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HOUSE BILL 2739

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State of Washington                      59th Legislature                      2006 Regular Session

By Representatives Orcutt, Blake, Kretz and B. Sullivan

Read first time 01/12/2006.                      Referred to Committee on Natural Resources, Ecology & Parks.

1            AN ACT Relating to integrating the forest practices act and  
2 hydraulic project approvals by authorizing the department of natural  
3 resources to approve certain hydraulic projects; amending RCW  
4 77.55.021, 76.09.050, and 76.09.030; and adding a new section to  
5 chapter 77.55 RCW.

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

7            **Sec. 1.** RCW 77.55.021 and 2005 c 146 s 201 are each amended to  
8 read as follows:

9            (1) Except as provided in RCW 77.55.031, 77.55.051, and 77.55.041,  
10 in the event that any person or government agency desires to undertake  
11 a hydraulic project, the person or government agency shall, before  
12 commencing work thereon, secure the approval of the department for all  
13 projects not falling within the scope of section 2 of this act, or the  
14 department of natural resources if the project falls within the scope  
15 of section 2 of this act, in the form of a permit as to the adequacy of  
16 the means proposed for the protection of fish life.

17            (2) A complete written application for a permit may be submitted in  
18 person or by registered mail and must contain the following:

19            (a) General plans for the overall project;

1 (b) Complete plans and specifications of the proposed construction  
2 or work within the mean higher high water line in saltwater or within  
3 the ordinary high water line in freshwater;

4 (c) Complete plans and specifications for the proper protection of  
5 fish life; and

6 (d) Notice of compliance with any applicable requirements of the  
7 state environmental policy act, unless otherwise provided for in this  
8 chapter.

9 (3)(a) Protection of fish life is the only ground upon which  
10 approval of a permit may be denied or conditioned. Approval of a  
11 permit may not be unreasonably withheld or unreasonably conditioned.  
12 Except as provided in this subsection and subsections (8), (10), and  
13 (11) of this section, the department has forty-five calendar days upon  
14 receipt of a complete application to grant or deny approval of a  
15 permit. The forty-five day requirement is suspended if:

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

19 (ii) The site is physically inaccessible for inspection;

20 (iii) The applicant requests a delay; or

21 (iv) The department is issuing a permit for a storm water discharge  
22 and is complying with the requirements of RCW 77.55.161(3)(b).

23 (b) Immediately upon determination that the forty-five day period  
24 is suspended, the department shall notify the applicant in writing of  
25 the reasons for the delay.

26 (c) The period of forty-five calendar days may be extended if the  
27 permit is part of a multiagency permit streamlining effort and all  
28 participating permitting agencies and the permit applicant agree to an  
29 extended timeline longer than forty-five calendar days.

30 (4) If the department denies approval of a permit, the department  
31 shall provide the applicant a written statement of the specific reasons  
32 why and how the proposed project would adversely affect fish life.  
33 Issuance, denial, conditioning, or modification of a permit shall be  
34 appealable to the department or the board as specified in RCW 77.55.301  
35 within thirty days of the notice of decision, or as specified in  
36 section 2 of this act if the project falls within the scope of section  
37 2 of this act.

1 (5)(a) The permittee must demonstrate substantial progress on  
2 construction of that portion of the project relating to the permit  
3 within two years of the date of issuance.

4 (b) Approval of a permit is valid for a period of up to five years  
5 from the date of issuance, except as provided in (c) of this subsection  
6 and in RCW 77.55.151.

7 (c) A permit remains in effect without need for periodic renewal  
8 for hydraulic projects that divert water for agricultural irrigation or  
9 stock watering purposes and that involve seasonal construction or other  
10 work. A permit for streambank stabilization projects to protect farm  
11 and agricultural land as defined in RCW 84.34.020 remains in effect  
12 without need for periodic renewal if the problem causing the need for  
13 the streambank stabilization occurs on an annual or more frequent  
14 basis. The permittee must notify the appropriate agency before  
15 commencing the construction or other work within the area covered by  
16 the permit.

17 (6) The department may, after consultation with the permittee,  
18 modify a permit due to changed conditions. The modification becomes  
19 effective unless appealed to the department or the board as specified  
20 in RCW 77.55.301 within thirty days from the notice of the proposed  
21 modification. For hydraulic projects that divert water for  
22 agricultural irrigation or stock watering purposes, or when the  
23 hydraulic project or other work is associated with streambank  
24 stabilization to protect farm and agricultural land as defined in RCW  
25 84.34.020, the burden is on the department to show that changed  
26 conditions warrant the modification in order to protect fish life.

