
HOUSE BILL 2757

State of Washington

57th Legislature

2002 Regular Session

By Representatives Rockefeller, Ericksen, Hunt, Doumit, Linville and Pearson

Read first time 01/28/2002. Referred to Committee on Natural Resources.

1 AN ACT Relating to administration of hydraulic project approval;
2 amending RCW 77.15.300, 77.12.170, and 43.135.055; adding new sections
3 to chapter 77.55 RCW; creating a new section; and prescribing
4 penalties.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the department of
7 fish and wildlife issues thousands of hydraulic project approvals each
8 year at a substantial commitment of government resources for individual
9 permitting review and writing. The legislature recognizes the
10 importance of such individual approval processes to ensure proper
11 protection of fish life and reasonable conditioning for hydraulic
12 project approval decisions. However, the legislature also recognizes
13 that certain subjects, such as small scale mining which is addressed by
14 RCW 77.55.270, can be more effectively addressed by pamphlets that
15 describe general rules which, if followed, will ensure proper
16 protection of fish life and lessen the burden on applicants and allow
17 the department to address its significant responsibilities. The
18 legislature also finds that a streamlined approval process for low-risk
19 projects should also provide the department of fish and wildlife with

1 the flexibility necessary to ensure that mitigation is allowed to
2 offset potential significant cumulative impacts to fish within a
3 region. The legislature does not seek to alter the scope of the
4 department's existing authority regarding what activities are
5 "hydraulic projects" or the department's existing obligation to
6 regulate solely for the protection of fish life. The legislature,
7 however, adopts this act to authorize and encourage the department to
8 address appropriate, defined activities by rules.

9 The legislature finds that hydraulic project approvals required
10 under chapter 77.55 RCW are currently processed by the department of
11 fish and wildlife at no cost to the applicant. The work necessary to
12 process these applications ranges from a simple review to an extensive
13 negotiated mitigation, and may result in an administrative appeal if a
14 hydraulic project approvals application is denied or conditioned.

15 The legislature finds that the department of fish and wildlife
16 should be authorized to charge a fee for processing and issuing
17 decisions on hydraulic project approvals applications in order to
18 defray the cost incurred by the department. The fee system will be
19 based on the scale and complexity of the proposed project or activity,
20 and whether the application is an original or a time extension,
21 renewal, or alteration. Fish habitat enhancement projects conducted
22 under RCW 77.55.290 are exempt.

23 NEW SECTION. **Sec. 2.** A new section is added to chapter 77.55 RCW
24 to read as follows:

25 (1) As an alternative to requiring and issuing individual hydraulic
26 project approvals under RCW 77.55.100, 77.55.110, and 77.55.200, the
27 department may adopt rules that describe approved and disapproved time,
28 manner, locations, methods, or other conditions for conducting
29 hydraulic projects or other work that will use, divert, obstruct, or
30 change the natural flow or bed of any of the salt or fresh waters of
31 the state. The conditions for approval or disapproval shall be
32 reasonably necessary to protection of fish life. The rules shall:

33 (a) Describe the time, manner, locations, methods, or other
34 conditions under which the described activity is approved;

35 (b) Describe the activity that is exempt from individual hydraulic
36 project approval, if conducted in conformance with the rules;

37 (c) Be published in pamphlets, which may provide other reasonably
38 necessary information or educational materials designed to aid

1 compliance with the approved time, manner, and methods provided by
2 rule; and

3 (d) Be provided by the department for free or, when determined by
4 the fish and wildlife commission, for a fee that shall reasonably
5 reflect the cost of publication, preparation, and distribution of the
6 pamphlet.

7 (2) Rules adopted under this section may require possession of the
8 pamphlet at the hydraulic project activity site or while conducting the
9 activity. The rules must describe an application process that
10 identifies the specific location of the project and any other
11 information deemed necessary for review of the permit. The rules must
12 contain sufficient detail to ensure that they are enforceable. The
13 rules shall be enforced under RCW 77.15.300.

14 (3) In adopting rules to implement this section, the department
15 shall ensure that this alternative hydraulic project approval is only
16 available for low-risk permit approval requests for which there are
17 predictable mitigation measures, and that complex projects, or projects
18 that generally require site-specific mitigation measures, will continue
19 to undergo individual hydraulic project approval. The department may
20 slightly vary the conditions for a particular pamphlet approval by
21 region to ensure that activities will not result in significant
22 cumulative impacts to fish within that region. The rules must also
23 include a description of the method that the department will use to
24 track, monitor, and evaluate the projects approved by this alternative
25 process. The department must also develop a process for conducting
26 compliance inspections on a random basis to ensure that the program is
27 effective. The fish and wildlife commission shall provide for public
28 review and comment of any candidates for the pamphlet type of approval
29 before committing to final selection.

