
HOUSE BILL 1118

State of Washington

59th Legislature

2005 Regular Session

By Representatives Ericksen, DeBolt, Sump, Kristiansen, Holmquist, Roach, Newhouse and Pearson

Read first time 01/14/2005. Referred to Committee on Natural Resources, Ecology & Parks.

1 AN ACT Relating to the removal of gravel from waterways to reduce
2 the impact of flooding; amending RCW 36.32.290, 79.90.150, 77.55.260,
3 and 77.55.100; adding a new section to chapter 86.09 RCW; adding a new
4 section to chapter 85.05 RCW; adding a new section to chapter 77.55
5 RCW; and adding a new section to chapter 90.48 RCW.

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

7 **Sec. 1.** RCW 36.32.290 and 1963 c 4 s 36.32.290 are each amended to
8 read as follows:

9 (1) Except as otherwise provided in this section:

10 (a) When the ((board of county commissioners)) legislative
11 authority of any county deems it essential to the public interest for
12 flood prevention purposes ((it)), the county may remove drifts, jams,
13 logs, debris, ((gravel,)) earth, stone or bars forming obstructions to
14 the stream, or other material from the beds, channels, and banks of
15 watercourses in any manner deemed expedient((, including the deposit
16 thereof)).

17 (b) The legislative authority of any county may remove gravel from
18 streams or other watercourses when the gravel removal is deemed by the
19 county legislative authority to be beneficial in reducing the impact of

1 potential flooding. Prior to removing gravel, the county legislative
2 authority must first contact the department of fish and wildlife for a
3 suggestion of when gravel removal would have the minimum impact on
4 aquatic life. Except in an emergency situation, the actual removal of
5 gravel should occur as close as possible to the dates provided by the
6 department of fish and wildlife.

7 (2) The authority to remove materials from streams or under
8 watercourses under this chapter includes the authority to deposit the
9 removed materials on bars not forming obstructions to the stream, or on
10 subsidiary or high water channels of ((such)) the watercourses.

11 (3) The legislative authority of a county may only exercise the
12 authority granted under this section to remove gravel from streams or
13 other watercourses if the area of the county from which the gravel is
14 to be removed is not within the jurisdiction of an active diking
15 district organized under chapter 85.05 RCW or an active flood control
16 district organized under chapter 86.09 RCW.

17 NEW SECTION. Sec. 2. A new section is added to chapter 86.09 RCW
18 to read as follows:

19 (1) A flood control district created under this chapter may, when
20 it is deemed by the board of directors of the flood control district to
21 be beneficial in reducing the impact of potential flooding, remove
22 gravel from a stream or other watercourse, or portion of a stream or
23 other watercourse, located within the flood control district.

24 (2) Prior to exercising the authority granted by this section, the
25 board of directors of the flood control district must first contact the
26 department of fish and wildlife for a suggestion of when gravel removal
27 would have the minimum impact on aquatic life. Except in an emergency
28 situation, the actual removal of gravel should occur as close as
29 possible to the dates provided by the department of fish and wildlife.

30 NEW SECTION. Sec. 3. A new section is added to chapter 85.05 RCW
31 to read as follows:

32 (1) Any diking districts created under this chapter may, when it is
33 deemed by the board of commissioners of the diking district to be
34 beneficial in reducing the impact of potential flooding, remove gravel
35 from a stream or other watercourse, or portion of a stream or other
36 watercourse, located within the diking district.

1 (2) Prior to exercising the authority granted by this section, the
2 board of commissioners of the diking district must first contact the
3 department of fish and wildlife for a suggestion of when gravel removal
4 would have the minimum impact on aquatic life. Except in an emergency
5 situation, the actual removal of gravel should occur as close as
6 possible to the dates provided by the department of fish and wildlife.