27 (7) A permittee may request modification of a permit due to changed  
28 conditions. The request must be processed within forty-five calendar  
29 days of receipt of the written request. A decision by the department  
30 may be appealed to the board within thirty days of the notice of the  
31 decision. For hydraulic projects that divert water for agricultural  
32 irrigation or stock watering purposes, or when the hydraulic project or  
33 other work is associated with streambank stabilization to protect farm  
34 and agricultural land as defined in RCW 84.34.020, the burden is on the  
35 permittee to show that changed conditions warrant the requested  
36 modification and that such a modification will not impair fish life.

37 (8) The department or the county legislative authority may declare  
38 and continue an emergency. The county legislative authority shall

1 immediately notify the department if it declares an emergency under  
2 this subsection. The department, through its authorized  
3 representatives, shall issue immediately, upon request, oral approval  
4 for a stream crossing, or work to remove any obstructions, repair  
5 existing structures, restore streambanks, protect fish life, or protect  
6 property threatened by the stream or a change in the stream flow  
7 without the necessity of obtaining a written permit prior to commencing  
8 work. Conditions of the emergency oral permit must be established by  
9 the department and reduced to writing within thirty days and complied  
10 with as provided for in this chapter. The department may not require  
11 the provisions of the state environmental policy act, chapter 43.21C  
12 RCW, to be met as a condition of issuing a permit under this  
13 subsection.

14 (9) All state and local agencies with authority under this chapter  
15 to issue permits or other authorizations in connection with emergency  
16 water withdrawals and facilities authorized under RCW 43.83B.410 shall  
17 expedite the processing of such permits or authorizations in keeping  
18 with the emergency nature of such requests and shall provide a decision  
19 to the applicant within fifteen calendar days of the date of  
20 application.

21 (10) The department or the county legislative authority may  
22 determine an imminent danger exists. The county legislative authority  
23 shall notify the department, in writing, if it determines that an  
24 imminent danger exists. In cases of imminent danger, the department  
25 shall issue an expedited written permit, upon request, for work to  
26 remove any obstructions, repair existing structures, restore banks,  
27 protect fish resources, or protect property. Expedited permit requests  
28 require a complete written application as provided in subsection (2) of  
29 this section and must be issued within fifteen calendar days of the  
30 receipt of a complete written application. Approval of an expedited  
31 permit is valid for up to sixty days from the date of issuance. The  
32 department may not require the provisions of the state environmental  
33 policy act, chapter 43.21C RCW, to be met as a condition of issuing a  
34 permit under this subsection.

35 (11) The department may issue an expedited written permit in those  
36 instances where normal permit processing would result in significant  
37 hardship for the applicant or unacceptable damage to the environment.  
38 Expedited permit requests require a complete written application as

1 provided in subsection (2) of this section and must be issued within  
2 fifteen calendar days of the receipt of a complete written application.  
3 Approval of an expedited permit is valid for up to sixty days from the  
4 date of issuance. The department may not require the provisions of the  
5 state environmental policy act, chapter 43.21C RCW, to be met as a  
6 condition of issuing a permit under this subsection.

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

9 (1) The department of natural resources is the lead agency in  
10 approving hydraulic projects under this chapter if the project is a  
11 necessary element of a forest practices application submitted pursuant  
12 to RCW 76.09.060. The department of natural resources must follow the  
13 applicable processes, standards, rules, and requirements provided by  
14 this chapter for the department of fish and wildlife when reviewing,  
15 conditioning, and approving hydraulic projects.

16 (2) The department of natural resources may consult with employees  
17 of the department of fish and wildlife or fund a biologist employed by  
18 the department of fish and wildlife. However, the department of  
19 natural resources shall maintain both the final decision over project  
20 applications and the timeline for reaching a final decision.

21 (3) The forest practices appeals board created in RCW 76.09.210 has  
22 exclusive jurisdiction to hear appeals arising from the approval,  
23 denial, conditioning, or modification of hydraulic project approvals  
24 made by the department of natural resources under this section.

