
HOUSE BILL 2305

State of Washington 54th Legislature 1996 Regular Session

By Representatives Johnson, Sheldon, Chandler, Hymes, Koster, Goldsmith, Stevens, Mulliken, McMahan, Thompson and Hargrove

Read first time 01/09/96. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to flood damage reduction; amending RCW 75.20.100,
2 75.20.103, 75.20.130, and 90.58.180; adding new sections to chapter
3 75.20 RCW; adding a new section to chapter 43.17 RCW; and declaring an
4 emergency.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 75.20 RCW
7 to read as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply to RCW 75.20.100, 75.20.103, and 75.20.130.

10 (1) "Bed" means the land below the ordinary high water lines of
11 state waters. This definition does not include irrigation ditches,
12 canals, storm water run-off devices, or other artificial watercourses
13 except where they exist in a natural watercourse that has been altered
14 by humans.

15 (2) "Commercial" means any facility or building used for commerce,
16 including those used for agricultural or industrial purposes.

17 (3) "Emergency" means an immediate threat to life, public land, or
18 private property, or an immediate threat of serious environmental
19 degradation.

1 (4) "Streambank stabilization" includes but is not limited to log
2 and debris removal; bank protection including riprap, jetties, and
3 groins; gravel removal; and erosion control.

4 (5) "To construct any form of hydraulic project or perform other
5 work" does not include the act of driving across an established ford.
6 Driving across streams or on wetted stream beds at areas other than
7 established fords requires approval. Work within the ordinary high
8 water line of state waters to construct or repair a ford or crossing
9 requires approval.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 75.20 RCW
11 to read as follows:

12 The permitting department may impose the following conditions on
13 persons applying under RCW 75.20.100 or 75.20.103:

14 (1) The permittee shall establish an excavation line. "Excavation
15 line" means a line on the dry bed, parallel to the water's edge unless
16 otherwise stated, that changes with water level fluctuations.

17 (2) The permittee may not remove bed material from the water side
18 of the excavation line.

19 (3) The permittee shall begin excavating at the excavation line and
20 proceed toward the bank, perpendicular to the alignment of the
21 watercourse.

22 (4) The permittee shall keep the maximum distance of excavation
23 toward the bank from the excavation line approximately equal throughout
24 the excavation zone. "Excavation zone" means the area between the
25 excavation line and the bank.

26 (5) The permittee shall identify the excavation zone with boundary
27 markers.

28 (6) The permittee shall maintain a minimum one-half percent
29 gradient upward from the excavation line in the excavation zone.

30 (7) The permittee shall ensure that the excavation zone is free of
31 pits or potholes.

32 (8) The permittee shall not stockpile or spoil excavated materials
33 within the ordinary high water line except from June 15 to October 15.

34 (9) The permittee may not allow any equipment within the wetted
35 perimeter of the watercourse without specific permission.

36 (10) The permittee shall dispose of debris in the excavation zone
37 so it does not reenter the watercourse.

1 (11) The permittee may not perform gravel washing or crushing
2 operations below the ordinary high water line.

3 (12) The permittee shall be allowed to remove only that amount of
4 rock, sand, gravel, or silt which is naturally replenished on an annual
5 basis, except in instances where a lapse in material removal has
6 occurred. If such lapse has occurred, then an amount of material
7 equivalent to the amount estimated to have accumulated since the last
8 material removal operation, including debris and vegetation, may be
9 removed.

10 **Sec. 3.** RCW 75.20.100 and 1993 sp.s. c 2 s 30 are each amended to
11 read as follows:

12 (1) In the event that any person or government agency desires to
13 construct any form of hydraulic project or perform other work that will
14 use, divert, obstruct, or change the natural flow or bed of any of the
15 salt or fresh waters of the state, such person or government agency
16 shall, before commencing construction or work thereon and to ensure the
17 proper protection of fish life, secure the written approval of the
18 department as to the adequacy of the means proposed for the protection
19 of fish life. The department may not limit, condition, or otherwise
20 affect the amount, timing, or delivery method of water diverted under
21 chapter 90.03 RCW after the water leaves the stream channel and before
22 it is returned to the stream. This approval shall not be unreasonably
23 withheld. Except as provided in RCW 75.20.1001 (~~and 75.20.1002~~), the
24 department shall grant or deny approval within forty-five calendar days
25 of the receipt of a complete application and notice of compliance with
26 any applicable requirements of the state environmental policy act, made
27 in the manner prescribed in this section. The applicant may document
28 receipt of application by filing in person or by registered mail. A
29 complete application for approval shall contain general plans for the
30 overall project, complete plans and specifications of the proposed
31 construction or work within the mean higher high water line in salt
32 water or within the ordinary high water line in fresh water, and
33 complete plans and specifications for the proper protection of fish
34 life. The forty-five day requirement shall be suspended if ~~((1))~~ (a)
35 after ten working days of receipt of the application, the applicant
36 remains unavailable or unable to arrange for a timely field evaluation
37 of the proposed project; ~~((2))~~ (b) the site is physically
38 inaccessible for inspection; or ~~((3))~~ (c) the applicant requests

