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HOUSE BILL 1996

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State of Washington

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By Representative Orcutt

Read first time 03/09/13. Referred to Committee on Environment.

1 AN ACT Relating to environmental standards related to  
2 transportation projects; amending RCW 47.01.290, 90.48.260, and  
3 77.55.021; adding a new section to chapter 43.21C RCW; and adding a new  
4 section to chapter 77.55 RCW.

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

6 **Sec. 1.** RCW 47.01.290 and 1994 c 258 s 3 are each amended to read  
7 as follows:

8 The legislature recognizes that environmental review of  
9 transportation projects is a continuous process that should begin at  
10 the earliest stages of planning and continue through final project  
11 construction. Early and extensive involvement of the relevant  
12 environmental regulatory authorities is critical in order to avoid  
13 significant changes in substantially completed project design and  
14 engineering. It is the expectation of the legislature that if a  
15 comprehensive environmental approach, consistent with RCW 90.48.260 and  
16 sections 3 and 4 of this act, is integrated throughout various  
17 transportation processes, onerous, duplicative, and time-consuming  
18 permit processes will be minimized.

1           **Sec. 2.** RCW 90.48.260 and 2012 1st sp.s. c 1 s 313 are each  
2 amended to read as follows:

3           (1) The department of ecology is hereby designated as the state  
4 water pollution control agency for all purposes of the federal clean  
5 water act as it exists on February 4, 1987, and is hereby authorized to  
6 participate fully in the programs of the act as well as to take all  
7 action necessary to secure to the state the benefits and to meet the  
8 requirements of that act. With regard to the national estuary program  
9 established by section 320 of that act, the department shall exercise  
10 its responsibility jointly with the Puget Sound partnership, created in  
11 RCW 90.71.210. The department of ecology may delegate its authority  
12 under this chapter, including its national pollutant discharge  
13 elimination permit system authority and duties regarding animal feeding  
14 operations and concentrated animal feeding operations, to the  
15 department of agriculture through a memorandum of understanding. Until  
16 any such delegation receives federal approval, the department of  
17 agriculture's adoption or issuance of animal feeding operation and  
18 concentrated animal feeding operation rules, permits, programs, and  
19 directives pertaining to water quality shall be accomplished after  
20 reaching agreement with the director of the department of ecology.  
21 Adoption or issuance and implementation shall be accomplished so that  
22 compliance with such animal feeding operation and concentrated animal  
23 feeding operation rules, permits, programs, and directives will achieve  
24 compliance with all federal and state water pollution control laws.  
25 The powers granted herein include, among others, and notwithstanding  
26 any other provisions of this chapter or otherwise, the following:

27           (a) Complete authority to establish and administer a comprehensive  
28 state point source waste discharge or pollution discharge elimination  
29 permit program which will enable the department to qualify for full  
30 participation in any national waste discharge or pollution discharge  
31 elimination permit system and will allow the department to be the sole  
32 agency issuing permits required by such national system operating in  
33 the state of Washington subject to the provisions of RCW 90.48.262(2).  
34 Program elements authorized herein may include, but are not limited to:  
35 (i) Effluent treatment and limitation requirements together with timing  
36 requirements related thereto; (ii) applicable receiving water quality  
37 standards requirements; (iii) requirements of standards of performance  
38 for new sources; (iv) pretreatment requirements; (v) termination and

1 modification of permits for cause; (vi) requirements for public notices  
2 and opportunities for public hearings; (vii) appropriate relationships  
3 with the secretary of the army in the administration of his or her  
4 responsibilities which relate to anchorage and navigation, with the  
5 administrator of the environmental protection agency in the performance  
6 of his or her duties, and with other governmental officials under the  
7 federal clean water act; (viii) requirements for inspection,  
8 monitoring, entry, and reporting; (ix) enforcement of the program  
9 through penalties, emergency powers, and criminal sanctions; (x) a  
10 continuing planning process; and (xi) user charges.