25 **Sec. 3.** RCW 76.09.050 and 2005 c 146 s 1003 are each amended to  
26 read as follows:

27 (1) The board shall establish by rule which forest practices shall  
28 be included within each of the following classes:

29 Class I: Minimal or specific forest practices that have no direct  
30 potential for damaging a public resource and that may be conducted  
31 without submitting an application or a notification except that when  
32 the regulating authority is transferred to a local governmental entity,  
33 those Class I forest practices that involve timber harvesting or road  
34 construction within "urban growth areas," designated pursuant to  
35 chapter 36.70A RCW, are processed as Class IV forest practices, but are  
36 not subject to environmental review under chapter 43.21C RCW;

1 Class II: Forest practices which have a less than ordinary  
2 potential for damaging a public resource that may be conducted without  
3 submitting an application and may begin five calendar days, or such  
4 lesser time as the department may determine, after written notification  
5 by the operator, in the manner, content, and form as prescribed by the  
6 department, is received by the department. However, the work may not  
7 begin until all forest practice fees required under RCW 76.09.065 have  
8 been received by the department. Class II shall not include forest  
9 practices:

10 (a) On lands platted after January 1, 1960, as provided in chapter  
11 58.17 RCW or on lands that have or are being converted to another use;

12 (b) Which require approvals by the department under the provisions  
13 of ~~((the hydraulics act,))~~ RCW 77.55.021 and section 2 of this act;

14 (c) Within "shorelines of the state" as defined in RCW 90.58.030;

15 (d) Excluded from Class II by the board; or

16 (e) Including timber harvesting or road construction within "urban  
17 growth areas," designated pursuant to chapter 36.70A RCW, which are  
18 Class IV;

19 Class III: Forest practices other than those contained in Class I,  
20 II, or IV. A Class III application must be approved or disapproved by  
21 the department within thirty calendar days from the date the department  
22 receives the application. However, the applicant may not begin work on  
23 that forest practice until all forest practice fees required under RCW  
24 76.09.065 have been received by the department;

25 Class IV: Forest practices other than those contained in Class I  
26 or II: (a) On lands platted after January 1, 1960, as provided in  
27 chapter 58.17 RCW, (b) on lands that have or are being converted to  
28 another use, (c) on lands which, pursuant to RCW 76.09.070 as now or  
29 hereafter amended, are not to be reforested because of the likelihood  
30 of future conversion to urban development, (d) involving timber  
31 harvesting or road construction on lands that are contained within  
32 "urban growth areas," designated pursuant to chapter 36.70A RCW, except  
33 where the forest landowner provides: (i) A written statement of intent  
34 signed by the forest landowner not to convert to a use other than  
35 commercial forest product operations for ten years, accompanied by  
36 either a written forest management plan acceptable to the department or  
37 documentation that the land is enrolled under the provisions of chapter  
38 84.33 RCW; or (ii) a conversion option harvest plan approved by the

1 local governmental entity and submitted to the department as part of  
2 the application, and/or (e) which have a potential for a substantial  
3 impact on the environment and therefore require an evaluation by the  
4 department as to whether or not a detailed statement must be prepared  
5 pursuant to the state environmental policy act, chapter 43.21C RCW.  
6 Such evaluation shall be made within ten days from the date the  
7 department receives the application: PROVIDED, That nothing herein  
8 shall be construed to prevent any local or regional governmental entity  
9 from determining that a detailed statement must be prepared for an  
10 action pursuant to a Class IV forest practice taken by that  
11 governmental entity concerning the land on which forest practices will  
12 be conducted. A Class IV application must be approved or disapproved  
13 by the department within thirty calendar days from the date the  
14 department receives the application, unless the department determines  
15 that a detailed statement must be made, in which case the application  
16 must be approved or disapproved by the department within sixty calendar  
17 days from the date the department receives the application, unless the  
18 commissioner of public lands, through the promulgation of a formal  
19 order, determines that the process cannot be completed within such  
20 period. However, the applicant may not begin work on that forest  
21 practice until all forest practice fees required under RCW 76.09.065  
22 have been received by the department.

23 Forest practices under Classes I, II, and III are exempt from the  
24 requirements for preparation of a detailed statement under the state  
25 environmental policy act.