1 delay. Immediately upon determination that the forty-five day period
2 is suspended, the department shall notify the applicant in writing of
3 the reasons for the delay. Approval is valid for a period of up to
4 five years from date of issuance. The permittee must demonstrate
5 substantial progress on construction of that portion of the project
6 relating to the approval within two years of the date of issuance. If
7 the department denies approval, the department shall provide the
8 applicant, in writing, a statement of the specific reasons why and how
9 the proposed project would adversely affect fish life. Protection of
10 fish life shall be the only ground upon which approval may be denied or
11 conditioned.

12 (2) In making a decision as to whether fish life is protected, the
13 department of fish and wildlife shall determine if a project as
14 proposed or modified:

15 (a) Presents no substantial risk to fish life and provides fish
16 habitat productivity equivalent to preproject conditions at the project
17 site within two years of the project's completion; or

18 (b)(i) Protects a residential, commercial, industrial, or public
19 facility, structure, or property that is likely to incur significant
20 flood damage during the next flood season if the project is not
21 completed; and (ii) lessens the loss of fish life or habitat as
22 compared to a project resulting from an emergency request under this
23 section.

24 The department with jurisdiction shall approve a project if it
25 determines that the project meets either (a) or (b) of this subsection.

26 (3) Chapter 34.05 RCW applies to any denial of project approval,
27 conditional approval, or requirements for project modification upon
28 which approval may be contingent. If any person or government agency
29 commences construction on any hydraulic works or projects subject to
30 this section without first having obtained written approval of the
31 department as to the adequacy of the means proposed for the protection
32 of fish life, or if any person or government agency fails to follow or
33 carry out any of the requirements or conditions as are made a part of
34 such approval, the person or director of the agency is guilty of a
35 gross misdemeanor. If any such person or government agency is
36 convicted of violating any of the provisions of this section and
37 continues construction on any such works or projects without fully
38 complying with the provisions hereof, such works or projects are hereby
39 declared a public nuisance and shall be subject to abatement as such.

1 ((For the purposes of this section and RCW 75.20.103, "bed" shall
2 mean the land below the ordinary high water lines of state waters.
3 This definition shall not include irrigation ditches, canals, storm
4 water run-off devices, or other artificial watercourses except where
5 they exist in a natural watercourse that has been altered by man.

6 The phrase "to construct any form of hydraulic project or perform
7 other work" shall not include the act of driving across an established
8 ford. Driving across streams or on wetted stream beds at areas other
9 than established fords requires approval. Work within the ordinary
10 high water line of state waters to construct or repair a ford or
11 crossing requires approval.))

12 (4) In case of an emergency arising from weather or stream flow
13 conditions or other natural conditions, upon request the department,
14 through its authorized representatives, shall ((issue)) grant
15 immediately ((upon request)), oral approval for removing any
16 obstructions, repairing existing structures, restoring stream banks, or
17 ((to protect)) protecting property threatened by the stream or a change
18 in the stream flow without ((the necessity of obtaining)) requiring a
19 written approval prior to commencing work. Conditions of an oral
20 approval shall be reduced to writing within thirty days and complied
21 with as provided for in this section. Oral approval shall be granted
22 immediately upon request, for a stream crossing during an emergency
23 situation.

24 (5) This section shall not apply to the repair of an existing flood
25 control project if the project is determined by the county to be:

26 (a) Consistent with a currently approved comprehensive flood
27 control management plan; and

28 (b) Necessary to avoid flood damage during the next flood season.

29 (6) This section shall not apply to the construction of any form of
30 hydraulic project or other work which diverts water for agricultural
31 irrigation or stock watering purposes authorized under or recognized as
32 being valid by the state's water codes, or when such hydraulic project
33 or other work is associated with streambank stabilization to protect
34 farm and agricultural land as defined in RCW 84.34.020. These
35 irrigation or stock watering diversion and streambank stabilization
36 projects shall be governed by RCW 75.20.103.

