
SUBSTITUTE HOUSE BILL 2525

State of Washington 60th Legislature 2008 Regular Session

By House Agriculture & Natural Resources (originally sponsored by Representatives Pearson, Kretz, Kristiansen, and Ross)

READ FIRST TIME 01/28/08.

1 AN ACT Relating to mitigating flood damage; and amending RCW
2 77.55.021.

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

4 **Sec. 1.** RCW 77.55.021 and 2005 c 146 s 201 are each amended to
5 read as follows:

6 (1) Except as provided in RCW 77.55.031, 77.55.051, and 77.55.041,
7 in the event that any person or government agency desires to undertake
8 a hydraulic project, the person or government agency shall, before
9 commencing work thereon, secure the approval of the department in the
10 form of a permit as to the adequacy of the means proposed for the
11 protection of fish life.

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

14 (a) General plans for the overall project;

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

18 (c) Complete plans and specifications for the proper protection of
19 fish life; and

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

4 (3)(a) Protection of fish life is the only ground upon which
5 approval of a permit may be denied or conditioned. Approval of a
6 permit may not be unreasonably withheld or unreasonably conditioned.
7 Except as provided in this subsection and subsections (8), (10), and
8 (~~(11)~~) (12) of this section, the department has forty-five calendar
9 days upon receipt of a complete application to grant or deny approval
10 of a permit. The forty-five day requirement is suspended if:

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

14 (ii) The site is physically inaccessible for inspection;

15 (iii) The applicant requests a delay; or

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

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

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

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

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

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

37 (c) A permit remains in effect without need for periodic renewal
38 for hydraulic projects that divert water for agricultural irrigation or

1 stock watering purposes and that involve seasonal construction or other
2 work. A permit for streambank stabilization projects to protect farm
3 and agricultural land as defined in RCW 84.34.020 remains in effect
4 without need for periodic renewal if the problem causing the need for
5 the streambank stabilization occurs on an annual or more frequent
6 basis. The permittee must notify the appropriate agency before
7 commencing the construction or other work within the area covered by
8 the permit.

9 (6) The department may, after consultation with the permittee,
10 modify a permit due to changed conditions. The modification becomes
11 effective unless appealed to the department or the board as specified
12 in RCW 77.55.301 within thirty days from the notice of the proposed
13 modification. For hydraulic projects that divert water for
14 agricultural irrigation or stock watering purposes, or when the
15 hydraulic project or other work is associated with streambank
16 stabilization to protect farm and agricultural land as defined in RCW
17 84.34.020, the burden is on the department to show that changed
18 conditions warrant the modification in order to protect fish life.

19 (7) A permittee may request modification of a permit due to changed
20 conditions. The request must be processed within forty-five calendar
21 days of receipt of the written request. A decision by the department
22 may be appealed to the board within thirty days of the notice of the
23 decision. For hydraulic projects that divert water for agricultural
24 irrigation or stock watering purposes, or when the hydraulic project or
25 other work is associated with streambank stabilization to protect farm
26 and agricultural land as defined in RCW 84.34.020, the burden is on the
27 permittee to show that changed conditions warrant the requested
28 modification and that such a modification will not impair fish life.

29 (8)(a) The department (~~((or))~~), the county legislative authority, or
30 the governor may declare and continue an emergency. If the county
31 legislative authority declares an emergency under this subsection, it
32 shall immediately notify the department ((if it declares an emergency
33 under this subsection)). A declared state of emergency by the governor
34 under RCW 43.06.010 shall constitute a declaration under this
35 subsection.

36 (b) The department, through its authorized representatives, shall
37 issue immediately, upon request, oral approval for a stream crossing,
38 or work to remove any obstructions, repair existing structures, restore

1 streambanks, protect fish life, or protect property threatened by the
2 stream or a change in the stream flow without the necessity of
3 obtaining a written permit prior to commencing work. Conditions of the
4 emergency oral permit must be established by the department and reduced
5 to writing within thirty days and complied with as provided for in this
6 chapter.

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

10 (9) All state and local agencies with authority under this chapter
11 to issue permits or other authorizations in connection with emergency
12 water withdrawals and facilities authorized under RCW 43.83B.410 shall
13 expedite the processing of such permits or authorizations in keeping
14 with the emergency nature of such requests and shall provide a decision
15 to the applicant within fifteen calendar days of the date of
16 application.

17 (10) The department or the county legislative authority may
18 determine an imminent danger exists. The county legislative authority
19 shall notify the department, in writing, if it determines that an
20 imminent danger exists. In cases of imminent danger, the department
21 shall issue an expedited written permit, upon request, for work to
22 remove any obstructions, repair existing structures, restore banks,
23 protect fish resources, or protect property. Expedited permit requests
24 require a complete written application as provided in subsection (2) of
25 this section and must be issued within fifteen calendar days of the
26 receipt of a complete written application. Approval of an expedited
27 permit is valid for up to sixty days from the date of issuance. The
28 department may not require the provisions of the state environmental
29 policy act, chapter 43.21C RCW, to be met as a condition of issuing a
30 permit under this subsection.

31 (11)(a) For any property, except for property located on a marine
32 shoreline, that has experienced at least two consecutive years of
33 flooding or erosion that has damaged or has threatened to damage a
34 major structure, water supply system, septic system, or access to any
35 road or highway, the county legislative authority may determine that a
36 chronic danger exists. The county legislative authority shall notify
37 the department, in writing, when it determines that a chronic danger
38 exists. In cases of chronic danger, the department shall issue a

1 permit, upon request, for work necessary to abate the chronic danger by
2 removing any obstructions, repairing existing structures, restoring
3 banks, restoring road or highway access, protecting fish resources, or
4 protecting property. Permit requests must be made and processed in
5 accordance with subsections (2) and (3) of this section.

6 (b) Any projects proposed to address a chronic danger identified
7 under (a) of this subsection that satisfies the project description
8 identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions
9 of the state environmental policy act, chapter 43.21C RCW. However,
10 the project is subject to the review process established in RCW
11 77.55.181(3) as if it were a fish habitat improvement project.

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

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