26 (2) Except for those forest practices being regulated by local  
27 governmental entities as provided elsewhere in this chapter, no Class  
28 II, Class III, or Class IV forest practice shall be commenced or  
29 continued after January 1, 1975, unless the department has received a  
30 notification with regard to a Class II forest practice or approved an  
31 application with regard to a Class III or Class IV forest practice  
32 containing all information required by RCW 76.09.060 as now or  
33 hereafter amended. However, in the event forest practices regulations  
34 necessary for the scheduled implementation of this chapter and RCW  
35 90.48.420 have not been adopted in time to meet such schedules, the  
36 department shall have the authority to regulate forest practices and  
37 approve applications on such terms and conditions consistent with this

1 chapter and RCW 90.48.420 and the purposes and policies of RCW  
2 76.09.010 until applicable forest practices regulations are in effect.

3 (3) Except for those forest practices being regulated by local  
4 governmental entities as provided elsewhere in this chapter, if a  
5 notification or application is delivered in person to the department by  
6 the operator or the operator's agent, the department shall immediately  
7 provide a dated receipt thereof. In all other cases, the department  
8 shall immediately mail a dated receipt to the operator.

9 (4) Except for those forest practices being regulated by local  
10 governmental entities as provided elsewhere in this chapter, forest  
11 practices shall be conducted in accordance with the forest practices  
12 regulations, orders and directives as authorized by this chapter or the  
13 forest practices regulations, and the terms and conditions of any  
14 approved applications.

15 (5) Except for those forest practices being regulated by local  
16 governmental entities as provided elsewhere in this chapter, the  
17 department of natural resources shall notify the applicant in writing  
18 of either its approval of the application or its disapproval of the  
19 application and the specific manner in which the application fails to  
20 comply with the provisions of this section or with the forest practices  
21 regulations. Except as provided otherwise in this section, if the  
22 department fails to either approve or disapprove an application or any  
23 portion thereof within the applicable time limit, the application shall  
24 be deemed approved and the operation may be commenced: PROVIDED, That  
25 this provision shall not apply to applications which are neither  
26 approved nor disapproved pursuant to the provisions of subsection (7)  
27 of this section: PROVIDED, FURTHER, That if seasonal field conditions  
28 prevent the department from being able to properly evaluate the  
29 application, the department may issue an approval conditional upon  
30 further review within sixty days: PROVIDED, FURTHER, That the  
31 department shall have until April 1, 1975, to approve or disapprove an  
32 application involving forest practices allowed to continue to April 1,  
33 1975, under the provisions of subsection (2) of this section. Upon  
34 receipt of any notification or any satisfactorily completed application  
35 the department shall in any event no later than two business days after  
36 such receipt transmit a copy to the departments of ecology and fish and  
37 wildlife, and to the county, city, or town in whose jurisdiction the

1 forest practice is to be commenced. Any comments by such agencies  
2 shall be directed to the department of natural resources.

3 (6) For those forest practices regulated by the board and the  
4 department, if the county, city, or town believes that an application  
5 is inconsistent with this chapter, the forest practices regulations, or  
6 any local authority consistent with RCW 76.09.240 as now or hereafter  
7 amended, it may so notify the department and the applicant, specifying  
8 its objections.

9 (7) For those forest practices regulated by the board and the  
10 department, the department shall not approve portions of applications  
11 to which a county, city, or town objects if:

12 (a) The department receives written notice from the county, city,  
13 or town of such objections within fourteen business days from the time  
14 of transmittal of the application to the county, city, or town, or one  
15 day before the department acts on the application, whichever is later;  
16 and

17 (b) The objections relate to lands either:

18 (i) Platted after January 1, 1960, as provided in chapter 58.17  
19 RCW; or

20 (ii) On lands that have or are being converted to another use.

21 The department shall either disapprove those portions of such  
22 application or appeal the county, city, or town objections to the  
23 appeals board. If the objections related to subparagraphs (b)(i) and  
24 (ii) of this subsection are based on local authority consistent with  
25 RCW 76.09.240 as now or hereafter amended, the department shall  
26 disapprove the application until such time as the county, city, or town  
27 consents to its approval or such disapproval is reversed on appeal.  
28 The applicant shall be a party to all department appeals of county,  
29 city, or town objections. Unless the county, city, or town either  
30 consents or has waived its rights under this subsection, the department  
31 shall not approve portions of an application affecting such lands until  
32 the minimum time for county, city, or town objections has expired.

33 (8) For those forest practices regulated by the board and the  
34 department, in addition to any rights under the above paragraph, the  
35 county, city, or town may appeal any department approval of an  
36 application with respect to any lands within its jurisdiction. The  
37 appeals board may suspend the department's approval in whole or in part

1 pending such appeal where there exists potential for immediate and  
2 material damage to a public resource.