37 **Sec. 4.** RCW 75.20.103 and 1993 sp.s. c 2 s 32 are each amended to
38 read as follows:

1 (1) In the event that any person or government agency desires to
2 construct any form of hydraulic project or other work that diverts
3 water for agricultural irrigation or stock watering purposes, or when
4 such hydraulic project or other work is associated with streambank
5 stabilization or flood damage reduction to protect farm and
6 agricultural land as defined in RCW 84.34.020, and when such
7 ~~((diversion or streambank stabilization))~~ hydraulic project will use,
8 divert, obstruct, or change the natural flow or bed of any river or
9 stream or will utilize any waters of the state or materials from the
10 stream beds, the person or government agency shall, before commencing
11 construction or work thereon and to ensure the proper protection of
12 fish life, secure a written approval from the department as to the
13 adequacy of the means proposed for the protection of fish life. The
14 department may not limit, condition, or otherwise affect the amount,
15 timing, or delivery method of water diverted under chapter 90.03 RCW
16 after the water leaves the stream channel and before it is returned to
17 the stream. This approval shall not be unreasonably withheld. Except
18 as provided in RCW 75.20.1001 ~~((and 75.20.1002))~~, the department shall
19 grant or deny the approval within forty-five calendar days of the
20 receipt of a complete application ~~((and notice of compliance with any~~
21 ~~applicable requirements of the state environmental policy act,))~~ made
22 in the manner prescribed in this section. The applicant may document
23 receipt of application by filing in person or by registered mail.

24 (2) A complete application for an approval shall:

25 (a) Contain general plans for the overall project, complete plans
26 and specifications of the proposed construction or work within ordinary
27 high water line, and complete plans and specifications for the proper
28 protection of fish life; and

29 (b) Not be required to include notice of compliance with any
30 applicable requirements of the state environmental policy act. Final
31 approval of a project may not be granted until any applicable
32 requirements of the state environmental policy act have been satisfied.

33 (3) The forty-five day requirement shall be suspended if ~~((+1))~~:

34 (a) After ten working days of receipt of the application, the
35 applicant remains unavailable or unable to arrange for a timely field
36 evaluation of the proposed project; ~~((+2))~~

37 (b) The site is physically inaccessible for inspection; ~~((or (+3)))~~

38 (c) After forty-four days of receipt of a complete application, a

1 notice of compliance with the state environmental policy act has not
2 been issued; or

3 (d) The applicant requests delay.

4 (4) Immediately upon determination that the forty-five day period
5 is suspended, the department shall notify the applicant in writing of
6 the reasons for the delay.

7 (5) In making a decision as to whether fish life is protected, the
8 department shall determine if a project as proposed or modified:

9 (a) Presents no substantial risk to fish life and provides fish
10 habitat productivity equivalent to preproject conditions at the project
11 site within two years of the project's completion; or

12 (b)(i) Protects a residential, commercial, industrial, or public
13 facility, structure, or property that is likely to incur significant
14 flood damage during the next flood season if the project is not
15 completed; and (ii) lessens the loss of fish life or habitat as
16 compared to a project resulting from an emergency request under this
17 section.

18 The department shall approve a project if it determines that the
19 project meets either (a) or (b) of this subsection.

20 (6) An approval shall remain in effect without need for periodic
21 renewal for projects that divert water for agricultural irrigation or
22 stock watering purposes and that involve seasonal construction or other
23 work. Approval for streambank stabilization projects shall remain in
24 effect without need for periodic renewal if the problem causing the
25 need for the streambank stabilization occurs on an annual or more
26 frequent basis. The permittee must notify the appropriate agency
27 before commencing the construction or other work within the area
28 covered by the approval.

29 (7) The permittee must demonstrate substantial progress on
30 construction of that portion of the project relating to the approval
31 within two years of the date of issuance. If the department denies
32 approval, the department shall provide the applicant, in writing, a
33 statement of the specific reasons why and how the proposed project
34 would adversely affect fish life. Protection of fish life shall be the
35 only ground upon which approval may be denied or conditioned.
36 Issuance, denial, conditioning, or modification shall be appealable to
37 the hydraulic appeals board established in RCW 43.21B.005 within thirty
38 days of the notice of decision. The burden shall be upon the

1 department to show that the denial or conditioning of an approval is
2 solely aimed at the protection of fish life.

