
SENATE BILL 5221

State of Washington

54th Legislature

1995 Regular Session

By Senators McCaslin, Hargrove and Snyder

Read first time 01/16/95. Referred to Committee on Ecology & Parks.

1 AN ACT Relating to hydraulic project approval authority of the
2 department of fish and wildlife; and amending RCW 75.20.100 and
3 75.20.103.

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

5 **Sec. 1.** RCW 75.20.100 and 1993 sp.s. c 2 s 30 are each amended to
6 read as follows:

7 In the event that any person or government agency desires to
8 construct any form of hydraulic project or perform other work that will
9 use, divert, obstruct, or change the natural flow or bed of any of the
10 salt or fresh waters of the state, such person or government agency
11 shall, before commencing construction or work thereon and to ensure the
12 proper protection of fish life, secure the written approval of the
13 department as to the adequacy of the means proposed for the protection
14 of fish life. The hydraulic project approval authority of the
15 department shall be limited to construction or other work that occurs
16 at or below the mean higher high water line in salt water and estuaries
17 or at or below the ordinary high water line in fresh water. The
18 department shall neither deny nor condition a hydraulic project
19 approval on the basis of human or animal actions or environmental

1 conditions that occur above the higher high water line in salt water
2 and estuaries or above the ordinary high water line in fresh water.
3 This approval shall not be unreasonably withheld. Except as provided
4 in RCW 75.20.1001 (~~and 75.20.1002~~), the department shall grant or
5 deny approval within forty-five calendar days of the receipt of a
6 complete application and notice of compliance with any applicable
7 requirements of the state environmental policy act, made in the manner
8 prescribed in this section. The applicant may document receipt of
9 application by filing in person or by registered mail. A complete
10 application for approval shall contain general plans for the overall
11 project, complete plans and specifications of the proposed construction
12 or work within the mean higher high water line in salt water or within
13 the ordinary high water line in fresh water, and complete plans and
14 specifications for the proper protection of fish life. The forty-five
15 day requirement shall be suspended if: (1) After ten working days of
16 receipt of the application, the applicant remains unavailable or unable
17 to arrange for a timely field evaluation of the proposed project; (2)
18 the site is physically inaccessible for inspection; or (3) the
19 applicant requests delay. Immediately upon determination that the
20 forty-five day period is suspended, the department shall notify the
21 applicant in writing of the reasons for the delay. Approval is valid
22 for a period of up to five years from date of issuance. The permittee
23 must demonstrate substantial progress on construction of that portion
24 of the project relating to the approval within two years of the date of
25 issuance. If the department denies approval, the department shall
26 provide the applicant, in writing, a statement of the specific reasons
27 why and how the proposed project would adversely affect fish life.
28 Protection of fish life shall be the only ground upon which approval
29 may be denied or conditioned. Chapter 34.05 RCW applies to any denial
30 of project approval, conditional approval, or requirements for project
31 modification upon which approval may be contingent. If any person or
32 government agency commences construction on any hydraulic works or
33 projects subject to this section without first having obtained written
34 approval of the department as to the adequacy of the means proposed for
35 the protection of fish life, or if any person or government agency
36 fails to follow or carry out any of the requirements or conditions as
37 are made a part of such approval, the person or director of the agency
38 is guilty of a gross misdemeanor. If any such person or government
39 agency is convicted of violating any of the provisions of this section

1 and continues construction on any such works or projects without fully
2 complying with the provisions hereof, such works or projects are hereby
3 declared a public nuisance and shall be subject to abatement as such.

4 For the purposes of this section and RCW 75.20.103, "bed" shall
5 mean the land below the ordinary high water lines of state waters.
6 This definition shall not include irrigation ditches, canals, storm
7 water run-off devices, or other artificial watercourses except where
8 they exist in a natural watercourse that has been altered by man.

9 The phrase "to construct any form of hydraulic project or perform
10 other work" shall not include the act of driving across an established
11 ford. Driving across streams or on wetted stream beds at areas other
12 than established fords requires approval. Work within the ordinary
13 high water line of state waters to construct or repair a ford or
14 crossing requires approval.

