

2 **ESHB 2866** - S COMM AMD

3 By Committee on Natural Resources, Parks & Shorelines

4 NOT ADOPTED 03/08/02

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature finds that hydraulic
8 project approvals should ensure that fish life is properly protected,
9 but conditions attached to the approval of these permits must
10 reasonably relate to the potential harm that the projects may produce.
11 The legislature is particularly concerned over the current overlap of
12 agency jurisdiction regarding storm water projects, and believes that
13 there is an immediate need to address this issue to ensure that project
14 applicants are not given conflicting directions over project design.
15 Requiring a major redesign of a project results in major delays,
16 produces exponentially rising costs for both public and private project
17 applicants, and frequently produces only marginal benefits for fish.

18 The legislature recognizes that the department of ecology is
19 primarily responsible for the approval of storm water projects. The
20 legislature believes that once the department of ecology approves a
21 proposed storm water project, it is inappropriate for the department of
22 fish and wildlife to require a major redesign of that project in order
23 for the applicant to obtain hydraulic project approval. The
24 legislature further believes that it is more appropriate for the
25 department of fish and wildlife to defer the design elements of a storm
26 water project to the department of ecology and focus its own efforts on
27 determining reasonable mitigation or conditions for the project based
28 upon the project's potential harm to fish. It is the intent of the
29 legislature to restore some balance over conditions attached to
30 hydraulic permits, and to minimize overlapping state regulatory
31 authority regarding storm water projects in order to reduce waste in
32 both time and money while still providing ample protection for fish
33 life.

34 **Sec. 2.** RCW 77.55.100 and 2000 c 107 s 16 are each amended to read
35 as follows:

1 (1) In the event that any person or government agency desires to
2 construct any form of hydraulic project or perform other work that will
3 use, divert, obstruct, or change the natural flow or bed of any of the
4 salt or fresh waters of the state, such person or government agency
5 shall, before commencing construction or work thereon and to ensure the
6 proper protection of fish life, secure the approval of the department
7 as to the adequacy of the means proposed for the protection of fish
8 life. This approval shall not be unreasonably withheld or unreasonably
9 conditioned.

10 (2)(a) The department shall grant or deny approval of a standard
11 permit within forty-five calendar days of the receipt of a complete
12 application and notice of compliance with any applicable requirements
13 of the state environmental policy act, made in the manner prescribed in
14 this section. The permit must contain provisions allowing for minor
15 modifications to the plans and specifications without requiring
16 reissuance of the permit.

17 (b) The applicant may document receipt of application by filing in
18 person or by registered mail. A complete application for approval
19 shall contain general plans for the overall project, complete plans and
20 specifications of the proposed construction or work within the mean
21 higher high water line in salt water or within the ordinary high water
22 line in fresh water, and complete plans and specifications for the
23 proper protection of fish life.

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

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

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

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

32 (d) For purposes of this section, "standard permit" means a written
33 permit issued by the department when the conditions under subsections
34 (3) and (5)(b) of this section are not met.

35 (3)(a) The department may issue an expedited written permit in
36 those instances where normal permit processing would result in
37 significant hardship for the applicant or unacceptable damage to the
38 environment. In cases of imminent danger, the department shall issue
39 an expedited written permit, upon request, for work to repair existing

1 structures, move obstructions, restore banks, protect property, or
2 protect fish resources. Expedited permit requests require a complete
3 written application as provided in subsection (2)(b) of this section
4 and shall be issued within fifteen calendar days of the receipt of a
5 complete written application. Approval of an expedited permit is valid
6 for up to sixty days from the date of issuance.

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

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

14 (d) The department or the county legislative authority may
15 determine if an imminent danger exists. The county legislative
16 authority shall notify the department, in writing, if it determines
17 that an imminent danger exists.

18 (4) Approval of a standard permit is valid for a period of up to
19 five years from date of issuance. The permittee must demonstrate
20 substantial progress on construction of that portion of the project
21 relating to the approval within two years of the date of issuance. If
22 the department denies approval, the department shall provide the
23 applicant, in writing, a statement of the specific reasons why and how
24 the proposed project would adversely affect fish life. Protection of
25 fish life shall be the only ground upon which approval may be denied or
26 conditioned. Chapter 34.05 RCW applies to any denial of project
27 approval, conditional approval, or requirements for project
28 modification upon which approval may be contingent.

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

1 (b) For purposes of this section and RCW 77.55.110, "emergency"
2 means an immediate threat to life, the public, property, or of
3 environmental degradation.

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

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

18 (7) 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 77.55.110.

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

30 (8) For the purposes of this section and RCW 77.55.110, "bed" means
31 the land below the ordinary high water lines of state waters. This
32 definition does not include irrigation ditches, canals, storm water
33 run-off devices, or other artificial watercourses except where they
34 exist in a natural watercourse that has been altered by man.

35 (9) The phrase "to construct any form of hydraulic project or
36 perform other work" does not include the act of driving across an
37 established ford. Driving across streams or on wetted stream beds at
38 areas other than established fords requires approval. Work within the

1 ordinary high water line of state waters to construct or repair a ford
2 or crossing requires approval.

