

---

HOUSE BILL 2802

---

State of Washington

55th Legislature

1998 Regular Session

By Representatives Chandler, Sump and Cairnes

Read first time 01/20/98. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to construction projects in state waters; and  
2 reenacting 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 1997 c 385 s 1 and 1997 c 290 s 4 are  
5 each reenacted and amended to 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~~) any  
8 work located below the ordinary high water mark that will use, divert,  
9 obstruct, or change the natural flow or bed of any of the salt or fresh  
10 waters of the state, such person or government agency shall, before  
11 commencing construction (~~or~~) of the work (~~thereon and~~), to ensure  
12 the proper protection of fish life, secure the approval of the  
13 department as to the adequacy of the means proposed for the protection  
14 of fish life. This approval shall not be unreasonably withheld.  
15 However, that department approval shall not be necessary for any work  
16 requiring a national pollution discharge elimination system permit  
17 under the clean water act or a wastewater discharge permit under  
18 chapter 90.48 RCW.

1 (2)(a) Except as provided in RCW 75.20.1001, the department shall  
2 grant or deny approval of a standard permit within forty-five calendar  
3 days of the receipt of a complete application and notice of compliance  
4 with any applicable requirements of the state environmental policy act,  
5 made in the manner prescribed in this section.

6 (b) The applicant may document receipt of application by filing in  
7 person or by registered mail. A complete application for approval  
8 shall contain general plans for the overall project, complete plans and  
9 specifications of the proposed construction or work within the mean  
10 higher high water line in salt water or within the ordinary high water  
11 line in fresh water, and complete plans and specifications for the  
12 proper protection of fish life.

13 (c) The forty-five day requirement shall be suspended if:

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

17 (ii) The site is physically inaccessible for inspection; or

18 (iii) The applicant requests delay. Immediately upon determination  
19 that the forty-five day period is suspended, the department shall  
20 notify the applicant in writing of the reasons for the delay.

21 (d) For purposes of this section, "standard permit" means a written  
22 permit issued by the department when the conditions under subsections  
23 (3) and (6)(b) of this section are not met.

24 (3)(a) The department may issue an expedited written permit in  
25 those instances where normal permit processing would result in  
26 significant hardship for the applicant or unacceptable damage to the  
27 environment. In cases of imminent danger, the department shall issue  
28 an expedited written permit, upon request, for work to repair existing  
29 structures, move obstructions, restore banks, protect property, or  
30 protect fish resources. Expedited permit requests require a complete  
31 written application as provided in subsection (2)(b) of this section  
32 and shall be issued within fifteen calendar days of the receipt of a  
33 complete written application. Approval of an expedited permit is valid  
34 for up to sixty days from the date of issuance.

35 (b) For the purposes of this subsection, "imminent danger" means a  
36 threat by weather, water flow, or other natural conditions that is  
37 likely to occur within sixty days of a request for a permit  
38 application.

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

4 (d) The department or the county legislative authority may  
5 determine if an imminent danger exists. The county legislative  
6 authority shall notify the department, in writing, if it determines  
7 that an imminent danger exists.

8 (4) Approval of a standard permit is valid for a period of up to  
9 five years from date of issuance. The permittee must demonstrate  
10 substantial progress on construction of that portion of the project  
11 relating to the approval within two years of the date of issuance. If  
12 the department denies approval, the department shall provide the  
13 applicant, in writing, a statement of the specific reasons why and how  
14 the proposed project would adversely affect fish life. Protection of  
15 fish life shall be the only ground upon which approval may be denied or  
16 conditioned. Chapter 34.05 RCW applies to any denial of project  
17 approval, conditional approval, or requirements for project  
18 modification upon which approval may be contingent.

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

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

1 for in this section. Oral approval shall be granted immediately, upon  
2 request, for a stream crossing during an emergency situation.

3 (b) For purposes of this section and RCW 75.20.103, "emergency"  
4 means an immediate threat to life, the public, property, or of  
5 environmental degradation.

6 (c) The department or the county legislative authority may declare  
7 and continue an emergency when one or more of the criteria under (b) of  
8 this subsection are met. The county legislative authority shall  
9 immediately notify the department if it declares an emergency under  
10 this subsection.

11 (7) The department shall, at the request of a county, develop five-  
12 year maintenance approval agreements, consistent with comprehensive  
13 flood control management plans adopted under the authority of RCW  
14 86.12.200, or other watershed plan approved by a county legislative  
15 authority, to allow for work on public and private property for bank  
16 stabilization, bridge repair, removal of sand bars and debris, channel  
17 maintenance, and other flood damage repair and reduction activity under  
18 agreed-upon conditions and times without obtaining permits for specific  
19 projects.

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

28 A landscape management plan approved by the department and the  
29 department of natural resources under RCW 76.09.350(2), shall serve as  
30 a hydraulic project approval for the life of the plan if fish are  
31 selected as one of the public resources for coverage under such a plan.

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

37 (10) The phrase "to construct any form of hydraulic project or  
38 perform other work" does not include the act of driving across an  
39 established ford. Driving across streams or on wetted stream beds at

1 areas other than established fords requires approval. Work within the  
2 ordinary high water line of state waters to construct or repair a ford  
3 or crossing requires approval.

--- END ---