11 (b) The power to establish and administer state programs in a  
12 manner which will ensure the procurement of moneys, whether in the form  
13 of grants, loans, or otherwise; to assist in the construction,  
14 operation, and maintenance of various water pollution control  
15 facilities and works; and the administering of various state water  
16 pollution control management, regulatory, and enforcement programs.

17 (c) The power to develop and implement appropriate programs  
18 pertaining to continuing planning processes, area-wide waste treatment  
19 management plans, and basin planning.

20 (2) The governor shall have authority to perform those actions  
21 required of him or her by the federal clean water act.

22 (3) By July 31, 2012, the department shall:

23 (a) Reissue without modification and for a term of one year any  
24 national pollutant discharge elimination system municipal storm water  
25 general permit applicable to western Washington municipalities first  
26 issued on January 17, 2007; and

27 (b) Issue an updated national pollutant discharge elimination  
28 system municipal storm water general permit applicable to western  
29 Washington municipalities for any permit first issued on January 17,  
30 2007. An updated permit issued under this subsection shall become  
31 effective beginning August 1, 2013.

32 (i) Provisions of the updated permit issued under (b) of this  
33 subsection relating to new requirements for low-impact development and  
34 review and revision of local development codes, rules, standards, or  
35 other enforceable documents to incorporate low-impact development  
36 principles must be implemented simultaneously. These requirements may  
37 go into effect no earlier than December 31, 2016, or the time of the

1 scheduled update under RCW 36.70A.130(5), as existing on July 10, 2012,  
2 whichever is later.

3 (ii) Provisions of the updated permit issued under (b) of this  
4 subsection related to increased catch basin inspection and illicit  
5 discharge detection frequencies and application of new storm water  
6 controls to projects smaller than one acre may go into effect no  
7 earlier than December 31, 2016, or the time of the scheduled update  
8 under RCW 36.70A.130(5), as existing on July 10, 2012, whichever is  
9 later.

10 (4) By July 31, 2012, the department shall:

11 (a) Reissue without modification and for a term of two years any  
12 national pollutant discharge elimination system municipal storm water  
13 general permit applicable to eastern Washington municipalities first  
14 issued on January 17, 2007; and

15 (b) Issue an updated national pollutant discharge elimination  
16 system municipal storm water general permit for any permit first issued  
17 on January 17, 2007, applicable to eastern Washington municipalities.  
18 An updated permit issued under this subsection becomes effective August  
19 1, 2014.

20 (5) The department may not adopt or maintain any rule that  
21 includes, or include in any permit, a requirement under this chapter  
22 that is applicable to transportation projects, as that term is defined  
23 in RCW 47.29.020, if the requirement is more stringent than would be  
24 required for a similar project in an abutting jurisdiction that is  
25 subject to the federal clean water act. If a rule of the department,  
26 or a condition of a department permit, applies to more than just  
27 transportation projects, then this subsection only applies as that rule  
28 or permit requirement affects the transportation project.

29 NEW SECTION. Sec. 3. A new section is added to chapter 43.21C RCW  
30 to read as follows:

31 The design, funding, permitting, construction, and maintenance of  
32 any transportation project, as that term is defined in RCW 47.29.020,  
33 is not subject to the provisions of this chapter if any element of the  
34 transportation project is required to conduct any level of  
35 environmental review under the national environmental policy act (42  
36 U.S.C. Sec. 4321 et seq.).

1        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 77.55 RCW  
2 to read as follows:

3        Transportation projects, as that term is defined in RCW 47.29.020,  
4 are not subject to the requirements of this chapter if the project is  
5 designed, permitted, constructed, and maintained consistent with the  
6 applicable provisions, if any, of the:    Federal clean water act,  
7 federal clean air act, the federal endangered species act, the  
8 shoreline management act, the growth management act and critical area  
9 ordinances, the forest practices act and the forest and fish habitat  
10 conservation plan, the national and state environmental policy acts,  
11 local grading permits and other local regulatory authorities, or the  
12 state proprietary discretion in aquatic lands leasing.

