
HOUSE BILL 1339

State of Washington

60th Legislature

2007 Regular Session

By Representatives Pearson, Kristiansen, Orcutt, Kretz, Hinkle, Ross, Ahern, Anderson and McCune

Read first time 01/17/2007. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to an emergency preparedness pilot program for
2 flood control; amending RCW 77.55.021; creating new sections; and
3 providing an expiration date.

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

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

1 (b) Projects that prevent and minimize flood damage may be planned
2 and approved in advance of the time that a flood occurs. However,
3 there are also emergencies requiring immediate project approval; and

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

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

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

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

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

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

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

34 (iii) Differences between projects designed to protect property,
35 protect or enhance habitat, and protect fish life. The analysis shall
36 give equal consideration to the protection of human life, public land
37 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, 2009. 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 77.55.021 and 2005 c 146 s 201 are each amended to
13 read as follows:

14 (1) Except as provided in RCW 77.55.031, 77.55.051, ~~((and))~~
15 77.55.041, and section 2 of this act, in the event that any person or
16 government agency desires to undertake a hydraulic project, the person
17 or government agency shall, before commencing work thereon, secure the
18 approval of the department in the form of a permit as to the adequacy
19 of the means proposed for the protection of fish life.

20 (2) A complete written application for a permit may be submitted in
21 person or by registered mail and must contain the following:

22 (a) General plans for the overall project;

23 (b) Complete plans and specifications of the proposed construction
24 or work within the mean higher high water line in saltwater or within
25 the ordinary high water line in freshwater;

26 (c) Complete plans and specifications for the proper protection of
27 fish life; and

28 (d) Notice of compliance with any applicable requirements of the
29 state environmental policy act, unless otherwise provided for in this
30 chapter.

31 (3)(a) Protection of fish life is the only ground upon which
32 approval of a permit may be denied or conditioned. Approval of a
33 permit may not be unreasonably withheld or unreasonably conditioned.
34 Except as provided in this subsection and subsections (8), (10), and
35 (11) of this section, the department has forty-five calendar days upon
36 receipt of a complete application to grant or deny approval of a
37 permit. The forty-five day requirement is 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;

5 (iii) The applicant requests a delay; or

6 (iv) The department is issuing a permit for a storm water discharge
7 and is complying with the requirements of RCW 77.55.161(3)(b).

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

11 (c) The period of forty-five calendar days may be extended if the
12 permit is part of a multiagency permit streamlining effort and all
13 participating permitting agencies and the permit applicant agree to an
14 extended timeline longer than forty-five calendar days.

15 (4) If the department denies approval of a permit, the department
16 shall provide the applicant a written statement of the specific reasons
17 why and how the proposed project would adversely affect fish life.
18 Issuance, denial, conditioning, or modification of a permit shall be
19 appealable to the department or the board as specified in RCW 77.55.301
20 within thirty days of the notice of decision.

21 (5)(a) The permittee must demonstrate substantial progress on
22 construction of that portion of the project relating to the permit
23 within two years of the date of issuance.

24 (b) Approval of a permit is valid for a period of up to five years
25 from the date of issuance, except as provided in (c) of this subsection
26 and in RCW 77.55.151.

27 (c) A permit remains in effect without need for periodic renewal
28 for hydraulic projects that divert water for agricultural irrigation or
29 stock watering purposes and that involve seasonal construction or other
30 work. A permit for streambank stabilization projects to protect farm
31 and agricultural land as defined in RCW 84.34.020 remains in effect
32 without need for periodic renewal if the problem causing the need for
33 the streambank stabilization occurs on an annual or more frequent
34 basis. The permittee must notify the appropriate agency before
35 commencing the construction or other work within the area covered by
36 the permit.

37 (6) The department may, after consultation with the permittee,
38 modify a permit due to changed conditions. The modification becomes

1 effective unless appealed to the department or the board as specified
2 in RCW 77.55.301 within thirty days from the notice of the proposed
3 modification. For hydraulic projects that divert water for
4 agricultural irrigation or stock watering purposes, or when the
5 hydraulic project or other work is associated with streambank
6 stabilization to protect farm and agricultural land as defined in RCW
7 84.34.020, the burden is on the department to show that changed
8 conditions warrant the modification in order to protect fish life.

9 (7) A permittee may request modification of a permit due to changed
10 conditions. The request must be processed within forty-five calendar
11 days of receipt of the written request. A decision by the department
12 may be appealed to the board within thirty days of the notice of the
13 decision. For hydraulic projects that divert water for agricultural
14 irrigation or stock watering purposes, or when the hydraulic project or
15 other work is associated with streambank stabilization to protect farm
16 and agricultural land as defined in RCW 84.34.020, the burden is on the
17 permittee to show that changed conditions warrant the requested
18 modification and that such a modification will not impair fish life.

19 (8) The department or the county legislative authority may declare
20 and continue an emergency. The county legislative authority shall
21 immediately notify the department if it declares an emergency under
22 this subsection. The department, through its authorized
23 representatives, shall issue immediately, upon request, oral approval
24 for a stream crossing, or work to remove any obstructions, repair
25 existing structures, restore streambanks, protect fish life, or protect
26 property threatened by the stream or a change in the stream flow
27 without the necessity of obtaining a written permit prior to commencing
28 work. Conditions of the emergency oral permit must be established by
29 the department and reduced to writing within thirty days and complied
30 with as provided for in this chapter. The department may not require
31 the provisions of the state environmental policy act, chapter 43.21C
32 RCW, to be met as a condition of issuing a permit under this
33 subsection.

34 (9) All state and local agencies with authority under this chapter
35 to issue permits or other authorizations in connection with emergency
36 water withdrawals and facilities authorized under RCW 43.83B.410 shall
37 expedite the processing of such permits or authorizations in keeping

1 with the emergency nature of such requests and shall provide a decision
2 to the applicant within fifteen calendar days of the date of
3 application.

4 (10) The department or the county legislative authority may
5 determine an imminent danger exists. The county legislative authority
6 shall notify the department, in writing, if it determines that an
7 imminent danger exists. In cases of imminent danger, the department
8 shall issue an expedited written permit, upon request, for work to
9 remove any obstructions, repair existing structures, restore banks,
10 protect fish resources, or protect property. Expedited permit requests
11 require a complete written application as provided in subsection (2) of
12 this section and must be issued within fifteen calendar days of the
13 receipt of a complete written application. Approval of an expedited
14 permit is valid for up to sixty days from the date of issuance. The
15 department may not require the provisions of the state environmental
16 policy act, chapter 43.21C RCW, to be met as a condition of issuing a
17 permit under this subsection.

18 (11) The department may issue an expedited written permit in those
19 instances where normal permit processing would result in significant
20 hardship for the applicant or unacceptable damage to the environment.
21 Expedited permit requests require a complete written application as
22 provided in subsection (2) of this section and must be issued within
23 fifteen calendar days of the receipt of a complete written application.
24 Approval of an expedited permit is valid for up to sixty days from the
25 date of issuance. The department may not require the provisions of the
26 state environmental policy act, chapter 43.21C RCW, to be met as a
27 condition of issuing a permit under this subsection.

28 (12) This section expires June 30, 2010.

--- END ---