
HOUSE BILL 1603

State of Washington

62nd Legislature

2011 Regular Session

By Representatives McCune and Pearson

Read first time 01/26/11. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to the removal of gravel from waterways to reduce
2 the impact of flooding; amending RCW 36.32.290, 79.140.110, 77.55.271,
3 and 77.55.021; 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 79.140.110 and 2005 c 155 s 110 are each amended to
8 read 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 state-owned
11 aquatic lands (~~is removed by any public agency or under public~~
12 ~~contract~~) for channel (~~or~~) improvement, harbor improvement, flood
13 impact reduction, or flood control, the use of the material may be
14 authorized by the department for a public purpose on:

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

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

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

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

36 (4) The department may authorize the public agency or private

1 landowner to dispose of the material removed under this section without
2 charge when necessary to implement disposal of material.

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

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

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

21 (8) Nothing in this section shall repeal or modify the provisions
22 of RCW ((77.55.100)) 77.55.021 or eliminate the necessity of obtaining
23 a permit for the removal from other state or federal agencies as
24 otherwise required by law.

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

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

1 **Sec. 6.** RCW 77.55.271 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 77.55.021 and 2010 c 210 s 27 are each amended to read
15 as follows:

16 (1) Except as provided in RCW 77.55.031, 77.55.051, and 77.55.041
17 and subsection (13) of this section, in the event that any person or
18 government agency desires to undertake a hydraulic project, the person
19 or government agency shall, before commencing work thereon, secure the
20 approval of the department in the form of a permit as to the adequacy
21 of the means proposed for the protection of fish life.

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

24 (a) General plans for the overall project;

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

28 (c) Complete plans and specifications for the proper protection of
29 fish life; and

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

33 (3)(a) Protection of fish life is the only ground upon which
34 approval of a permit may be denied or conditioned. Approval of a
35 permit may not be unreasonably withheld or unreasonably conditioned.
36 Except as provided in this subsection and subsections (8), (10), and

1 (12) of this section, the department has forty-five calendar days upon
2 receipt of a complete application to grant or deny approval of a
3 permit. The forty-five day requirement is suspended if:

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

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

8 (iii) The applicant requests a delay; or

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

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

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

18 (4) If the department denies approval of a permit, the department
19 shall provide the applicant a written statement of the specific reasons
20 why and how the proposed project would adversely affect fish life.

21 (a) Except as provided in (b) of this subsection, issuance, denial,
22 conditioning, or modification of a permit shall be appealable to the
23 board within thirty days from the date of receipt of the decision as
24 provided in RCW 43.21B.230.

25 (b) Issuance, denial, conditioning, or modification of a permit may
26 be informally appealed to the department within thirty days from the
27 date of receipt of the decision. Requests for informal appeals must be
28 filed in the form and manner prescribed by the department by rule. A
29 permit decision that has been informally appealed to the department is
30 appealable to the board within thirty days from the date of receipt of
31 the department's decision on the informal appeal.

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

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

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

11 (6) The department may, after consultation with the permittee,
12 modify a permit due to changed conditions. The modification is
13 appealable as provided in subsection (4) of this section. For
14 hydraulic projects that divert water for agricultural irrigation or
15 stock watering purposes, or when the hydraulic project or other work is
16 associated with streambank stabilization to protect farm and
17 agricultural land as defined in RCW 84.34.020, the burden is on the
18 department to show that changed conditions warrant the modification in
19 order to protect fish life.

20 (7) A permittee may request modification of a permit due to changed
21 conditions. The request must be processed within forty-five calendar
22 days of receipt of the written request. A decision by the department
23 is appealable as provided in subsection (4) of this section. For
24 hydraulic projects that divert water for agricultural irrigation or
25 stock watering purposes, or when the hydraulic project or other work is
26 associated with streambank stabilization to protect farm and
27 agricultural land as defined in RCW 84.34.020, the burden is on the
28 permittee to show that changed conditions warrant the requested
29 modification and that such a modification will not impair fish life.

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

22 (13) This section does not apply to a flood control district
23 removing gravel under section 2 of this act, a diking district removing
24 gravel under section 3 of this act, or a county legislative authority
25 removing gravel under RCW 36.32.290.

26 NEW SECTION. Sec. 8. A new section is added to chapter 90.48 RCW
27 to read as follows:

28 The department may not prohibit, condition, penalize, or require
29 mitigation of a flood control district operating under section 2 of
30 this act, a diking district operating under section 3 of this act, or
31 a county legislative authority operating under RCW 36.32.290 when
32 removing gravel from streams or other watercourses for flood control or
33 flood impact reduction purposes.

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