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HOUSE BILL 1641

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By Representatives R. King, Schmidt, Basich, Padden, Zellinsky, Fuhrman, Wilson, Orr, Hochstatter and Day.

Read first time February 5, 1991. Referred to Committee on Fisheries & Wildlife.

1 AN ACT Relating to the protection of the food fish resource;  
2 amending RCW 75.20.100 and 75.20.130; adding new sections to chapter  
3 75.20 RCW; and prescribing penalties.

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

5 **Sec. 1.** RCW 75.20.100 and 1988 c 272 s 1 are each amended to read  
6 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 of fisheries or the department of wildlife as to the  
14 adequacy of the means proposed for the protection of fish life except  
15 as provided in section 2 of this 1991 act. This approval shall not be

1 unreasonably withheld. The department of fisheries or the department  
2 of wildlife shall grant or deny approval within forty-five calendar  
3 days of the receipt of a complete application and notice of compliance  
4 with any applicable requirements of the state environmental policy act,  
5 made in the manner prescribed in this section. The applicant may  
6 document receipt of application by filing in person or by registered  
7 mail. A complete application for approval shall contain general plans  
8 for the overall project, complete plans and specifications of the  
9 proposed construction or work within the mean higher high water line in  
10 salt water or within the ordinary high water line in fresh water, and  
11 complete plans and specifications for the proper protection of fish  
12 life. The forty-five day requirement shall be suspended if (1) after  
13 ten working days of receipt of the application, the applicant remains  
14 unavailable or unable to arrange for a timely field evaluation of the  
15 proposed project; (2) the site is physically inaccessible for  
16 inspection; or (3) the applicant requests delay. Immediately upon  
17 determination that the forty-five day period is suspended, the  
18 department of fisheries or the department of wildlife shall notify the  
19 applicant in writing of the reasons for the delay. Approval is valid  
20 for a period of up to five years from date of issuance. The permittee  
21 must demonstrate substantial progress on construction of that portion  
22 of the project relating to the approval within two years of the date of  
23 issuance. If either the department of fisheries or the department of  
24 wildlife denies approval, that department shall provide the applicant,  
25 in writing, a statement of the specific reasons why and how the  
26 proposed project would adversely affect fish life. Protection of fish  
27 life shall be the only ground upon which approval may be denied or  
28 conditioned. Chapter 34.05 RCW applies to any denial of project  
29 approval, conditional approval, or requirements for project  
30 modification upon which approval may be contingent. If any person or

1 government agency commences construction on any hydraulic works or  
2 projects subject to this section without first having obtained written  
3 approval of the department of fisheries or the department of wildlife  
4 as to the adequacy of the means proposed for the protection of fish  
5 life, or if any person or government agency fails to follow or carry  
6 out any of the requirements or conditions as are made a part of such  
7 approval, the person or director of the agency is guilty of a gross  
8 misdemeanor. If any such person or government agency is convicted of  
9 violating any of the provisions of this section and continues  
10 construction on any such works or projects without fully complying with  
11 the provisions hereof, such works or projects are hereby declared a  
12 public nuisance and shall be subject to abatement as such.

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

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

24 For each application, the department of fisheries and the  
25 department of wildlife shall mutually agree on whether the department  
26 of fisheries or the department of wildlife shall administer the  
27 provisions of this section, in order to avoid duplication of effort.  
28 The department designated to act shall cooperate with the other  
29 department in order to protect all species of fish life found at the  
30 project site. If the department of fisheries or the department of

1 wildlife receives an application concerning a site not in its  
2 jurisdiction, it shall transmit the application to the other department  
3 within three days and notify the applicant.

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

15 This section shall not apply to the construction of any form of  
16 hydraulic project or other work which diverts water for agricultural  
17 irrigation or stock watering purposes authorized under or recognized as  
18 being valid by the state's water codes, or when such hydraulic project  
19 or other work is associated with streambank stabilization to protect  
20 farm and agricultural land as defined in RCW 84.34.020. These  
21 irrigation or stock watering diversion and streambank stabilization  
22 projects shall be governed by RCW 75.20.103.

23 NEW SECTION. **Sec. 2.** A new section is added to chapter 75.20 RCW  
24 to read as follows:

25 (1) If a property owner or the owner's representative applies to  
26 the department of fisheries for approval for a hydraulic project  
27 conducted on his or her property and if that property is a single-  
28 family residence, the following conditions shall apply.

1 (a) The department of fisheries shall grant or deny approval within  
2 thirty calendar days of the receipt of a complete application, made in  
3 the manner prescribed in this section. The applicant may document  
4 receipt of application by filing in person or by registered mail. A  
5 complete application for approval shall contain general plans for the  
6 overall project, complete plans and specifications of the proposed  
7 construction or work within the mean higher high water line in salt  
8 water or within the ordinary high water line in fresh water, and  
9 complete plans and specifications for the proper protection of fish  
10 life.

11 (b) The thirty-day requirement shall be suspended if (i) after ten  
12 working days of receipt of the application, the applicant remains  
13 unavailable or unable to arrange for a timely field evaluation of the  
14 proposed project; (ii) the site is physically inaccessible for  
15 inspection; or (iii) the applicant requests a delay. Immediately upon  
16 determination that the thirty-day period is suspended, the department  
17 of fisheries shall notify the applicant in writing of the reasons for  
18 the delay.

