
HOUSE BILL 2616

State of Washington 64th Legislature 2016 Regular Session

By Representatives Buys, Blake, Van Werven, Chandler, and Wilcox

Read first time 01/18/16. Referred to Committee on Environment.

1 AN ACT Relating to watershed management actions by watershed
2 improvement districts; amending RCW 39.34.190, 77.55.021, and
3 87.03.019; adding a new section to chapter 36.70A RCW; adding a new
4 section to chapter 43.21C RCW; adding a new section to chapter 90.48
5 RCW; and adding a new section to chapter 90.58 RCW.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 36.70A
8 RCW to read as follows:

9 Any county or city planning under this chapter shall allow a
10 watershed improvement district organized under Title 87 RCW to
11 perform watershed management actions as defined in RCW 87.03.019.

12 **Sec. 2.** RCW 39.34.190 and 2008 c 301 s 26 are each amended to
13 read as follows:

14 (1) The legislative authority of a city or county and the
15 governing body of any special purpose district enumerated in
16 subsection (2) of this section may authorize up to ten percent of its
17 water-related revenues to be expended in the implementation of
18 watershed management plan projects or activities that are in addition
19 to the county's, city's, or district's existing water-related
20 services or activities. Such limitation on expenditures shall not

1 apply to water-related revenues of a public utility district
2 organized according to Title 54 RCW or a watershed improvement
3 district organized according to Title 87 RCW. Water-related revenues
4 include rates, charges, and fees for the provision of services
5 relating to water supply, treatment, distribution, and management
6 generally, and those general revenues of the local government that
7 are expended for water management purposes. A local government may
8 not expend for this purpose any revenues that were authorized by
9 voter approval for other specified purposes or that are specifically
10 dedicated to the repayment of municipal bonds or other debt
11 instruments.

12 (2) The following special purpose districts may exercise the
13 authority provided by this section:

14 (a) Water districts, sewer districts, and water-sewer districts
15 organized under Title 57 RCW;

16 (b) Public utility districts organized under Title 54 RCW;

17 (c) Irrigation, reclamation, conservation, and similar districts
18 organized under Titles 87 and 89 RCW;

19 (d) Port districts organized under Title 53 RCW;

20 (e) Diking, drainage, and similar districts organized under Title
21 85 RCW;

22 (f) Flood control and similar districts organized under Title 86
23 RCW;

24 (g) Lake or beach management districts organized under chapter
25 36.61 RCW;

26 (h) Aquifer protection areas organized under chapter 36.36 RCW;
27 and

28 (i) Shellfish protection districts organized under chapter 90.72
29 RCW.

30 (3) The authority for expenditure of local government revenues
31 provided by this section shall be applicable broadly to the
32 implementation of watershed management plans addressing water supply,
33 water transmission, water quality treatment or protection, or any
34 other water-related purposes. Such plans include but are not limited
35 to plans developed under the following authorities:

36 (a) Watershed plans developed under chapter 90.82 RCW;

37 (b) Salmon recovery plans developed under chapter 77.85 RCW;

38 (c) Watershed management elements of comprehensive land use plans
39 developed under the growth management act, chapter 36.70A RCW;

1 (d) Watershed management elements of shoreline master programs
2 developed under the shoreline management act, chapter 90.58 RCW;

3 (e) Nonpoint pollution action plans developed under the Puget
4 Sound water quality management planning authorities of chapter 90.71
5 RCW and chapter 400-12 WAC;

6 (f) Other comprehensive management plans addressing watershed
7 health at a WRIA level or sub-WRIA basin drainage level;

8 (g) Coordinated water system plans under chapter 70.116 RCW and
9 similar regional plans for water supply; and

10 (h) Any combination of the foregoing plans in an integrated
11 watershed management plan.

12 (4) The authority provided by this section to expend revenues for
13 watershed management plan implementation shall be construed broadly
14 to include, but not be limited to:

15 (a) The coordination and oversight of plan implementation,
16 including funding a watershed management partnership for this
17 purpose;

18 (b) Technical support, monitoring, and data collection and
19 analysis;

20 (c) The design, development, construction, and operation of
21 projects included in the plan; and

22 (d) Conducting activities and programs included as elements in
23 the plan.