13        **Sec. 5.**    RCW 77.55.021 and 2012 1st sp.s. c 1 s 102 are each  
14 amended to read as follows:

15        (1) Except as provided in RCW 77.55.031, 77.55.051, 77.55.041,  
16 (~~and~~) 77.55.361, and section 4 of this act, in the event that any  
17 person or government agency desires to undertake a hydraulic project,  
18 the person or government agency shall, before commencing work thereon,  
19 secure the approval of the department in the form of a permit as to the  
20 adequacy of the means proposed for the protection of fish life.

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

23        (a) General plans for the overall project;

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

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

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

32        (e) Payment of all applicable application fees charged by the  
33 department under RCW 77.55.321.

34        (3) The department may establish direct billing accounts or other  
35 funds transfer methods with permit applicants to satisfy the fee  
36 payment requirements of RCW 77.55.321.

1 (4) The department may accept complete, written applications as  
2 provided in this section for multiple site permits and may issue these  
3 permits. For multiple site permits, each specific location must be  
4 identified.

5 (5) With the exception of emergency permits as provided in  
6 subsection (12) of this section, applications for permits must be  
7 submitted to the department's headquarters office in Olympia. Requests  
8 for emergency permits as provided in subsection (12) of this section  
9 may be made to the permitting biologist assigned to the location in  
10 which the emergency occurs, to the department's regional office in  
11 which the emergency occurs, or to the department's headquarters office.

12 (6) Except as provided for emergency permits in subsection (12) of  
13 this section, the department may not proceed with permit review until  
14 all fees are paid in full as required in RCW 77.55.321.

15 (7)(a) Protection of fish life is the only ground upon which  
16 approval of a permit may be denied or conditioned. Approval of a  
17 permit may not be unreasonably withheld or unreasonably conditioned.

18 (b) Except as provided in this subsection and subsections (12)  
19 through (14) and (16) of this section, the department has forty-five  
20 calendar days upon receipt of a complete application to grant or deny  
21 approval of a permit. The forty-five day requirement is suspended if:

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

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

26 (iii) The applicant requests a delay; or

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

29 (c) Immediately upon determination that the forty-five day period  
30 is suspended under (b) of this subsection, the department shall notify  
31 the applicant in writing of the reasons for the delay.

32 (d) The period of forty-five calendar days may be extended if the  
33 permit is part of a multiagency permit streamlining effort and all  
34 participating permitting agencies and the permit applicant agree to an  
35 extended timeline longer than forty-five calendar days.

36 (8) If the department denies approval of a permit, the department  
37 shall provide the applicant a written statement of the specific reasons  
38 why and how the proposed project would adversely affect fish life.

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

5 (b) Issuance, denial, conditioning, or modification of a permit may  
6 be informally appealed to the department within thirty days from the  
7 date of receipt of the decision. Requests for informal appeals must be  
8 filed in the form and manner prescribed by the department by rule. A  
9 permit decision that has been informally appealed to the department is  
10 appealable to the board within thirty days from the date of receipt of  
11 the department's decision on the informal appeal.

12 (9)(a) The permittee must demonstrate substantial progress on  
13 construction of that portion of the project relating to the permit  
14 within two years of the date of issuance.

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

18 (c) A permit remains in effect without need for periodic renewal  
19 for hydraulic projects that divert water for agricultural irrigation or  
20 stock watering purposes and that involve seasonal construction or other  
21 work. A permit for streambank stabilization projects to protect farm  
22 and agricultural land as defined in RCW 84.34.020 remains in effect  
23 without need for periodic renewal if the problem causing the need for  
24 the streambank stabilization occurs on an annual or more frequent  
25 basis. The permittee must notify the appropriate agency before  
26 commencing the construction or other work within the area covered by  
27 the permit.