3 **Sec. 3.** RCW 77.55.110 and 1998 c 190 s 88 are each amended to read
4 as follows:

5 In the event that any person or government agency desires to
6 construct any form of hydraulic project or other work that diverts
7 water for agricultural irrigation or stock watering purposes, or when
8 such hydraulic project or other work is associated with streambank
9 stabilization to protect farm and agricultural land as defined in RCW
10 84.34.020, and when such diversion or streambank stabilization will
11 use, divert, obstruct, or change the natural flow or bed of any river
12 or stream or will utilize any waters of the state or materials from the
13 stream beds, the person or government agency shall, before commencing
14 construction or work thereon and to ensure the proper protection of
15 fish life, secure a written approval from the department as to the
16 adequacy of the means proposed for the protection of fish life. This
17 approval shall not be unreasonably withheld or unreasonably
18 conditioned. ((~~Except as provided in RCW 75.20.1001,~~)) The department
19 shall 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 in
22 the manner prescribed in this section. The permit must contain
23 provisions allowing for minor modifications to the plans and
24 specifications without requiring reissuance of the permit. The
25 applicant may document receipt of application by filing in person or by
26 registered mail. A complete application for an approval shall contain
27 general plans for the overall project, complete plans and
28 specifications of the proposed construction or work within ordinary
29 high water line, and complete plans and specifications for the proper
30 protection of fish life. The forty-five day requirement shall be
31 suspended if (1) after ten working days of receipt of the application,
32 the applicant remains unavailable or unable to arrange for a timely
33 field evaluation of the proposed project; (2) the site is physically
34 inaccessible for inspection; or (3) the applicant requests delay.

35 Immediately upon determination that the forty-five day period is
36 suspended, the department shall notify the applicant in writing of the
37 reasons for the delay.

1 An approval shall remain in effect without need for periodic
2 renewal for projects that divert water for agricultural irrigation or
3 stock watering purposes and that involve seasonal construction or other
4 work. Approval for streambank stabilization projects shall remain in
5 effect without need for periodic renewal if the problem causing the
6 need for the streambank stabilization occurs on an annual or more
7 frequent basis. The permittee must notify the appropriate agency
8 before commencing the construction or other work within the area
9 covered by the approval.

10 The permittee must demonstrate substantial progress on construction
11 of that portion of the project relating to the approval within two
12 years of the date of issuance. If the department denies approval, the
13 department shall provide the applicant, in writing, a statement of the
14 specific reasons why and how the proposed project would adversely
15 affect fish life. Protection of fish life shall be the only ground
16 upon which approval may be denied or conditioned. Issuance, denial,
17 conditioning, or modification shall be appealable to the hydraulic
18 appeals board established in RCW 43.21B.005 within thirty days of the
19 notice of decision. The burden shall be upon the department to show
20 that the denial or conditioning of an approval is solely aimed at the
21 protection of fish life.

22 The department may, after consultation with the permittee, modify
23 an approval due to changed conditions. The modifications shall become
24 effective unless appealed to the hydraulic appeals board within thirty
25 days from the notice of the proposed modification. The burden is on
26 the department to show that changed conditions warrant the modification
27 in order to protect fish life.

28 A permittee may request modification of an approval due to changed
29 conditions. The request shall be processed within forty-five calendar
30 days of receipt of the written request. A decision by the department
31 may be appealed to the hydraulic appeals board within thirty days of
32 the notice of the decision. The burden is on the permittee to show
33 that changed conditions warrant the requested modification and that
34 such modification will not impair fish life.

35 In case of an emergency arising from weather or stream flow
36 conditions or other natural conditions, the department, through its
37 authorized representatives, shall issue immediately upon request oral
38 approval for removing any obstructions, repairing existing structures,
39 restoring stream banks, or to protect property threatened by the stream

1 or a change in the stream flow without the necessity of obtaining a
2 written approval prior to commencing work. Conditions of an oral
3 approval shall be reduced to writing within thirty days and complied
4 with as provided for in this section.

5 For purposes of this chapter, "streambank stabilization" shall
6 include but not be limited to log and debris removal, bank protection
7 (including riprap, jetties, and groins), gravel removal and erosion
8 control.

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

11 (1) The regulation of storm water projects is the primary
12 responsibility of the department of ecology and local governments under
13 chapter 90.48 RCW. Notwithstanding any other provision of this
14 chapter, all hydraulic project approvals related to storm water
15 discharges must follow the provisions established in this section.

16 (2) After the department of ecology or a local government has
17 approved a storm water project that is consistent with the guidelines
18 contained in the department of ecology's adopted storm water manual, or
19 its equivalent, a hydraulic project approval is only required for the
20 actual construction of any storm water outfall or associated structures
21 pursuant to this chapter. For projects located in western Washington,
22 the determination of consistency shall be made with respect to the
23 department of ecology manual for western Washington released in 2001,
24 or as the manual may be revised following the review authorized by
25 chapter . . . (Engrossed Second Substitute House Bill No. 2847), Laws
26 of 2002. The department may not in these instances deny or condition
27 hydraulic project approvals for water quality or quantity impacts
28 arising from storm water discharges for which the structure is being
29 installed.

