
SENATE BILL 5467

State of Washington

57th Legislature

2001 Regular Session

By Senators Constantine, Jacobsen and Regala; by request of Department of Fish and Wildlife

Read first time 01/24/2001. Referred to Committee on Natural Resources, Parks & Shorelines.

1 AN ACT Relating to civil enforcement of hydraulic projects;
2 amending RCW 77.15.300; adding a new section to chapter 77.55 RCW;
3 creating a new section; repealing RCW 77.55.140; 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 violations of the
7 hydraulic code may range from relatively minor infractions to serious
8 offenses. Many of the more serious offenses result in destruction of
9 fish life and habitat because work is being conducted in an improper
10 way, or at the incorrect time of the year. The legislature recognizes
11 that, given the wide range in violations, the department of fish and
12 wildlife needs a range of enforcement authorities. Minor offenses need
13 to be dealt with as infractions with accompanying small fines, while
14 serious offenses need to be prosecuted as gross misdemeanors. The
15 legislature also recognizes that, when violations lead to destruction
16 of fish life and habitat, such actions must be expeditiously
17 terminated, and that the violator must remediate the nonconforming
18 site. The legislature finds, however, that current law does not
19 adequately provide the department the range of regulatory tools needed

1 to achieve these goals. While there are appropriate provisions under
2 RCW 77.15.300 for gross misdemeanors there are no provisions for
3 issuing orders to stop work and to remediate at nonconforming sites.
4 Furthermore, the legislature finds that the current law to levy civil
5 penalties, found at RCW 77.55.140, has proven to be cumbersome and
6 ineffectual in dealing with minor offenses. Therefore, the legislature
7 seeks to provide the department with an increased range of enforcement
8 authorities by directing that minor offenses be efficiently dealt with
9 as civil infractions, and that orders may be issued to promptly stop
10 work and provide for remediation at sites where violations of the
11 hydraulic code are leading to the destruction of fish life and habitat.

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

14 (1) If any person or government agency fails to follow the
15 requirements of obtaining hydraulic project approval under this chapter
16 or fails to carry out any of the requirements or conditions of a
17 hydraulic project approval issued under this chapter, the department
18 may issue an order to that person or government agency. The order may
19 require the person or government agency to stop work on any or all of
20 the activities subject to the hydraulic project approval, to correct or
21 to restore the nonconforming site, or to both stop work and to correct
22 or to restore the nonconforming site. Within twenty days of service of
23 such an order or as provided by rule of the department extending such
24 time, the person may file a written petition with the department
25 appealing the order, and this petition shall be treated as an
26 application for an adjudicative proceeding under chapter 34.05 RCW. In
27 the event of an appeal, a person or government agency may seek interim
28 relief from an order under this section as provided in chapter 34.05
29 RCW.

30 (2) The department may adopt rules to designate that certain
31 violations of the terms or conditions of hydraulic project approval are
32 an infraction to be punished as provided by RCW 77.15.160. Any
33 punishment under chapter 77.15 RCW shall be supplemental to the remedy
34 provided by subsection (1) of this section.

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

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

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

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

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

9 (c) Violates any stop work or correction order issued under section
10 2 of this act; or

11 (d) Violates any rule governing hydraulic project activities
12 addressed in a pamphlet that serves as a hydraulic project approval.

13 (2) Unlawfully undertaking hydraulic project activities is a gross
14 misdemeanor.

15 NEW SECTION. Sec. 4. RCW 77.55.140 (Hydraulic projects--Civil
16 penalty) and 2000 c 107 s 19, 1993 sp.s. c 2 s 35, 1988 c 36 s 35, &
17 1986 c 173 s 6 are each repealed.

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