19 (c) Approval is valid for a period of up to five years from date of  
20 issuance. The permittee shall demonstrate substantial progress on  
21 construction of that portion of the project relating to the approval  
22 within two years of the date approval was obtained. The department of  
23 fisheries shall not deny approval unless the department can provide the  
24 applicant, in writing, a statement of the specific reasons why and how  
25 the proposed project would adversely affect fish life and written  
26 scientific evidence that such adverse effect shall occur. The  
27 department of fisheries shall provide such statement and evidence to  
28 the applicant if approval is denied. Protection of fish life shall be  
29 the only ground upon which approval may be denied or conditioned.  
30 Chapter 34.05 RCW applies to any denial of project approval,

1 conditional approval, or requirements for project modification upon  
2 which approval may be contingent.

3 (d) If any person or government agency commences construction on  
4 any hydraulic works or projects subject to this section without first  
5 having obtained written approval of the department of fisheries as to  
6 the adequacy of the means proposed for the protection of fish life, or  
7 if any person or government agency fails to follow or carry out any of  
8 the requirements or conditions as are made a part of such approval, the  
9 person or director of the agency is guilty of a gross misdemeanor.

10 (e) If a person or government agency convicted of violating any of  
11 the provisions of this section continues construction on any works or  
12 projects without fully complying with this section, then the works or  
13 projects are a public nuisance and are subject to abatement.

14 (2) For the purposes of this section and RCW 75.20.103, "bed" means  
15 the land below the ordinary high water lines of state waters. This  
16 definition does not include irrigation ditches, canals, storm water  
17 run-off devices, or other artificial watercourses except where they  
18 exist in a natural watercourse that has been altered by humans.

19 (3) The phrase "to construct any form of hydraulic project or  
20 perform other work" does not include the act of driving across an  
21 established ford. Driving across streams or on wetted stream beds at  
22 areas other than established fords requires approval. Work within the  
23 ordinary high water line of state waters to construct or repair a ford  
24 or crossing requires approval.

25 (4) In case of an emergency arising from weather or stream flow  
26 conditions or other natural conditions, the department of fisheries,  
27 through its authorized representatives, shall issue immediately upon  
28 request oral approval to remove any obstructions, repair existing  
29 structures, restore stream banks, or to protect property threatened by  
30 the stream or a change in the stream flow without the necessity of

1 obtaining a written approval before commencing work. Conditions of an  
2 oral approval shall be reduced to writing within thirty days and  
3 complied with as provided for in this section. Oral approval for a  
4 stream crossing during an emergency situation shall be granted  
5 immediately upon request.

6 (5) This section shall not apply to the construction of any form of  
7 hydraulic project or other work that diverts water for agricultural  
8 irrigation or stock watering purposes authorized under or recognized as  
9 being valid by the state's water laws, or when the hydraulic project or  
10 other work is associated with streambank stabilization to protect farm  
11 and agricultural land as defined in RCW 84.34.020. Irrigation or stock  
12 watering diversion and streambank stabilization projects shall be  
13 governed by RCW 75.20.103.

14 NEW SECTION. **Sec. 3.** A new section is added to chapter 75.20 RCW  
15 to read as follows:

16 The director of fisheries shall establish an advisory committee to  
17 develop new and review existing technical provisions for hydraulic  
18 project permit conditions that would commonly apply to projects  
19 conducted on property that is a single-family residence. The advisory  
20 committee shall comprise, at a minimum, technical experts in the fields  
21 of bulkhead construction, fish biology, civil engineering, and  
22 hydrology. By October 1991, the committee shall make recommendations  
23 to the director on appropriate technical provisions. These  
24 recommendations shall be based on scientific evidence that demonstrates  
25 the association of project activities with impacts on fish life. The  
26 director shall adopt rules to implement these provisions. A field  
27 manual describing and illustrating these provisions shall be written  
28 and made available to field personnel of the department of fisheries.

1       **Sec. 4.** RCW 75.20.130 and 1989 c 175 s 160 are each amended to  
2 read as follows:

3       (1) There is hereby created within the environmental hearings  
4 office under RCW 43.21B.005 the hydraulic appeals board of the state of  
5 Washington.

6       (2) The hydraulic appeals board shall consist of three members:  
7 The director of the department of ecology or the director's designee,  
8 the director of the department of agriculture or the director's  
9 designee, and the director or the director's designee of the department  
10 whose action is appealed under subsection (6) of this section. A  
11 decision must be agreed to by at least two members of the board to be  
12 final.

13       (3) The board may adopt rules necessary for the conduct of its  
14 powers and duties or for transacting other official business.

15       (4) The board shall make findings of fact and prepare a written  
16 decision in each case decided by it, and that finding and decision  
17 shall be effective upon being signed by two or more board members and  
18 upon being filed at the hydraulic appeals board's principal office, and  
19 shall be open to public inspection at all reasonable times.

20       (5) The board has exclusive jurisdiction to hear appeals arising  
21 from the approval, denial, conditioning, or modification of a hydraulic  
22 approval issued by either the department of fisheries or the department  
23 of wildlife under the authority granted in RCW 75.20.103 or issued  
24 under section 2 of this 1991 act for the diversion of water for  
25 agricultural irrigation or stock watering purposes or when associated  
26 with streambank stabilization to protect farm and agricultural land as  
27 defined in RCW 84.34.020.

28       (6) (a) Any person aggrieved by the approval, denial, conditioning,  
29 or modification of a hydraulic approval pursuant to RCW 75.20.103 or  
30 issued under section 2 of this 1991 act may seek review from the board



1 by filing a request for the same within thirty days of notice of the  
2 approval, denial, conditioning, or modification of such approval.

3 (b) The review proceedings authorized in (a) of this subsection are  
4 subject to the provisions of chapter 34.05 RCW pertaining to procedures  
5 in adjudicative proceedings.