7 **Sec. 4.** RCW 79.90.150 and 2003 c 39 s 41 are each amended to read
8 as follows:

9 (1) When a public agency removes gravel, rock, sand, silt or other
10 material directly, or under a public contract, from any aquatic lands
11 ~~((is removed by any public agency or under public contract))~~ for
12 channel ~~((or))~~ improvement, harbor improvement, flood impact reduction,
13 or flood control, the use of ((such)) the material may be authorized by
14 the department ((of natural resources)) for a public purpose on:

15 (a) Land owned or leased by the state or any municipality, county,
16 or public corporation((: PROVIDED, That when no public land site is
17 available for deposit of such material, its deposit on)); or

18 (b) Private land, with the landowner's permission ((is authorized
19 and may be designated by the department of natural resources to be for
20 a public purpose)), if there is no public land available for deposit of
21 the material.

22 (2) Prior to removal and use of material under this section, the
23 state agency, municipality, county, or public corporation contemplating
24 or arranging ~~((such))~~ the removal or use shall first obtain written
25 permission from the department ((of natural resources)), except for
26 flood control districts removing gravel under section 2 of this act,
27 diking districts removing gravel under section 3 of this act, and
28 county legislative authorities removing gravel under RCW 36.32.290.
29 These public entities are not required to obtain permission from the
30 department to remove or use gravel from streams or other watercourses
31 for flood control or flood impact reduction purposes and are only
32 required to notify the department of their intent to do so.

33 (3) No payment of royalty shall be required for ~~((such))~~ gravel,
34 rock, sand, silt, or other material used for ~~((such))~~ a public purpose
35 under this section, but a charge will be made if ~~((such))~~ the material
36 is subsequently sold or used for some other purpose((: PROVIDED,
37 That)).

1 (4) The department may authorize (~~such~~) a public agency or
2 private landowner to dispose of (~~such~~) material removed under this
3 section without charge when necessary to implement disposal of
4 material.

5 (5) No charge shall be required for any use of the material
6 obtained under the provisions of this chapter when used solely on an
7 authorized site.

8 (6) No charge shall be required for any removal or use of the
9 material obtained under the provisions of this chapter if the material
10 is used for public purposes by local governments, including flood
11 control districts removing gravel under section 2 of this act, diking
12 districts removing gravel under section 3 of this act, and county
13 legislative authorities removing gravel under RCW 36.32.290. Public
14 purposes include, but are not limited to, flood control, flood impact
15 reduction, and the construction and maintenance of roads, dikes, and
16 levies.

17 (7) The department may not prohibit, penalize, or condition a flood
18 control district operating under section 2 of this act, a diking
19 district operating under section 3 of this act, or a county legislative
20 authority operating under RCW 36.32.290 when removing gravel from
21 streams or other watercourses for flood control or flood impact
22 reduction purposes.

23 (8) Nothing in this section shall repeal or modify the provisions
24 of RCW 77.55.100 or eliminate the necessity of obtaining a permit for
25 such removal from other state or federal agencies as otherwise required
26 by law.

27 NEW SECTION. Sec. 5. A new section is added to chapter 77.55 RCW
28 to read as follows:

29 The department may not prohibit, penalize, or condition a flood
30 control district operating under section 2 of this act, a diking
31 district operating under section 3 of this act, or a county legislative
32 authority operating under RCW 36.32.290 when removing gravel from
33 streams or other watercourses for flood control or flood impact
34 reduction purposes. However, the department shall, when requested by
35 a flood control district, diking district, or county, provide a range
36 of suggested dates when gravel removal will have the minimum impact to
37 aquatic life.

1 **Sec. 6.** RCW 77.55.260 and 1997 c 424 s 5 are each amended to read
2 as follows:

3 (1) The department shall not require mitigation for:

4 (a) Sediment dredging or capping actions that result in a cleaner
5 aquatic environment and equal or better habitat functions and values,
6 if the actions are taken under a state or federal cleanup action; or

7 (b) Gravel removal by a flood control district operating under
8 section 2 of this act, a diking district operating under section 3 of
9 this act, or a county legislative authority operating under RCW
10 36.32.290.

