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HOUSE BILL 1354

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State of Washington

59th Legislature

2005 Regular Session

By Representatives Pearson and Kristiansen

Read first time 01/20/2005. Referred to Committee on Natural Resources, Ecology & Parks.

1 AN ACT Relating to a pilot program for flood control; amending RCW  
2 77.55.100 and 77.55.110; creating new sections; and providing  
3 expiration dates.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that floods pose  
6 threats to public health and to public and private property including:  
7 (a) Loss or endangerment of human life;  
8 (b) Loss of public and private property;  
9 (c) Damage to homes, farms, and other structures;  
10 (d) Damage to fisheries and fish habitat;  
11 (e) Damage to public roads, bridges, and other infrastructure;  
12 (f) Destruction or degradation of environmentally sensitive areas;  
13 (g) Erosion of land and stream banks and beds; and  
14 (h) Reduction of water quality.  
15 (2) The legislature further finds that:  
16 (a) The prevention of flood damage to public and private property  
17 is a matter of public concern;  
18 (b) Projects that prevent and minimize flood damage may be planned

1 and approved in advance of the time that a flood occurs. However,  
2 there are also emergencies requiring immediate project approval; and

3 (c) Many projects designed to protect public and private property  
4 from flood damage are not approved due to conflicts with existing  
5 permitting and regulatory requirements.

6 (3) The legislature therefore finds that a pilot program must be  
7 developed for projects in select water resource inventory areas to  
8 demonstrate and evaluate methods for authorizing flood control projects  
9 that protect public and private property, protect or enhance habitat,  
10 and protect fish life.

11 NEW SECTION. **Sec. 2.** (1) A flood control and stream bank  
12 restoration pilot program is authorized to demonstrate flood control  
13 projects that protect property, protect or enhance habitat, and protect  
14 fish life.

15 (a) County legislative authorities within water resource inventory  
16 areas three, four, five, and seven shall administer the pilot program.  
17 The department of fish and wildlife shall delegate authority to approve  
18 hydraulic project approvals to the county legislative authority for  
19 projects selected for the pilot program. In determining permit  
20 approval, the county legislative authority shall give equal  
21 consideration to the protection of human life, public land or private  
22 property, and fish life.

23 (b) The pilot program must test permit approval processes for flood  
24 control and stream bank restoration projects and the effect of  
25 approving projects designed to protect property, protect or enhance  
26 habitat, and protect fish life. The objectives of the pilot program  
27 include identifying:

28 (i) Methods for expediting and coordinating permit decision-making  
29 processes for flood control and stream bank restoration projects that  
30 involve multiple jurisdictions and state agencies;

31 (ii) Impediments during the permitting process for project approval  
32 including conflicts with existing policies, rules, and laws; and

33 (iii) Differences between projects designed to protect property,  
34 protect or enhance habitat, and protect fish life. The analysis shall  
35 give equal consideration to the protection of human life, public land  
36 or private property, and fish life.

1 (2) The pilot program must consist of up to ten projects in each  
2 participating county within watershed resource inventory areas three,  
3 four, five, and seven.

4 (3)(a) The departments of ecology, fish and wildlife, and natural  
5 resources shall participate in the pilot program. The department of  
6 ecology shall act as the lead agency among the state agencies and shall  
7 coordinate among the state agencies as necessary. The department of  
8 fish and wildlife shall provide technical assistance to project  
9 proponents to assist in developing projects that both protect property  
10 and protect or enhance fish life. The department of natural resources  
11 shall provide technical assistance with projects involving aquatic use  
12 permits and removal of sand or gravel from aquatic lands.

13 (b) The department of ecology shall notify each of the eligible  
14 counties of the pilot program, describe the nature of the pilot  
15 program, and invite county participation. When a county receives an  
16 application for a project that will require permits or authorizations  
17 from multiple jurisdictions, and in the county's judgment the proposed  
18 project offers an appropriate opportunity to test the pilot program's  
19 intent under subsection (1) of this section, the county, with the  
20 approval of the project applicant, may include the project as part of  
21 the pilot program.

22 (c) In selecting projects for the pilot program, the county shall  
23 provide an opportunity to test and evaluate a variety of projects,  
24 including but not limited to dredging, stream bank stabilization, and  
25 dike construction or repair.

26 (d) When a project has been selected for inclusion in the pilot  
27 program, the county shall schedule an initial coordination meeting and  
28 contact all appropriate agencies and the project applicant. Other  
29 local jurisdictions, including but not limited to cities, diking  
30 districts, and flood management districts, shall be invited to  
31 participate when a project is selected for inclusion in the pilot  
32 program and those jurisdictions have a role in the permitting process.

33 The purpose of the coordination meeting is to:

34 (i) Identify all necessary permit requirements;

35 (ii) Determine the sequence of permitting decisions and  
36 opportunities where those decisions can be made concurrently;

37 (iii) Determine a timeline for the decisions and how those  
38 decisions can be expedited; and

1 (iv) Work with the applicant to make sure that he or she  
2 understands how the process will work, what the applicant is  
3 responsible for, and when those responsibilities must be met in order  
4 to adhere to the overall permitting timeline.

5 (4) The department of ecology, in cooperation with the  
6 participating counties, other participating local jurisdictions, and  
7 state agencies, shall submit a final report on the pilot program to the  
8 appropriate committees of the legislature by December 1, 2007. The  
9 report shall include an assessment of the degree to which the pilot  
10 program achieved the objectives identified in subsection (1) of this  
11 section.

