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HOUSE BILL 2677

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State of Washington                      60th Legislature                      2008 Regular Session

By Representatives Ericksen, Pearson, and Ross

Read first time 01/15/08.    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 2005 c 146 s 201 are each amended to  
15 read as follows:

16       (1) Except as provided in RCW 77.55.031, 77.55.051, ~~((and))~~  
17 77.55.041, and subsection (12) of this section, in the event that any  
18 person or government agency desires to undertake a hydraulic project,  
19 the person or government agency shall, before commencing work thereon,  
20 secure the approval of the department in the form of a permit as to the  
21 adequacy 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 (11) 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 Issuance, denial, conditioning, or modification of a permit shall be  
22 appealable to the department or the board as specified in RCW 77.55.301  
23 within thirty days of the notice of decision.

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

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

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

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

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

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

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

1 (9) All state and local agencies with authority under this chapter  
2 to issue permits or other authorizations in connection with emergency  
3 water withdrawals and facilities authorized under RCW 43.83B.410 shall  
4 expedite the processing of such permits or authorizations in keeping  
5 with the emergency nature of such requests and shall provide a decision  
6 to the applicant within fifteen calendar days of the date of  
7 application.

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

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

32 (12) This section does not apply to a flood control district  
33 removing gravel under section 2 of this act, a diking district removing  
34 gravel under section 3 of this act, or a county legislative authority  
35 removing gravel under RCW 36.32.290.

36 NEW SECTION. **Sec. 8.** A new section is added to chapter 90.48 RCW  
37 to read as follows:



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

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