28 (10) The department may, after consultation with the permittee,  
29 modify a permit due to changed conditions. A modification under this  
30 subsection is not subject to the fees provided under RCW 77.55.321.  
31 The modification is appealable as provided in subsection (8) of this  
32 section. For a hydraulic project that diverts water for agricultural  
33 irrigation or stock watering purposes, when the hydraulic project or  
34 other work is associated with streambank stabilization to protect farm  
35 and agricultural land as defined in RCW 84.34.020, the burden is on the  
36 department to show that changed conditions warrant the modification in  
37 order to protect fish life.

1 (11) A permittee may request modification of a permit due to  
2 changed conditions. The request must be processed within forty-five  
3 calendar days of receipt of the written request and payment of  
4 applicable fees under RCW 77.55.321. A decision by the department is  
5 appealable as provided in subsection (8) of this section. For a  
6 hydraulic project that diverts water for agricultural irrigation or  
7 stock watering purposes, when the hydraulic project or other work is  
8 associated with streambank stabilization to protect farm and  
9 agricultural land as defined in RCW 84.34.020, the burden is on the  
10 permittee to show that changed conditions warrant the requested  
11 modification and that such a modification will not impair fish life.

12 (12)(a) The department, the county legislative authority, or the  
13 governor may declare and continue an emergency. If the county  
14 legislative authority declares an emergency under this subsection, it  
15 shall immediately notify the department. A declared state of emergency  
16 by the governor under RCW 43.06.010 shall constitute a declaration  
17 under this subsection.

18 (b) The department, through its authorized representatives, shall  
19 issue immediately, upon request, verbal approval for a stream crossing,  
20 or work to remove any obstructions, repair existing structures, restore  
21 streambanks, protect fish life, or protect property threatened by the  
22 stream or a change in the stream flow without the necessity of  
23 obtaining a written permit prior to commencing work. Conditions of the  
24 emergency verbal permit must be reduced to writing within thirty days  
25 and complied with as provided for in this chapter.

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

29 (d) The department may not charge a person requesting an emergency  
30 permit any of the fees authorized by RCW 77.55.321 until after the  
31 emergency permit is issued and reduced to writing.

32 (13) All state and local agencies with authority under this chapter  
33 to issue permits or other authorizations in connection with emergency  
34 water withdrawals and facilities authorized under RCW 43.83B.410 shall  
35 expedite the processing of such permits or authorizations in keeping  
36 with the emergency nature of such requests and shall provide a decision  
37 to the applicant within fifteen calendar days of the date of  
38 application.



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

15           (15)(a) For any property, except for property located on a marine  
16 shoreline, that has experienced at least two consecutive years of  
17 flooding or erosion that has damaged or has threatened to damage a  
18 major structure, water supply system, septic system, or access to any  
19 road or highway, the county legislative authority may determine that a  
20 chronic danger exists. The county legislative authority shall notify  
21 the department, in writing, when it determines that a chronic danger  
22 exists. In cases of chronic danger, the department shall issue a  
23 permit, upon request, for work necessary to abate the chronic danger by  
24 removing any obstructions, repairing existing structures, restoring  
25 banks, restoring road or highway access, protecting fish resources, or  
26 protecting property. Permit requests must be made and processed in  
27 accordance with subsections (2) and (7) of this section.

28           (b) Any projects proposed to address a chronic danger identified  
29 under (a) of this subsection that satisfies the project description  
30 identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions  
31 of the state environmental policy act, chapter 43.21C RCW. However,  
32 the project is subject to the review process established in RCW  
33 77.55.181(3) as if it were a fish habitat improvement project.

34           (16) The department may issue an expedited written permit in those  
35 instances where normal permit processing would result in significant  
36 hardship for the applicant or unacceptable damage to the environment.  
37 Expedited permit requests require a complete written application as  
38 provided in subsection (2) of this section and must be issued within

1 fifteen calendar days of the receipt of a complete written application.  
2 Approval of an expedited permit is valid for up to sixty days from the  
3 date of issuance. The department may not require the provisions of the  
4 state environmental policy act, chapter 43.21C RCW, to be met as a  
5 condition of issuing a permit under this subsection.

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