24 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.21C
25 RCW to read as follows:

26 Decisions pertaining to watershed management actions, as defined
27 in RCW 87.03.019, by a watershed improvement district organized under
28 Title 87 RCW are not subject to the requirements of RCW
29 43.21C.030(2)(c).

30 **Sec. 4.** RCW 77.55.021 and 2012 1st sp.s. c 1 s 102 are each
31 amended to read as follows:

32 (1) Except as provided in RCW 77.55.031, 77.55.051, 77.55.041,
33 and 77.55.361, in the event that any person or government agency
34 desires to undertake a hydraulic project, the person or government
35 agency shall, before commencing work thereon, secure the approval of
36 the department in the form of a permit as to the adequacy of the
37 means proposed for the protection of fish life.

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

3 (a) General plans for the overall project;

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

7 (c) Complete plans and specifications for the proper protection
8 of fish life;

9 (d) Notice of compliance with any applicable requirements of the
10 state environmental policy act, unless otherwise provided for in this
11 chapter; and

12 (e) Payment of all applicable application fees charged by the
13 department under RCW 77.55.321.

14 (3) The department may establish direct billing accounts or other
15 funds transfer methods with permit applicants to satisfy the fee
16 payment requirements of RCW 77.55.321.

17 (4) The department may accept complete, written applications as
18 provided in this section for multiple site permits and may issue
19 these permits. For multiple site permits, each specific location must
20 be identified.

21 (5) With the exception of emergency permits as provided in
22 subsection (12) of this section, applications for permits must be
23 submitted to the department's headquarters office in Olympia.
24 Requests for emergency permits as provided in subsection (12) of this
25 section may be made to the permitting biologist assigned to the
26 location in which the emergency occurs, to the department's regional
27 office in which the emergency occurs, or to the department's
28 headquarters office.

29 (6) Except as provided for emergency permits in subsection (12)
30 of this section, the department may not proceed with permit review
31 until all fees are paid in full as required in RCW 77.55.321.

32 (7)(a) Protection of fish life is the only ground upon which
33 approval of a permit may be denied or conditioned. Approval of a
34 permit may not be unreasonably withheld or unreasonably conditioned.

35 (b) Except as provided in this subsection and subsections (12)
36 through (14) (~~and~~), (16), and (17) of this section, the department
37 has forty-five calendar days upon receipt of a complete application
38 to grant or deny approval of a permit. The forty-five day requirement
39 is suspended if:

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

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

5 (iii) The applicant requests a delay; or

6 (iv) The department is issuing a permit for a storm water
7 discharge and is complying with the requirements of RCW
8 77.55.161(3)(b).

9 (c) Immediately upon determination that the forty-five day period
10 is suspended under (b) of this subsection, the department shall
11 notify the applicant in writing of the reasons for the delay.

12 (d) The period of forty-five calendar days may be extended if the
13 permit is part of a multiagency permit streamlining effort and all
14 participating permitting agencies and the permit applicant agree to
15 an extended timeline longer than forty-five calendar days.

16 (8) If the department denies approval of a permit, the department
17 shall provide the applicant a written statement of the specific
18 reasons why and how the proposed project would adversely affect fish
19 life.

20 (a) Except as provided in (b) of this subsection, issuance,
21 denial, conditioning, or modification of a permit shall be appealable
22 to the board within thirty days from the date of receipt of the
23 decision as provided in RCW 43.21B.230.

24 (b) Issuance, denial, conditioning, or modification of a permit
25 may be informally appealed to the department within thirty days from
26 the date of receipt of the decision. Requests for informal appeals
27 must be filed in the form and manner prescribed by the department by
28 rule. A permit decision that has been informally appealed to the
29 department is appealable to the board within thirty days from the
30 date of receipt of the department's decision on the informal appeal.

