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SENATE BILL 5085

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State of Washington

53rd Legislature

1993 Regular Session

By Senators McCaslin and Barr

Read first time 01/13/93. Referred to Committee on Natural Resources.

1 AN ACT Relating to hydraulic project approval authority of the  
2 departments of fisheries 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 1991 c 322 s 30 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. The  
15 hydraulic project approval authority of the department of fisheries and  
16 the department of wildlife shall be limited to construction or other  
17 work that occurs at or below the mean higher high water line in salt  
18 water and estuaries or at or below the ordinary high water line in  
19 fresh water. Neither the department of fisheries nor the department of

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

1 life, or if any person or government agency fails to follow or carry  
2 out any of the requirements or conditions as are made a part of such  
3 approval, the person or director of the agency is guilty of a gross  
4 misdemeanor. If any such person or government agency is convicted of  
5 violating any of the provisions of this section and continues  
6 construction on any such works or projects without fully complying with  
7 the provisions hereof, such works or projects are hereby declared a  
8 public nuisance and shall be subject to abatement as such.

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

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

20 For each application, the department of fisheries and the  
21 department of wildlife shall mutually agree on whether the department  
22 of fisheries or the department of wildlife shall administer the  
23 provisions of this section, in order to avoid duplication of effort.  
24 The department designated to act shall cooperate with the other  
25 department in order to protect all species of fish life found at the  
26 project site. If the department of fisheries or the department of  
27 wildlife receives an application concerning a site not in its  
28 jurisdiction, it shall transmit the application to the other department  
29 within three days and notify the applicant.

30 In case of an emergency arising from weather or stream flow  
31 conditions or other natural conditions, the department of fisheries or  
32 department of wildlife, through their authorized representatives, shall  
33 issue immediately upon request oral approval for removing any  
34 obstructions, repairing existing structures, restoring stream banks, or  
35 to protect property threatened by the stream or a change in the stream  
36 flow without the necessity of obtaining a written approval prior to  
37 commencing work. Conditions of an oral approval shall be reduced to  
38 writing within thirty days and complied with as provided for in this

1 section. Oral approval shall be granted immediately upon request, for  
2 a stream crossing during an emergency situation.

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

11 **Sec. 2.** RCW 75.20.103 and 1991 c 322 s 31 are each amended to read  
12 as follows:

13 In the event that any person or government agency desires to  
14 construct any form of hydraulic project or other work that diverts  
15 water for agricultural irrigation or stock watering purposes, or when  
16 such hydraulic project or other work is associated with streambank  
17 stabilization to protect farm and agricultural land as defined in RCW  
18 84.34.020, and when such diversion or streambank stabilization will  
19 use, divert, obstruct, or change the natural flow or bed of any river  
20 or stream or will utilize any waters of the state or materials from the  
21 stream beds, the person or government agency shall, before commencing  
22 construction or work thereon and to ensure the proper protection of  
23 fish life, secure a written approval from the department of fisheries  
24 or the department of wildlife as to the adequacy of the means proposed  
25 for the protection of fish life. The hydraulic project approval  
26 authority of the department of fisheries and the department of wildlife  
27 shall be limited to construction or other work that occurs at or below  
28 the mean higher high water line in salt water and estuaries or at or  
29 below the ordinary high water line in fresh water. Neither the  
30 department of fisheries nor the department of wildlife shall deny or  
31 condition a hydraulic project approval on the basis of human or animal  
32 actions or environmental conditions that occur above the higher high  
33 water line in salt water and estuaries or above the ordinary high water  
34 line in fresh water. This approval shall not be unreasonably withheld.  
35 Except as provided in RCW 75.20.1001 and 75.20.1002, the department of  
36 fisheries or the department of wildlife shall grant or deny the  
37 approval within forty-five calendar days of the receipt of a complete  
38 application and notice of compliance with any applicable requirements

1 of the state environmental policy act, made in the manner prescribed in  
2 this section. The applicant may document receipt of application by  
3 filing in person or by registered mail. A complete application for an  
4 approval shall contain general plans for the overall project, complete  
5 plans and specifications of the proposed construction or work within  
6 ordinary high water line, and complete plans and specifications for the  
7 proper protection of fish life. The forty-five day requirement shall  
8 be suspended if (1) after ten working days of receipt of the  
9 application, the applicant remains unavailable or unable to arrange for  
10 a timely field evaluation of the proposed project; (2) the site is  
11 physically inaccessible for inspection; or (3) the applicant requests  
12 delay.