3 (8) The department may, after consultation with the permittee,
4 modify an approval due to changed conditions. The modifications shall
5 become effective unless appealed to the hydraulic appeals board within
6 thirty days from the notice of the proposed modification. The burden
7 is on the department to show that changed conditions warrant the
8 modification in order to protect fish life.

9 (9) A permittee may request modification of an approval due to
10 changed conditions. The request shall be processed within forty-five
11 calendar days of receipt of the written request. A decision by the
12 department may be appealed to the hydraulic appeals board within thirty
13 days of the notice of the decision. The burden is on the permittee to
14 show that changed conditions warrant the requested modification and
15 that such modification will not impair fish life.

16 (10) If any person or government agency commences construction on
17 any hydraulic works or projects subject to this section without first
18 having obtained written approval of the department as to the adequacy
19 of the means proposed for the protection of fish life, or if any person
20 or government agency fails to follow or carry out any of the
21 requirements or conditions as are made a part of such approval, the
22 person or director of the agency is guilty of a gross misdemeanor. If
23 any such person or government agency is convicted of violating any of
24 the provisions of this section and continues construction on any such
25 works or projects without fully complying with the provisions hereof,
26 such works or projects are hereby declared a public nuisance and shall
27 be subject to abatement as such.

28 (11) In case of an emergency arising from weather or stream flow
29 conditions or other natural conditions, the department, through its
30 authorized representatives, shall issue immediately upon request oral
31 approval for removing any obstructions, repairing existing structures,
32 restoring stream banks, or to protect property threatened by the stream
33 or a change in the stream flow without the necessity of obtaining a
34 written approval prior to commencing work. Conditions of an oral
35 approval shall be reduced to writing within thirty days and complied
36 with as provided for in this section. Oral approval shall be granted
37 immediately upon request, for a stream crossing during an emergency.

38 (~~For purposes of this chapter, "streambank stabilization" shall~~
39 ~~include but not be limited to log and debris removal, bank protection~~

1 (~~including riprap, jetties, and groins~~), ~~gravel removal and erosion~~
2 ~~control.~~)

3 (12) This section shall not apply to a project involving the repair
4 of an existing flood control facility if the project is determined by
5 the county to be:

6 (a) Consistent with a previously approved comprehensive flood
7 control management plan; and

8 (b) Necessary to avoid flood damage during the next flood season.

9 **Sec. 5.** RCW 75.20.130 and 1993 sp.s. c 2 s 37 are each amended to
10 read as follows:

11 (1) There is hereby created within the environmental hearings
12 office under RCW 43.21B.005 the hydraulic appeals board of the state of
13 Washington.

14 (2) The hydraulic appeals board shall consist of three members:
15 The director of the department of ecology or the director's designee,
16 the director of the department of agriculture or the director's
17 designee, and the director or the director's designee of the department
18 whose action is appealed under subsection (6) of this section. A
19 decision must be agreed to by at least two members of the board to be
20 final.

21 (3) The board may adopt rules necessary for the conduct of its
22 powers and duties or for transacting other official business.

23 (4) The board shall make findings of fact and prepare a written
24 decision in each case decided by it, and that finding and decision
25 shall be effective upon being signed by two or more board members and
26 upon being filed at the hydraulic appeals board's principal office, and
27 shall be open to public inspection at all reasonable times.

28 (5) The board has exclusive jurisdiction to hear appeals arising
29 from the approval, denial, conditioning, or modification of a hydraulic
30 approval issued by the department under the authority granted in RCW
31 75.20.103 for the diversion of water for agricultural irrigation or
32 stock watering purposes or when associated with streambank
33 stabilization to protect farm and agricultural land as defined in RCW
34 84.34.020.

35 (6)(a) Any person aggrieved by the approval, denial, conditioning,
36 or modification of a hydraulic approval pursuant to RCW 75.20.103 may
37 seek review from the board by filing a request for the same within

1 thirty days of notice of the approval, denial, conditioning, or
2 modification of such approval.

3 (b) The review proceedings authorized in (a) of this subsection are
4 subject to the provisions of chapter 34.05 RCW pertaining to procedures
5 in adjudicative proceedings.

6 (c) If a review proceeding authorized in (a) of this subsection
7 finds for the aggrieved permit applicant, the applicant may be awarded
8 any legal and engineering costs involved in challenging the permit
9 decision.