11 (2) This chapter shall not be construed to require habitat
12 mitigation for navigation and maintenance dredging of existing channels
13 and berthing areas.

14 **Sec. 7.** RCW 77.55.100 and 2004 c 32 s 2 are each amended to read
15 as follows:

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

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

35 (b) The applicant may document receipt of application by filing in
36 person or by registered mail. A complete application for approval
37 shall contain general plans for the overall project, complete plans and

1 specifications of the proposed construction or work within the mean
2 higher high water line in salt water or within the ordinary high water
3 line in fresh water, and complete plans and specifications for the
4 proper protection of fish life.

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

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

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

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

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

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

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

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

34 (d) The department or the county legislative authority may
35 determine if an imminent danger exists. The county legislative
36 authority shall notify the department, in writing, if it determines
37 that an imminent danger exists.

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

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

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

26 (c) The department or the county legislative authority may declare
27 and continue an emergency when one or more of the criteria under (b) of
28 this subsection are met. The county legislative authority shall
29 immediately notify the department if it declares an emergency under
30 this subsection.

31 (6) The department shall, at the request of a county, develop five-
32 year maintenance approval agreements, consistent with comprehensive
33 flood control management plans adopted under the authority of RCW
34 86.12.200, or other watershed plan approved by a county legislative
35 authority, to allow for work on public and private property for bank
36 stabilization, bridge repair, removal of sand bars and debris, channel
37 maintenance, and other flood damage repair and reduction activity under

1 agreed-upon conditions and times without obtaining permits for specific
2 projects.

3 (7) This section shall not apply to:

4 (a) The construction of any form of hydraulic project or other work
5 which diverts water for agricultural irrigation or stock watering
6 purposes authorized under or recognized as being valid by the state's
7 water codes, or when such hydraulic project or other work is associated
8 with streambank stabilization to protect farm and agricultural land as
9 defined in RCW 84.34.020. These irrigation or stock watering diversion
10 and streambank stabilization projects shall be governed by RCW
11 77.55.110.

12 (b) A flood control district removing gravel under section 2 of
13 this act, a diking district removing gravel under section 3 of this
14 act, or a county legislative authority removing gravel under RCW
15 36.32.290.

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

20 ~~((+8))~~ (9) For the purposes of this section and RCW 77.55.110,
21 "bed" means the land below the ordinary high water lines of state
22 waters. This definition does not include irrigation ditches, canals,
23 storm water run-off devices, or other artificial watercourses except
24 where they exist in a natural watercourse that has been altered by man.

25 ~~((+9))~~ (10) The phrase "to construct any form of hydraulic project
26 or perform other work" does not include the act of driving across an
27 established ford. Driving across streams or on wetted stream beds at
28 areas other than established fords requires approval. Work within the
29 ordinary high water line of state waters to construct or repair a ford
30 or crossing requires approval.

31 ~~((+10))~~ (11) The department shall not require a fishway on a tide
32 gate, flood gate, or other associated man-made agricultural drainage
33 facilities as a condition of a hydraulic project approval if such
34 fishway was not originally installed as part of an agricultural
35 drainage system existing on or before May 20, 2003.

36 ~~((+11))~~ (12) Any condition requiring a self-regulating tide gate
37 to achieve fish passage in an existing hydraulic project approval under
38 this section may not be enforced.

1 NEW SECTION. **Sec. 8.** A new section is added to chapter 90.48 RCW
2 to read as follows:

3 The department may not prohibit, condition, penalize, or require
4 mitigation of, a flood control district operating under section 2 of
5 this act, a diking district operating under section 3 of this act, or
6 a county legislative authority operating under RCW 36.32.290 when
7 removing gravel from streams or other watercourses for flood control or
8 flood impact reduction purposes.

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