30 (4) By September 1, 2002, the department of fish and wildlife must
31 establish an advisory committee that includes representatives of local
32 governments, environmental groups, business groups, and other
33 stakeholder groups to assist in the development and implementation of
34 the alternative permit program. The advisory committee must also make
35 recommendations on additional mechanisms that might be used to create
36 administrative efficiencies while maintaining the effectiveness of the
37 hydraulic project approval program as a whole, such as training,
38 workload allocation, and electronic permitting, as well as exploring
39 the need for new resources for the program. The advisory committee may

1 also make recommendations regarding the levels of any fees that the
2 department is considering establishing pursuant to section 4 of this
3 act.

4 (5) The department of fish and wildlife shall report to the
5 appropriate legislative committees by January 1, 2006, on the number
6 and type of alternative permit approvals granted under this section.
7 The report shall include information regarding how resources that would
8 have been used to process these alternative permits as individual
9 permits were shifted to more complex projects. The department must
10 send a final report to the appropriate legislative committees by
11 January 1, 2004, that includes the number and type of alternative
12 permit approvals granted under this section, information regarding how
13 resources that would have been used to process alternative permits as
14 individual permits were shifted to complex projects, and any
15 recommendations developed under subsection (4) of this section.

16 **Sec. 3.** RCW 77.15.300 and 2000 c 107 s 239 are each amended to
17 read as follows:

18 (1) A person is guilty of unlawfully undertaking hydraulic project
19 activities if the person:

20 (a) Constructs any form of hydraulic project or performs other work
21 on a hydraulic project and(~~+~~

22 ~~(a))~~ fails to have a hydraulic project approval required under
23 chapter 77.55 RCW for such construction or work; (~~(or)~~)

24 (b) Violates any requirements or conditions of the hydraulic
25 project approval for such construction or work; or

26 (c) Violates any rule adopted under RCW 77.55.150, 77.55.270, or
27 section 2 of this act that identifies the time, manner, locations,
28 methods, or other conditions under which an activity is approved or not
29 approved.

30 (2) Unlawfully undertaking hydraulic project activities is a gross
31 misdemeanor.

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

34 (1) The department may charge a fee for processing and issuing
35 decisions on hydraulic project approvals applications. The fee must be
36 based on the scale and complexity of the project. By July 31, 2003,
37 the commission, in collaboration with interested and affected parties,

1 must adopt rules that set forth the fee criteria and amount for these
2 various categories of approvals. The criteria and amounts must be
3 based on a workload analysis conducted by the department as part of the
4 rule development process. The fee criteria may include the capital
5 cost of the project.

6 (2) Habitat enhancement projects conducted pursuant to RCW
7 77.55.290 are exempted from fees.

8 (3) Revenue generated by these fees must be dedicated to fund
9 hydraulic project approvals processing and issuing decisions conducted
10 by the department.

11 (4) A fee established under this section is exempt from the fee
12 restriction provisions found under RCW 43.135.055.

13 **Sec. 5.** RCW 77.12.170 and 2001 c 253 s 15 are each amended to read
14 as follows:

15 (1) There is established in the state treasury the state wildlife
16 fund which consists of moneys received from:

17 (a) Rentals or concessions of the department;

18 (b) The sale of real or personal property held for department
19 purposes;

20 (c) The sale of licenses, permits, tags, and stamps required by
21 chapter 77.32 RCW and RCW 77.65.490, except annual resident adult
22 saltwater and all shellfish licenses, which shall be deposited into the
23 state general fund;

24 (d) Fees for informational materials published by the department;

25 (e) Fees for personalized vehicle license plates as provided in
26 chapter 46.16 RCW;

27 (f) Articles or wildlife sold by the director under this title;

28 (g) Compensation for damage to department property or wildlife
29 losses or contributions, gifts, or grants received under RCW 77.12.320
30 or 77.32.380;

31 (h) Excise tax on anadromous game fish collected under chapter
32 82.27 RCW;

33 (i) The sale of personal property seized by the department for
34 fish, shellfish, or wildlife violations; ~~((and))~~

35 (j) The department's share of revenues from auctions and raffles
36 authorized by the commission; and

37 (k) Fees for processing and issuing decisions for hydraulic project
38 approvals conducted under chapter 77.55 RCW.

1 (2) State and county officers receiving any moneys listed in
2 subsection (1) of this section shall deposit them in the state treasury
3 to be credited to the state wildlife fund.

4 **Sec. 6.** RCW 43.135.055 and 2001 c 314 s 19 are each amended to
5 read as follows:

6 (1) No fee may increase in any fiscal year by a percentage in
7 excess of the fiscal growth factor for that fiscal year without prior
8 legislative approval.

9 (2) This section does not apply to an assessment made by an
10 agricultural commodity commission or board created by state statute or
11 created under a marketing agreement or order under chapter 15.65 or
12 15.66 RCW, or to the forest products commission, if the assessment is
13 approved by referendum in accordance with the provisions of the
14 statutes creating the commission or board or chapter 15.65 or 15.66 RCW
15 for approving such assessments.

16 (3) This section does not apply to fees charged by the department
17 of fish and wildlife to process hydraulic project approvals
18 applications under section 4 of this act.

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