3 (9) For those forest practices regulated by the board and the  
4 department, appeals under this section shall be made to the appeals  
5 board in the manner and time provided in RCW 76.09.220(8). In such  
6 appeals there shall be no presumption of correctness of either the  
7 county, city, or town or the department position.

8 (10) For those forest practices regulated by the board and the  
9 department, the department shall, within four business days notify the  
10 county, city, or town of all notifications, approvals, and disapprovals  
11 of an application affecting lands within the county, city, or town,  
12 except to the extent the county, city, or town has waived its right to  
13 such notice.

14 (11) For those forest practices regulated by the board and the  
15 department, a county, city, or town may waive in whole or in part its  
16 rights under this section, and may withdraw or modify any such waiver,  
17 at any time by written notice to the department.

18 (12) Notwithstanding subsections (2) through (5) of this section,  
19 forest practices applications or notifications are not required for  
20 exotic insect and disease control operations conducted in accordance  
21 with RCW 76.09.060(8) where eradication can reasonably be expected.

22 **Sec. 4.** RCW 76.09.030 and 2003 c 39 s 32 are each amended to read  
23 as follows:

24 (1) There is hereby created the forest practices board of the state  
25 of Washington as an agency of state government consisting of members as  
26 follows:

27 (a) The commissioner of public lands or the commissioner's  
28 designee;

29 (b) The director of the department of community, trade, and  
30 economic development or the director's designee;

31 (c) The director of the department of agriculture or the director's  
32 designee;

33 (d) The director of the department of ecology or the director's  
34 designee;

35 (e) The director of the department of fish and wildlife or the  
36 director's designee;

1 (f) An elected member of a county legislative authority appointed  
2 by the governor: PROVIDED, That such member's service on the board  
3 shall be conditioned on the member's continued service as an elected  
4 county official; and

5 (g) Six members of the general public appointed by the governor,  
6 one of whom shall be an owner of not more than five hundred acres of  
7 forest land, and one of whom shall be an independent logging  
8 contractor.

9 ~~(2) ((The director of the department of fish and wildlife's service  
10 on the board may be terminated two years after August 18, 1999, if the  
11 legislature finds that after two years the department has not made  
12 substantial progress toward integrating the laws, rules, and programs  
13 governing forest practices, chapter 76.09 RCW, and the laws, rules, and  
14 programs governing hydraulic projects, chapter 77.55 RCW. Such a  
15 finding shall be based solely on whether the department of fish and  
16 wildlife makes substantial progress as defined in this subsection, and  
17 will not be based on other actions taken as a member of the board.  
18 Substantial progress shall include recommendations to the legislature  
19 for closer integration of the existing rule-making authorities of the  
20 board and the department of fish and wildlife, and closer integration  
21 of the forest practices and hydraulics permitting processes, including  
22 exploring the potential for a consolidated permitting process. These  
23 recommendations shall be designed to resolve problems currently  
24 associated with the existing dual regulatory and permitting processes.~~

25 ~~(3))~~ The members of the initial board appointed by the governor  
26 shall be appointed so that the term of one member shall expire December  
27 31, 1975, the term of one member shall expire December 31, 1976, the  
28 term of one member shall expire December 31, 1977, the terms of two  
29 members shall expire December 31, 1978, and the terms of two members  
30 shall expire December 31, 1979. Thereafter, each member shall be  
31 appointed for a term of four years. Vacancies on the board shall be  
32 filled in the same manner as the original appointments. Each member of  
33 the board shall continue in office until his or her successor is  
34 appointed and qualified. The commissioner of public lands or the  
35 commissioner's designee shall be the ~~((chairman))~~ chair of the board.

36 ~~((4))~~ (3) The board shall meet at such times and places as shall  
37 be designated by the ~~((chairman))~~ chair or upon the written request of

1 the majority of the board. The principal office of the board shall be  
2 at the state capital.

3 ~~((+5))~~ (4) Members of the board, except public employees and  
4 elected officials, shall be compensated in accordance with RCW  
5 43.03.250. Each member shall be entitled to reimbursement for travel  
6 expenses incurred in the performance of their duties as provided in RCW  
7 43.03.050 and 43.03.060.

8 ~~((+6))~~ (5) The board may employ such clerical help and staff  
9 pursuant to chapter 41.06 RCW as is necessary to carry out its duties.

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