12 **Sec. 3.** RCW 77.55.100 and 2004 c 32 s 2 are each amended to read  
13 as follows:

14 (1) Except as provided in section 2 of this act, in the event that  
15 any person or government agency desires to construct any form of  
16 hydraulic project or perform other work that will use, divert,  
17 obstruct, or change the natural flow or bed of any of the salt or fresh  
18 waters of the state, such person or government agency shall, before  
19 commencing construction or work thereon and to ensure the proper  
20 protection of fish life, secure the approval of the department as to  
21 the adequacy of the means proposed for the protection of fish life.  
22 This approval shall not be unreasonably withheld or unreasonably  
23 conditioned.

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

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

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

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

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

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

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

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

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

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

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

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

37 (4) Approval of a standard permit is valid for a period of up to  
38 five years from date of issuance. The permittee must demonstrate

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

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

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

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

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

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

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

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

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

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

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

32 (12) This section expires June 30, 2008.

33 **Sec. 4.** RCW 77.55.110 and 2002 c 368 s 3 are each amended to read  
34 as follows:

35 Except as provided in section 2 of this act, in the event that any  
36 person or government agency desires to construct any form of hydraulic  
37 project or other work that diverts water for agricultural irrigation or

1 stock watering purposes, or when such hydraulic project or other work  
2 is associated with streambank stabilization to protect farm and  
3 agricultural land as defined in RCW 84.34.020, and when such diversion  
4 or streambank stabilization will use, divert, obstruct, or change the  
5 natural flow or bed of any river or stream or will utilize any waters  
6 of the state or materials from the stream beds, the person or  
7 government agency shall, before commencing construction or work thereon  
8 and to ensure the proper protection of fish life, secure a written  
9 approval from the department as to the adequacy of the means proposed  
10 for the protection of fish life. This approval shall not be  
11 unreasonably withheld or unreasonably conditioned. The department  
12 shall grant or deny the approval within forty-five calendar days of the  
13 receipt of a complete application and notice of compliance with any  
14 applicable requirements of the state environmental policy act, made in  
15 the manner prescribed in this section. The permit must contain  
16 provisions allowing for minor modifications to the plans and  
17 specifications without requiring reissuance of the permit. The  
18 applicant may document receipt of application by filing in person or by  
19 registered mail. A complete application for an approval shall contain  
20 general plans for the overall project, complete plans and  
21 specifications of the proposed construction or work within ordinary  
22 high water line, and complete plans and specifications for the proper  
23 protection of fish life. The forty-five day requirement shall be  
24 suspended if (1) after ten working days of receipt of the application,  
25 the applicant remains unavailable or unable to arrange for a timely  
26 field evaluation of the proposed project; (2) the site is physically  
27 inaccessible for inspection; or (3) the applicant requests delay.

28 Immediately upon determination that the forty-five day period is  
29 suspended, the department shall notify the applicant in writing of the  
30 reasons for the delay.

31 An approval shall remain in effect without need for periodic  
32 renewal for projects that divert water for agricultural irrigation or  
33 stock watering purposes and that involve seasonal construction or other  
34 work. Approval for streambank stabilization projects shall remain in  
35 effect without need for periodic renewal if the problem causing the  
36 need for the streambank stabilization occurs on an annual or more  
37 frequent basis. The permittee must notify the appropriate agency

1 before commencing the construction or other work within the area  
2 covered by the approval.

3 The permittee must demonstrate substantial progress on construction  
4 of that portion of the project relating to the approval within two  
5 years of the date of issuance. If the department denies approval, the  
6 department shall provide the applicant, in writing, a statement of the  
7 specific reasons why and how the proposed project would adversely  
8 affect fish life. Protection of fish life shall be the only ground  
9 upon which approval may be denied or conditioned. Issuance, denial,  
10 conditioning, or modification shall be appealable to the hydraulic  
11 appeals board established in RCW 43.21B.005 within thirty days of the  
12 notice of decision. The burden shall be upon the department to show  
13 that the denial or conditioning of an approval is solely aimed at the  
14 protection of fish life.

15 The department may, after consultation with the permittee, modify  
16 an approval due to changed conditions. The modifications shall become  
17 effective unless appealed to the hydraulic appeals board within thirty  
18 days from the notice of the proposed modification. The burden is on  
19 the department to show that changed conditions warrant the modification  
20 in order to protect fish life.

21 A permittee may request modification of an approval due to changed  
22 conditions. The request shall be processed within forty-five calendar  
23 days of receipt of the written request. A decision by the department  
24 may be appealed to the hydraulic appeals board within thirty days of  
25 the notice of the decision. The burden is on the permittee to show  
26 that changed conditions warrant the requested modification and that  
27 such modification will not impair fish life.

28 In case of an emergency arising from weather or stream flow  
29 conditions or other natural conditions, the department, through its  
30 authorized representatives, shall issue immediately upon request oral  
31 approval for removing any obstructions, repairing existing structures,  
32 restoring stream banks, or to protect property threatened by the stream  
33 or a change in the stream flow without the necessity of obtaining a  
34 written approval prior to commencing work. Conditions of an oral  
35 approval shall be reduced to writing within thirty days and complied  
36 with as provided for in this section.

37 For purposes of this chapter, "streambank stabilization" shall

1 include but not be limited to log and debris removal, bank protection  
2 (including riprap, jetties, and groins), gravel removal and erosion  
3 control.

4 This section expires June 30, 2008.

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