13 Immediately upon determination that the forty-five day period is  
14 suspended, the department of fisheries or the department of wildlife  
15 shall notify the applicant in writing of the reasons for the delay.

16 An approval shall remain in effect without need for periodic  
17 renewal for projects that divert water for agricultural irrigation or  
18 stock watering purposes and that involve seasonal construction or other  
19 work. Approval for streambank stabilization projects shall remain in  
20 effect without need for periodic renewal if the problem causing the  
21 need for the streambank stabilization occurs on an annual or more  
22 frequent basis. The permittee must notify the appropriate agency  
23 before commencing the construction or other work within the area  
24 covered by the approval.

25 The permittee must demonstrate substantial progress on construction  
26 of that portion of the project relating to the approval within two  
27 years of the date of issuance. If either the department of fisheries  
28 or the department of wildlife denies approval, that department shall  
29 provide the applicant, in writing, a statement of the specific reasons  
30 why and how the proposed project would adversely affect fish life.  
31 Protection of fish life shall be the only ground upon which approval  
32 may be denied or conditioned. Issuance, denial, conditioning, or  
33 modification shall be appealable to the hydraulic appeals board  
34 established in RCW 43.21B.005 within thirty days of the notice of  
35 decision. The burden shall be upon the department of fisheries or the  
36 department of wildlife to show that the denial or conditioning of an  
37 approval is solely aimed at the protection of fish life.

38 The department granting approval may, after consultation with the  
39 permittee, modify an approval due to changed conditions. The

1 modifications shall become effective unless appealed to the hydraulic  
2 appeals board within thirty days from the notice of the proposed  
3 modification. The burden is on the department issuing the approval to  
4 show that changed conditions warrant the modification in order to  
5 protect fish life.

6 A permittee may request modification of an approval due to changed  
7 conditions. The request shall be processed within forty-five calendar  
8 days of receipt of the written request. A decision by the department  
9 that issued the approval may be appealed to the hydraulic appeals board  
10 within thirty days of the notice of the decision. The burden is on the  
11 permittee to show that changed conditions warrant the requested  
12 modification and that such modification will not impair fish life.

13 If any person or government agency commences construction on any  
14 hydraulic works or projects subject to this section without first  
15 having obtained written approval of the department of fisheries or the  
16 department of wildlife as to the adequacy of the means proposed for the  
17 protection of fish life, or if any person or government agency fails to  
18 follow or carry out any of the requirements or conditions as are made  
19 a part of such approval, the person or director of the agency is guilty  
20 of a gross misdemeanor. If any such person or government agency is  
21 convicted of violating any of the provisions of this section and  
22 continues construction on any such works or projects without fully  
23 complying with the provisions hereof, such works or projects are hereby  
24 declared a public nuisance and shall be subject to abatement as such.

25 For each application, the department of fisheries and the  
26 department of wildlife shall mutually agree on whether the department  
27 of fisheries or the department of wildlife shall administer the  
28 provisions of this section, in order to avoid duplication of effort.  
29 The department designated to act shall cooperate with the other  
30 department in order to protect all species of fish life found at the  
31 project site. If the department of fisheries or the department of  
32 wildlife receives an application concerning a site not in its  
33 jurisdiction, it shall transmit the application to the other department  
34 within three days and notify the applicant.

35 In case of an emergency arising from weather or stream flow  
36 conditions or other natural conditions, the department of fisheries or  
37 department of wildlife, through their authorized representatives, shall  
38 issue immediately upon request oral approval for removing any  
39 obstructions, repairing existing structures, restoring stream banks, or

1 to protect property threatened by the stream or a change in the stream  
2 flow without the necessity of obtaining a written approval prior to  
3 commencing work. Conditions of an oral approval shall be reduced to  
4 writing within thirty days and complied with as provided for in this  
5 section.

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

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