10 **Sec. 6.** RCW 90.58.180 and 1995 c 347 s 310 are each amended to
11 read as follows:

12 (1) Any person aggrieved by the granting, denying, or rescinding of
13 a permit on shorelines of the state pursuant to RCW 90.58.140 may seek
14 review from the shorelines hearings board by filing a petition for
15 review within twenty-one days of the date of filing as defined in RCW
16 90.58.140(6).

17 Within seven days of the filing of any petition for review with the
18 board as provided in this section pertaining to a final decision of a
19 local government, the petitioner shall serve copies of the petition on
20 the department and the office of the attorney general. The department
21 and the attorney general may intervene to protect the public interest
22 and insure that the provisions of this chapter are complied with at any
23 time within fifteen days from the date of the receipt by the department
24 or the attorney general of a copy of the petition for review filed
25 pursuant to this section. The shorelines hearings board shall schedule
26 review proceedings on the petition for review without regard as to
27 whether the period for the department or the attorney general to
28 intervene has or has not expired.

29 (2) The department or the attorney general may obtain review of any
30 final decision granting a permit, or granting or denying an application
31 for a permit issued by a local government by filing a written petition
32 with the shorelines hearings board and the appropriate local government
33 within twenty-one days from the date the final decision was filed as
34 provided in RCW 90.58.140(6).

35 (3) The review proceedings authorized in subsections (1) and (2) of
36 this section are subject to the provisions of chapter 34.05 RCW
37 pertaining to procedures in adjudicative proceedings. Judicial review
38 of such proceedings of the shorelines hearings board is governed by

1 chapter 34.05 RCW. The board shall issue its decision on the appeal
2 authorized under subsections (1) and (2) of this section within one
3 hundred eighty days after the date the petition is filed with the board
4 or a petition to intervene is filed by the department or the attorney
5 general, whichever is later. The time period may be extended by the
6 board for a period of thirty days upon a showing of good cause or may
7 be waived by the parties.

8 (4) If the review proceedings authorized in subsection (1) of this
9 section find for the requestor, and if the requestor is the permit
10 applicant, the requestor may be awarded any legal and engineering costs
11 involved in challenging the permit decision.

12 (5) Any person may appeal any rules, regulations, or guidelines
13 adopted or approved by the department within thirty days of the date of
14 the adoption or approval. The board shall make a final decision within
15 sixty days following the hearing held thereon.

16 ~~((+5+))~~ (6) The board shall find the rule, regulation, or guideline
17 to be valid and enter a final decision to that effect unless it
18 determines that the rule, regulation, or guideline:

19 (a) Is clearly erroneous in light of the policy of this chapter; or

20 (b) Constitutes an implementation of this chapter in violation of
21 constitutional or statutory provisions; or

22 (c) Is arbitrary and capricious; or

23 (d) Was developed without fully considering and evaluating all
24 material submitted to the department during public review and comment;
25 or

26 (e) Was not adopted in accordance with required procedures.

27 ~~((+6+))~~ (7) If the board makes a determination under subsection
28 ~~((+5+))~~ (6)(a) through (e) of this section, it shall enter a final
29 decision declaring the rule, regulation, or guideline invalid,
30 remanding the rule, regulation, or guideline to the department with a
31 statement of the reasons in support of the determination, and directing
32 the department to adopt, after a thorough consultation with the
33 affected local government and any other interested party, a new rule,
34 regulation, or guideline consistent with the board's decision.

35 ~~((+7+))~~ (8) A decision of the board on the validity of a rule,
36 regulation, or guideline shall be subject to review in superior court,
37 if authorized pursuant to chapter 34.05 RCW. A petition for review of
38 the decision of the shorelines hearings board on a rule, regulation, or

1 guideline shall be filed within thirty days after the date of final
2 decision by the shorelines hearings board.

3 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.17 RCW
4 to read as follows:

5 Each appropriate agency shall actively seek to encourage through
6 permit requirements the removal of accumulated materials from rivers
7 and streams where there is a measurable flood damage reduction benefit.
8 Each agency shall develop policies to accomplish this goal. Policies
9 should consider the benefits of a designed, open-channel hydraulic
10 engineering criteria to facilitate the natural downstream movement of
11 detrimental material.

12 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
13 preservation of the public peace, health, or safety, or support of the
14 state government and its existing public institutions, and shall take
15 effect immediately.

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