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**HOUSE BILL 1739**

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**State of Washington****54th Legislature****1995 Regular Session**

**By** Representatives Hymes, L. Thomas, Mielke, Fuhrman, G. Fisher, Grant and Reams

Read first time 02/07/95. Referred to Committee on Government Operations.

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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