
SENATE BILL 5765

State of Washington

54th Legislature

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By Senators Heavey, Snyder, Smith, Finkbeiner and Schow

Read first time 02/06/95. Referred to Committee on Ecology & Parks.

1 AN ACT Relating to delegation to local municipal jurisdictions of
2 hydraulic project approval authority; and amending RCW 75.20.100.

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

4 **Sec. 1.** RCW 75.20.100 and 1993 sp.s. c 2 s 30 are each amended to
5 read as follows:

6 (1) In the event that any person or government agency desires to
7 construct any form of hydraulic project or perform other work that will
8 use, divert, obstruct, or change the natural flow or bed of any of the
9 salt or fresh waters of the state, such person or government agency
10 shall, before commencing construction or work thereon and to ensure the
11 proper protection of fish life, secure the written approval of the
12 department as to the adequacy of the means proposed for the protection
13 of fish life. This approval shall not be unreasonably withheld.
14 Except as provided in RCW 75.20.1001 (~~and 75.20.1002~~), the department
15 shall grant or deny approval within forty-five calendar days of the
16 receipt of a complete application and notice of compliance with any
17 applicable requirements of the state environmental policy act, made in
18 the manner prescribed in this section. The applicant may document
19 receipt of application by filing in person or by registered mail. A

1 complete application for approval shall contain general plans for the
2 overall project, complete plans and specifications of the proposed
3 construction or work within the mean higher high water line in salt
4 water or within the ordinary high water line in fresh water, and
5 complete plans and specifications for the proper protection of fish
6 life. The forty-five day requirement shall be suspended if ~~((+1))~~ (a)
7 after ten working days of receipt of the application, the applicant
8 remains unavailable or unable to arrange for a timely field evaluation
9 of the proposed project; ~~((+2))~~ (b) the site is physically
10 inaccessible for inspection; or ~~((+3))~~ (c) the applicant requests
11 delay. 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. Approval is valid for a period of up to
14 five years from date of issuance. The permittee must demonstrate
15 substantial progress on construction of that portion of the project
16 relating to the approval within two years of the date of issuance. If
17 the department denies approval, the department shall provide the
18 applicant, in writing, a statement of the specific reasons why and how
19 the proposed project would adversely affect fish life. Protection of
20 fish life shall be the only ground upon which approval may be denied or
21 conditioned. Chapter 34.05 RCW applies to any denial of project
22 approval, conditional approval, or requirements for project
23 modification upon which approval may be contingent. If any person or
24 government agency commences construction on any hydraulic works or
25 projects subject to this section without first having obtained written
26 approval of the department as to the adequacy of the means proposed for
27 the protection of fish life, or if any person or government agency
28 fails to follow or carry out any of the requirements or conditions as
29 are made a part of such approval, the person or director of the agency
30 is guilty of a gross misdemeanor. If any such person or government
31 agency is convicted of violating any of the provisions of this section
32 and continues construction on any such works or projects without fully
33 complying with the provisions hereof, such works or projects are hereby
34 declared a public nuisance and shall be subject to abatement as such.

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

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

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

18 This section shall not apply to the construction of any form of
19 hydraulic project or other work which diverts water for agricultural
20 irrigation or stock watering purposes authorized under or recognized as
21 being valid by the state's water codes, or when such hydraulic project
22 or other work is associated with streambank stabilization to protect
23 farm and agricultural land as defined in RCW 84.34.020. These
24 irrigation or stock watering diversion and streambank stabilization
25 projects shall be governed by RCW 75.20.103.

26 (2) The department shall delegate to local municipal jurisdictions
27 the authority to approve hydraulic projects located within harbor areas
28 under the following conditions:

29 (a) The local municipal jurisdiction has made a written request to
30 the department for such a delegation of authority;

31 (b) The comprehensive plan of the local municipal jurisdiction has
32 been approved by the state department of community, trade, and economic
33 development, pursuant to the requirements of the growth management act,
34 chapter 36.70A RCW;

35 (c) The shoreline master program of the local municipal
36 jurisdiction has been approved by the state department of ecology
37 pursuant to the requirements of the shoreline management act, chapter
38 90.58 RCW;

1 (d) The local municipal jurisdiction shall exercise the authority
2 so delegated in accordance with the hydraulic code rules adopted by the
3 department, which rules shall include provisions that provide that (i)
4 technical provisions applicable to a specific project may be modified
5 or deleted by the approving authority when the applicant provides an
6 alternative plan to the provision and demonstrates that it provides
7 equal or greater protection for fish life; and (ii) construction
8 permits for a specific project may be issued upon provision of adequate
9 assurances that the alternative plan will be completed; and

10 (e) The local municipal jurisdiction shall consult with the
11 department in its review of hydraulic project applications and shall
12 take into account the department's recommendations in its exercise of
13 delegated authority under this section.

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