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**SUBSTITUTE SENATE BILL 5442**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** Senate Committee on Natural Resources & Parks (originally sponsored by Senators Swecker, Loveland, Anderson, Stevens, Haugen, Prince, Hale, Franklin, Sheldon, Benton, Rasmussen and Zarelli)

Read first time 03/03/97.

1 AN ACT Relating to flood damage reduction; amending RCW 75.20.100  
2 and 86.26.007; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that flooding  
5 emergencies in recent years demonstrate the need for a more cooperative  
6 strategy among federal, state, and local emergency response agencies.  
7 The legislature further finds that regulatory processes may impede  
8 action by landowners and local government which can prevent or reduce  
9 flood damage. It is the intent of this act to streamline state  
10 regulatory requirements, encourage cooperative emergency response  
11 efforts, while providing for the consideration of instream resources,  
12 and provide additional funding for local flood prevention and dredging  
13 programs.

14 **Sec. 2.** RCW 75.20.100 and 1993 sp.s. c 2 s 30 are each amended to  
15 read as follows:

16 In the event that any person or government agency desires to  
17 construct any form of hydraulic project or perform other work that will  
18 use, divert, obstruct, or change the natural flow or bed of any of the

1 salt or fresh waters of the state, such person or government agency  
2 shall, before commencing construction or work thereon and to ensure the  
3 proper protection of fish life, secure the written approval of the  
4 department as to the adequacy of the means proposed for the protection  
5 of fish life. This approval shall not be unreasonably withheld.  
6 Except as provided in RCW 75.20.1001 (~~and 75.20.1002~~), the department  
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 shall notify the applicant in writing of the reasons for the  
24 delay. Approval is valid for a period of up to five years from date of  
25 issuance. The permittee must demonstrate substantial progress on  
26 construction of that portion of the project relating to the approval  
27 within two years of the date of issuance. If the department denies  
28 approval, the department shall provide the applicant, in writing, a  
29 statement of the specific reasons why and how the proposed project  
30 would adversely affect fish life. Protection of fish life shall be the  
31 only ground upon which approval may be denied or conditioned. Chapter  
32 34.05 RCW applies to any denial of project approval, conditional  
33 approval, or requirements for project modification upon which approval  
34 may be contingent. If any person or government agency commences  
35 construction on any hydraulic works or projects subject to this section  
36 without first having obtained written approval of the department as to  
37 the adequacy of the means proposed for the protection of fish life, or  
38 if any person or government agency fails to follow or carry out any of  
39 the requirements or conditions as are made a part of such approval, the

1 person or director of the agency is guilty of a gross misdemeanor. If  
2 any such person or government agency is convicted of violating any of  
3 the provisions of this section and continues construction on any such  
4 works or projects without fully complying with the provisions hereof,  
5 such works or projects are hereby declared a public nuisance and shall  
6 be subject to abatement as such.

7 The department shall, at the request of a county, develop five-year  
8 maintenance approval agreements, consistent with comprehensive flood  
9 control management plans or watershed management plans adopted by a  
10 county, to allow for work on public and private property for bank  
11 stabilization, bridge repair, removal of sand bars and debris, channel  
12 maintenance, and other flood damage repair and reduction activity under  
13 agreed-upon conditions and times without obtaining permits for specific  
14 projects.

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

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

26 (~~In case of an emergency arising from weather or stream flow~~  
27 ~~conditions or other natural conditions)) In instances arising from  
28 weather or stream flow conditions or other natural conditions that are  
29 not an emergency, but where normal processing within the next forty-  
30 five days would result in loss of public or private property, cause an  
31 unanticipated extreme hardship for the applicant, or cause unacceptable  
32 environmental damage, the department shall, upon receipt of a written  
33 application, issue an expedited hydraulic project approval. Expedited  
34 hydraulic project approvals take precedence over nonemergency hydraulic  
35 project approvals and must be issued within seven days of the request:  
36 PROVIDED, a county declares the project meets the definition of an  
37 emergency in chapter 43.21C RCW.~~

38 In instances arising from weather or stream flow conditions, or  
39 other natural conditions that constitute an emergency for which action

1 must be taken immediately or within a time too short to allow full  
2 compliance with the requirements of chapter 43.21C RCW, the department,  
3 through its authorized representatives, shall issue immediately upon  
4 request oral approval for removing any obstructions, repairing existing  
5 structures, restoring stream banks, or to protect property threatened  
6 by the stream or a change in the stream flow without the necessity of  
7 obtaining a written approval prior to commencing work. Conditions of  
8 an oral approval shall be reduced to writing within thirty days and  
9 complied with as provided for in this section. Oral approval shall be  
10 granted immediately upon request, for ((a)) stream crossing during an  
11 emergency situation.

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

20 **Sec. 3.** RCW 86.26.007 and 1996 c 283 s 903 are each amended to  
21 read as follows:

22 The flood control assistance account is hereby established in the  
23 state treasury. At the beginning of the 1997-99 fiscal biennium and  
24 each biennium thereafter the state treasurer shall transfer from the  
25 general fund to the flood control assistance account an amount of money  
26 which, when combined with money remaining in the account from the  
27 previous biennium, will equal ((four)) ten million dollars. Moneys in  
28 the flood control assistance account may be spent only after  
29 appropriation for purposes specified under this chapter or((, ~~during~~  
30 ~~the 1995-97 biennium,~~)) for state and local response and recovery costs  
31 associated with federal emergency management agency (FEMA) disasters  
32 ((~~number 1079 (November/December 1995 storms), FEMA disaster number~~  
33 ~~1100 (February 1996 floods), and for prior biennia disaster recovery~~  
34 ~~costs.~~ To the extent that moneys in the flood control assistance  
35 ~~account are not appropriated during the 1995-97 fiscal biennium for~~

1 ~~flood control assistance, the legislature may direct their transfer to~~  
2 ~~the state general fund))~~).

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