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SENATE BILL 5822

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State of Washington

58th Legislature

2003 Regular Session

By Senators Swecker, Doumit, Oke, Jacobsen and Hewitt

Read first time 02/13/2003. Referred to Committee on Parks, Fish & Wildlife.

1 AN ACT Relating to hydraulic project approval; and amending RCW  
2 77.55.100.

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

4 **Sec. 1.** RCW 77.55.100 and 2002 c 368 s 2 are each amended to read  
5 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 approval of the department  
12 as to the adequacy of the means proposed for the protection of fish  
13 life. This approval shall not be unreasonably withheld or unreasonably  
14 conditioned.

15 (2)(a) The department shall grant or deny approval of a standard  
16 permit within forty-five calendar days of the receipt of a complete  
17 application and notice of compliance with any applicable requirements  
18 of the state environmental policy act, made in the manner prescribed in

1 this section. The permit must contain provisions allowing for minor  
2 modifications to the plans and specifications without requiring  
3 reissuance of the permit.

4 (b) The applicant may document receipt of application by filing in  
5 person or by registered mail. A complete application for approval  
6 shall contain general plans for the overall project, complete plans and  
7 specifications of the proposed construction or work within the mean  
8 higher high water line in salt water or within the ordinary high water  
9 line in fresh water, and complete plans and specifications for the  
10 proper protection of fish life.

11 (c) The forty-five day requirement shall be suspended if:

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

15 (ii) The site is physically inaccessible for inspection; or

16 (iii) The applicant requests delay. Immediately upon determination  
17 that the forty-five day period is suspended, the department shall  
18 notify the applicant in writing of the reasons for the delay.

19 (d) For purposes of this section, "standard permit" means a written  
20 permit issued by the department when the conditions under subsections  
21 (3) and (5)(b) of this section are not met.

22 (3)(a) The department may issue an expedited written permit in  
23 those instances where normal permit processing would result in  
24 significant hardship for the applicant or unacceptable damage to the  
25 environment. In cases of imminent danger, the department shall issue  
26 an expedited written permit, upon request, for work to repair existing  
27 structures, move obstructions, restore banks, protect property, or  
28 protect fish resources. Expedited permit requests require a complete  
29 written application as provided in subsection (2)(b) of this section  
30 and shall be issued within fifteen calendar days of the receipt of a  
31 complete written application. Approval of an expedited permit is valid  
32 for up to sixty days from the date of issuance.

33 (b) For the purposes of this subsection, "imminent danger" means a  
34 threat by weather, water flow, or other natural conditions that is  
35 likely to occur within sixty days of a request for a permit  
36 application.

37 (c) The department may not require the provisions of the state

1 environmental policy act, chapter 43.21C RCW, to be met as a condition  
2 of issuing a permit under this subsection.

3 (d) The department or the county legislative authority may  
4 determine if an imminent danger exists. The county legislative  
5 authority shall notify the department, in writing, if it determines  
6 that an imminent danger exists.

7 (4) Approval of a standard permit is valid for a period of up to  
8 five years from date of issuance. The permittee must demonstrate  
9 substantial progress on construction of that portion of the project  
10 relating to the approval within two years of the date of issuance. If  
11 the department denies approval, the department shall provide the  
12 applicant, in writing, a statement of the specific reasons why and how  
13 the proposed project would adversely affect fish life. Protection of  
14 fish life shall be the only ground upon which approval may be denied or  
15 conditioned. Chapter 34.05 RCW applies to any denial of project  
16 approval, conditional approval, or requirements for project  
17 modification upon which approval may be contingent.

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

29 (b) For purposes of this section and RCW 77.55.110, "emergency"  
30 means an immediate threat to life, the public, property, or of  
31 environmental degradation.

32 (c) The department or the county legislative authority may declare  
33 and continue an emergency when one or more of the criteria under (b) of  
34 this subsection are met. The county legislative authority shall  
35 immediately notify the department if it declares an emergency under  
36 this subsection.

37 (6)(a) The department shall, at the request of a county, develop  
38 renewable five-year maintenance approval agreements, consistent with

1 comprehensive flood control management plans adopted under the  
2 authority of RCW 86.12.200, or other watershed plan approved by a  
3 county legislative authority, to allow for work on public and private  
4 property for bank stabilization, bridge repair, removal of sand bars  
5 and debris, channel maintenance, and other flood damage repair and  
6 reduction activity under agreed-upon conditions and times without  
7 obtaining permits for specific projects.

8 (b) The department shall, at the request of a county, city, or  
9 private party, develop a renewable five-year maintenance approval  
10 agreement or a hydraulic project approval mitigation agreement to allow  
11 for work on public and private property for bank stabilization, bridge  
12 repair, removal of sandbars and debris, channel maintenance, and other  
13 flood damage repair and reduction activity under reasonable agreed-upon  
14 conditions and times without obtaining permits for specific projects.

15 (7) 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 77.55.110.

23 A landscape management plan approved by the department and the  
24 department of natural resources under RCW 76.09.350(2), shall serve as  
25 a hydraulic project approval for the life of the plan if fish are  
26 selected as one of the public resources for coverage under such a plan.

27 (8) For the purposes of this section and RCW 77.55.110, "bed" means  
28 the land below the ordinary high water lines of state waters. This  
29 definition does not include irrigation ditches, canals, storm water  
30 run-off devices, or other artificial watercourses except where they  
31 exist in a natural watercourse that has been altered by man.

32 (9) The phrase "to construct any form of hydraulic project or  
33 perform other work" does not include the act of driving across an  
34 established ford. Driving across streams or on wetted stream beds at  
35 areas other than established fords requires approval. Work within the  
36 ordinary high water line of state waters to construct or repair a ford  
37 or crossing requires approval.

1        (10) For the purposes of this section, "sandbars" includes, but is  
2 not limited to, sand, gravel, rock, silt, and sediments.

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