senators Swecker, Doumit, Oke, Mulliken, Horn, Jacobsen, Sheahan, Hale, Rasmussen and Murray)

READ FIRST TIME 01/30/04.

1 AN ACT Relating to permit timelines; amending RCW 77.55.100; and
2 adding a new section to chapter 43.42 RCW.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.42 RCW
5 to read as follows:

6 (1) The legislature finds that there are numerous efforts ongoing
7 to streamline and improve permitting processes. These include the work
8 of the transportation permit efficiency and accountability committee,
9 chapter 47.06C RCW, and the efforts of the office of regulatory
10 assistance to develop an integrated permit system, chapter 245, Laws of
11 2003. While these efforts are ongoing and likely to yield procedural
12 improvements in permit processing by 2006, there is an immediate need
13 to coordinate permitting timelines for large, multiagency permit
14 streamlining efforts.

15 (2) With the agreement of all participating permitting agencies and
16 the permit applicant, state permitting agencies may establish timelines
17 to make permit decisions, including the time periods required to
18 determine that the permit applications are complete, to review the
19 applications, and to process the permits. Established timelines shall

1 not be shorter than those otherwise required for each permit under
2 other applicable provisions of law, but may extend and coordinate such
3 timelines. The goal of the established timelines is to achieve the
4 maximum efficiencies possible through concurrent studies and
5 consolidation of applications, permit review, hearings, and comment
6 periods. A timeline established under this subsection with the
7 agreement of each permitting agency shall commit each permitting agency
8 to act within the established timeline.

9 **Sec. 2.** RCW 77.55.100 and 2003 c 391 s 2 are each amended to read
10 as follows:

11 (1) In the event that any person or government agency desires to
12 construct any form of hydraulic project or perform other work that will
13 use, divert, obstruct, or change the natural flow or bed of any of the
14 salt or fresh waters of the state, such person or government agency
15 shall, before commencing construction or work thereon and to ensure the
16 proper protection of fish life, secure the approval of the department
17 as to the adequacy of the means proposed for the protection of fish
18 life. This approval shall not be unreasonably withheld or unreasonably
19 conditioned.

20 (2)(a) The department shall grant or deny approval of a standard
21 permit within forty-five calendar days of the receipt of a complete
22 application and notice of compliance with any applicable requirements
23 of the state environmental policy act, made in the manner prescribed in
24 this section. The period of forty-five calendar days may be extended,
25 if the permit is part of a multiagency permit streamlining effort and
26 all participating permitting agencies and the permit applicant agree to
27 an extended timeline longer than forty-five calendar days. The permit
28 must contain provisions allowing for minor modifications to the plans
29 and specifications without requiring 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

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

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

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

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

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

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

1 farm and agricultural land as defined in RCW 84.34.020. These
2 irrigation or stock watering diversion and streambank stabilization
3 projects shall be governed by RCW 77.55.110.

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

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

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

19 (10) The department shall not require a fishway on a tide gate,
20 flood gate, or other associated man-made agricultural drainage
21 facilities as a condition of a hydraulic project approval if such
22 fishway was not originally installed as part of an agricultural
23 drainage system existing on or before May 20, 2003.

24 (11) Any condition requiring a self-regulating tide gate to achieve
25 fish passage in an existing hydraulic project approval under this
26 section may not be enforced.

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