31 (9)(a) The permittee must demonstrate substantial progress on
32 construction of that portion of the project relating to the permit
33 within two years of the date of issuance.

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

37 (c) A permit remains in effect without need for periodic renewal
38 for hydraulic projects that divert water for agricultural irrigation
39 or stock watering purposes and that involve seasonal construction or
40 other work. A permit for stream bank stabilization projects to

1 protect farm and agricultural land as defined in RCW 84.34.020
2 remains in effect without need for periodic renewal if the problem
3 causing the need for the stream bank stabilization occurs on an
4 annual or more frequent basis. The permittee must notify the
5 appropriate agency before commencing the construction or other work
6 within the area covered by the permit.

7 (10) The department may, after consultation with the permittee,
8 modify a permit due to changed conditions. A modification under this
9 subsection is not subject to the fees provided under RCW 77.55.321.
10 The modification is appealable as provided in subsection (8) of this
11 section. For a hydraulic project that diverts water for agricultural
12 irrigation or stock watering purposes, when the hydraulic project or
13 other work is associated with stream bank stabilization to protect
14 farm and agricultural land as defined in RCW 84.34.020, the burden is
15 on the department to show that changed conditions warrant the
16 modification in order to protect fish life.

17 (11) A permittee may request modification of a permit due to
18 changed conditions. The request must be processed within forty-five
19 calendar days of receipt of the written request and payment of
20 applicable fees under RCW 77.55.321. A decision by the department is
21 appealable as provided in subsection (8) of this section. For a
22 hydraulic project that diverts water for agricultural irrigation or
23 stock watering purposes, when the hydraulic project or other work is
24 associated with stream bank stabilization to protect farm and
25 agricultural land as defined in RCW 84.34.020, the burden is on the
26 permittee to show that changed conditions warrant the requested
27 modification and that such a modification will not impair fish life.

28 (12)(a) The department, the county legislative authority, or the
29 governor may declare and continue an emergency. If the county
30 legislative authority declares an emergency under this subsection, it
31 shall immediately notify the department. A declared state of
32 emergency by the governor under RCW 43.06.010 shall constitute a
33 declaration under this subsection.

34 (b) The department, through its authorized representatives, shall
35 issue immediately, upon request, verbal approval for a stream
36 crossing, or work to remove any obstructions, repair existing
37 structures, restore stream banks, protect fish life, or protect
38 property threatened by the stream or a change in the streamflow
39 without the necessity of obtaining a written permit prior to
40 commencing work. Conditions of the emergency verbal permit must be

1 reduced to writing within thirty days and complied with as provided
2 for in this chapter.

3 (c) The department may not require the provisions of the state
4 environmental policy act, chapter 43.21C RCW, to be met as a
5 condition of issuing a permit under this subsection.

6 (d) The department may not charge a person requesting an
7 emergency permit any of the fees authorized by RCW 77.55.321 until
8 after the emergency permit is issued and reduced to writing.

9 (13) All state and local agencies with authority under this
10 chapter to issue permits or other authorizations in connection with
11 emergency water withdrawals and facilities authorized under RCW
12 43.83B.410 shall expedite the processing of such permits or
13 authorizations in keeping with the emergency nature of such requests
14 and shall provide a decision to the applicant within fifteen calendar
15 days of the date of application.

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

30 (15)(a) For any property, except for property located on a marine
31 shoreline, that has experienced at least two consecutive years of
32 flooding or erosion that has damaged or has threatened to damage a
33 major structure, water supply system, septic system, or access to any
34 road or highway, the county legislative authority may determine that
35 a chronic danger exists. The county legislative authority shall
36 notify the department, in writing, when it determines that a chronic
37 danger exists. In cases of chronic danger, the department shall issue
38 a permit, upon request, for work necessary to abate the chronic
39 danger by removing any obstructions, repairing existing structures,
40 restoring banks, restoring road or highway access, protecting fish

1 resources, or protecting property. Permit requests must be made and
2 processed in accordance with subsections (2) and (7) of this section.