15 In case of an emergency arising from weather or stream flow
16 conditions or other natural conditions, the department, through its
17 authorized representatives, shall issue immediately upon request oral
18 approval for removing any obstructions, repairing existing structures,
19 restoring stream banks, or to protect property threatened by the stream
20 or a change in the stream flow without the necessity of obtaining a
21 written approval prior to commencing work. Conditions of an oral
22 approval shall be reduced to writing within thirty days and complied
23 with as provided for in this section. Oral approval shall be granted
24 immediately upon request, for a stream crossing during an emergency
25 situation.

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

34 **Sec. 2.** RCW 75.20.103 and 1993 sp.s. c 2 s 32 are each amended to
35 read as follows:

36 In the event that any person or government agency desires to
37 construct any form of hydraulic project or other work that diverts
38 water for agricultural irrigation or stock watering purposes, or when

1 such hydraulic project or other work is associated with streambank
2 stabilization to protect farm and agricultural land as defined in RCW
3 84.34.020, and when such diversion or streambank stabilization will
4 use, divert, obstruct, or change the natural flow or bed of any river
5 or stream or will utilize any waters of the state or materials from the
6 stream beds, the person or government agency shall, before commencing
7 construction or work thereon and to ensure the proper protection of
8 fish life, secure a written approval from the department as to the
9 adequacy of the means proposed for the protection of fish life. The
10 hydraulic project approval authority of the department shall be limited
11 to construction or other work that occurs at or below the mean higher
12 high water line in salt water and estuaries or at or below the ordinary
13 high water line in fresh water. The department shall neither deny nor
14 condition a hydraulic project approval on the basis of human or animal
15 actions or environmental conditions that occur above the higher high
16 water line in salt water and estuaries or above the ordinary high water
17 line in fresh water. This approval shall not be unreasonably withheld.
18 Except as provided in RCW 75.20.1001 (~~and 75.20.1002~~), 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 applicant may document
23 receipt of application by filing in person or by registered mail. A
24 complete application for an approval shall contain general plans for
25 the overall project, complete plans and specifications of the proposed
26 construction or work within ordinary high water line, and complete
27 plans and specifications for the proper protection of fish life. The
28 forty-five day requirement shall be suspended if: (1) After ten
29 working days of receipt of the application, the applicant remains
30 unavailable or unable to arrange for a timely field evaluation of the
31 proposed project; (2) the site is physically inaccessible for
32 inspection; or (3) the applicant requests delay.

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

36 An approval shall remain in effect without need for periodic
37 renewal for projects that divert water for agricultural irrigation or
38 stock watering purposes and that involve seasonal construction or other
39 work. Approval for streambank stabilization projects shall remain in

1 effect without need for periodic renewal if the problem causing the
2 need for the streambank stabilization occurs on an annual or more
3 frequent basis. The permittee must notify the appropriate agency
4 before commencing the construction or other work within the area
5 covered by the approval.

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

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

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

31 If any person or government agency commences construction on any
32 hydraulic works or projects subject to this section without first
33 having obtained written approval of the department as to the adequacy
34 of the means proposed for the protection of fish life, or if any person
35 or government agency fails to follow or carry out any of the
36 requirements or conditions as are made a part of such approval, the
37 person or director of the agency is guilty of a gross misdemeanor. If
38 any such person or government agency is convicted of violating any of
39 the provisions of this section and continues construction on any such

1 works or projects without fully complying with the provisions hereof,
2 such works or projects are hereby declared a public nuisance and shall
3 be subject to abatement as such.

4 In case of an emergency arising from weather or stream flow
5 conditions or other natural conditions, the department, through its
6 authorized representatives, shall issue immediately upon request oral
7 approval for removing any obstructions, repairing existing structures,
8 restoring stream banks, or to protect property threatened by the stream
9 or a change in the stream flow without the necessity of obtaining a
10 written approval prior to commencing work. Conditions of an oral
11 approval shall be reduced to writing within thirty days and complied
12 with as provided for in this section.

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

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