30 (3)(a) In any other location the department may issue hydraulic
31 project approvals that contain provisions that protect fish life from
32 adverse effects, such as scouring or erosion of the bed of the water
33 body, resulting from the direct hydraulic impacts of the discharge.

34 (b) Prior to the issuance of a hydraulic project approval issued
35 under this subsection (3), the department must:

36 (i) Make a finding that the discharge from the outfall will cause
37 harmful effects to fish life;

1 (ii) Transmit the findings to the applicant and to the city or
2 county where the project is being proposed; and

3 (iii) Allow the applicant an opportunity to use local ordinances or
4 other mechanisms to avoid the adverse effects resulting from the direct
5 hydraulic discharge. The forty-five day requirement for hydraulic
6 project approval issuance pursuant to RCW 77.55.100 is suspended during
7 the time period the department is meeting the requirements of this
8 subsection (3)(b).

9 (c) After following the procedures set forth in (b) of this
10 subsection, the department may issue a hydraulic project approval that
11 prescribes the discharge rates from an outfall structure that will
12 prevent adverse effects to the bed or flow of the waterway. The
13 department may recommend, but not specify, the measures required to
14 meet these discharge rates. The department may not require changes to
15 the project design above the mean higher high water mark of marine
16 waters, or the ordinary high water mark of fresh waters of the state.
17 Nothing in this section alters any authority the department may have to
18 regulate other types of projects under this chapter.

19 NEW SECTION. **Sec. 5.** A new section is added to chapter 77.55 RCW
20 to read as follows:

21 Conditions imposed upon hydraulic project approvals must be
22 reasonably related to the project. The conditions must ensure that the
23 project provides proper protection for fish life, but the department
24 may not impose conditions that attempt to optimize conditions for fish
25 life that are out of proportion to the impact of the proposed project.

26 **Sec. 6.** RCW 77.55.170 and 2000 c 107 s 20 are each amended to read
27 as follows:

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

31 (2) The hydraulic appeals board shall consist of (~~three~~) six
32 members: The director of the department of ecology or the director's
33 designee, the director of the department of agriculture or the
34 director's designee, (~~and~~) the director or the director's designee of
35 the department whose action is appealed under subsection (6) of this
36 section, and three local government members. One of the local
37 government members must be appointed by the Washington state

1 association of counties, one of the local government members must be
2 appointed by the association of Washington cities, and one of the local
3 government members must be appointed by the Washington public ports
4 association. The local government members serve at the pleasure of
5 their respective associations. A decision must be agreed to by at
6 least (~~two~~) four members of the board to be final.

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

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

14 (5) The board has exclusive jurisdiction to hear appeals arising
15 from the approval, denial, conditioning, or modification of a hydraulic
16 approval issued by the department: (a) Under the authority granted in
17 RCW 77.55.110 for the diversion of water for agricultural irrigation or
18 stock watering purposes or when associated with streambank
19 stabilization to protect farm and agricultural land as defined in RCW
20 84.34.020; or (b) under the authority granted in RCW 77.55.230 for off-
21 site mitigation proposals.

22 (6)(a) Any person aggrieved by the approval, denial, conditioning,
23 or modification of a hydraulic approval pursuant to RCW 77.55.110 may
24 seek review from the board by filing a request for the same within
25 thirty days of notice of the approval, denial, conditioning, or
26 modification of such approval.

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

30 **Sec. 7.** RCW 77.55.220 and 1996 c 192 s 2 are each amended to read
31 as follows:

32 (1) The definitions in this subsection apply throughout this
33 section unless the context clearly requires otherwise.

34 (a) "Marina" means a public or private facility providing boat
35 moorage space, fuel, or commercial services. Commercial services
36 include but are not limited to overnight or live-aboard boating
37 accommodations.

1 (b) "Marine terminal" means a public or private commercial wharf
2 located in the navigable water of the state and used, or intended to be
3 used, as a port or facility for the storing, handling, transferring, or
4 transporting of goods to and from vessels.

5 (2) For a marina or marine terminal in existence on June 6, 1996,
6 or a marina or marine terminal that has received a hydraulic project
7 approval for its initial construction, a renewable, five-year hydraulic
8 project approval shall be issued, upon request, for regular maintenance
9 activities of the marina or marine terminal.

10 (3) Upon construction of a new marina or marine terminal that has
11 received hydraulic project approval, a renewable, five-year hydraulic
12 project approval shall be issued, upon request, for regular maintenance
13 activities of the marina or marine terminal.

14 (4) For the purposes of this section, regular maintenance
15 activities are only those activities necessary to restore the marina or
16 marine terminal to the conditions approved in the initial hydraulic
17 project approval. These activities may include, but are not limited
18 to, dredging, piling replacement, and float replacement.

19 (5) The five-year permit must include a requirement that a
20 fourteen-day notice be given to the department before regular
21 maintenance activities begin."

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25 On page 1, line 1 of the title, after "permits;" strike the
26 remainder of the title and insert "amending RCW 77.55.100, 77.55.110,
27 77.55.170, and 77.55.220; adding new sections to chapter 77.55 RCW; and
28 creating a new section."

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