3 (b) Any projects proposed to address a chronic danger identified
4 under (a) of this subsection that satisfies the project description
5 identified in RCW 77.55.181(1)(a)(ii) are not subject to the
6 provisions of the state environmental policy act, chapter 43.21C RCW.
7 However, the project is subject to the review process established in
8 RCW 77.55.181(3) as if it were a fish habitat improvement project.

9 (16) The department may issue an expedited written permit in
10 those instances where normal permit processing would result in
11 significant hardship for the applicant or unacceptable damage to the
12 environment. Expedited permit requests under this subsection require
13 a complete written application as provided in subsection (2) of this
14 section and must be issued within fifteen calendar days of the
15 receipt of a complete written application. Approval of an expedited
16 permit under this subsection is valid for up to sixty days from the
17 date of issuance. The department may not require the provisions of
18 the state environmental policy act, chapter 43.21C RCW, to be met as
19 a condition of issuing a permit under this subsection.

20 (17) The department shall issue an expedited written permit for a
21 hydraulic project involving watershed management actions, as defined
22 in RCW 87.03.019, performed by a watershed improvement district
23 organized under Title 87 RCW. Expedited permit requests under this
24 subsection require a complete written application as provided in
25 subsection (2) of this section and must be issued within fifteen
26 calendar days of the receipt of a complete written application. The
27 department may not require the provisions of the state environmental
28 policy act, chapter 43.21C RCW, to be met as a condition of issuing a
29 permit under this subsection.

30 **Sec. 5.** RCW 87.03.019 and 2003 c 327 s 15 are each amended to
31 read as follows:

32 (1) In addition to the authority provided throughout this title,
33 an irrigation district, reclamation district, and similar districts
34 organized pursuant to the authority of this title may participate in
35 and expend revenue on cooperative watershed management actions,
36 including watershed management partnerships under RCW 39.34.210 and
37 other intergovernmental agreements, for purposes of water supply,
38 water quality, and water resource and habitat protection and
39 management. For the purposes of this section, "watershed management

1 actions" include, but are not limited to, ditch maintenance and
2 sediment management, without regard to whether these actions are
3 performed cooperatively or through a watershed management partnership
4 under RCW 39.34.210 or other intergovernmental agreement.

5 (2) A watershed improvement district organized under this title
6 is authorized to receive funds for watershed management actions from
7 any federal or state grant or loan program for which a watershed
8 improvement district organized under this title is eligible to apply.

9 (3) A watershed improvement district organized under this title
10 is authorized to receive funds for watershed management actions from
11 any county lands assessment fund established pursuant to chapter
12 36.33 RCW. A watershed improvement district may request funds from a
13 county lands assessment fund for the purpose of performing watershed
14 management actions. The county in which the watershed management
15 actions will be performed shall transfer the requested funds from the
16 county lands assessment fund to the watershed improvement district
17 upon request by the district. A county may not increase the levy
18 authorized under RCW 36.33.120 for the purpose of providing funds to
19 a watershed improvement district under this subsection. This
20 subsection does not authorize any county to exceed the maximum levy
21 under RCW 36.33.140.

22 NEW SECTION. Sec. 6. A new section is added to chapter 90.48
23 RCW to read as follows:

24 If the department reviews a project for watershed management
25 actions, as defined in RCW 87.03.019, by a watershed improvement
26 district organized under Title 87 RCW, for certification under
27 section 401 of the federal clean water act (33 U.S.C. Sec. 1341), the
28 department must issue a decision on certification no later than
29 fifteen days after receiving a complete application for the project.
30 This section does not alter any requirement of section 401 of the
31 federal clean water act (33 U.S.C. Sec. 1341) relating to waiver of
32 the certification requirements of that section.

33 NEW SECTION. Sec. 7. A new section is added to chapter 90.58
34 RCW to read as follows:

1 Every master program must allow a watershed improvement district
2 organized under Title 87 RCW to perform watershed management actions
3 as defined in RCW 87.03.019.

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