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**SUBSTITUTE SENATE BILL 5733**

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**State of Washington**

**60th Legislature**

**2007 Regular Session**

**By** Senate Committee on Natural Resources, Ocean & Recreation  
(originally sponsored by Senators Stevens and Jacobsen)

READ FIRST TIME 02/28/07.

1 AN ACT Relating to flood protection; and amending RCW 77.55.021.

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

3 **Sec. 1.** RCW 77.55.021 and 2005 c 146 s 201 are each amended to  
4 read as follows:

5 (1) Except as provided in RCW 77.55.031, 77.55.051, and 77.55.041,  
6 in the event that any person or government agency desires to undertake  
7 a hydraulic project, the person or government agency shall, before  
8 commencing work thereon, secure the approval of the department in the  
9 form of a permit as to the adequacy of the means proposed for the  
10 protection of fish life.

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

13 (a) General plans for the overall project;

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

17 (c) Complete plans and specifications for the proper protection of  
18 fish life; and

1 (d) Notice of compliance with any applicable requirements of the  
2 state environmental policy act, unless otherwise provided for in this  
3 chapter.

4 (3)(a) Protection of fish life is the only ground upon which  
5 approval of a permit may be denied or conditioned. Approval of a  
6 permit may not be unreasonably withheld or unreasonably conditioned.  
7 Except as provided in this subsection and subsections (8), (10), and  
8 (~~(11)~~) (12) of this section, the department has forty-five calendar  
9 days upon receipt of a complete application to grant or deny approval  
10 of a permit. The forty-five day requirement is suspended if:

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

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

15 (iii) The applicant requests a delay; or

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

18 (b) Immediately upon determination that the forty-five day period  
19 is suspended, the department shall notify the applicant in writing of  
20 the reasons for the delay.

21 (c) The period of forty-five calendar days may be extended if the  
22 permit is part of a multiagency permit streamlining effort and all  
23 participating permitting agencies and the permit applicant agree to an  
24 extended timeline longer than forty-five calendar days.

25 (4) If the department denies approval of a permit, the department  
26 shall provide the applicant a written statement of the specific reasons  
27 why and how the proposed project would adversely affect fish life.  
28 Issuance, denial, conditioning, or modification of a permit shall be  
29 appealable to the department or the board as specified in RCW 77.55.301  
30 within thirty days of the notice of decision.

31 (5)(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 a period of up to five years  
35 from the date of issuance, except as provided in (c) of this subsection  
36 and in 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 or

1 stock watering purposes and that involve seasonal construction or other  
2 work. A permit for streambank stabilization projects to protect farm  
3 and agricultural land as defined in RCW 84.34.020 remains in effect  
4 without need for periodic renewal if the problem causing the need for  
5 the streambank stabilization occurs on an annual or more frequent  
6 basis. The permittee must notify the appropriate agency before  
7 commencing the construction or other work within the area covered by  
8 the permit.

9 (6) The department may, after consultation with the permittee,  
10 modify a permit due to changed conditions. The modification becomes  
11 effective unless appealed to the department or the board as specified  
12 in RCW 77.55.301 within thirty days from the notice of the proposed  
13 modification. For hydraulic projects that divert water for  
14 agricultural irrigation or stock watering purposes, or when the  
15 hydraulic project or other work is associated with streambank  
16 stabilization to protect farm and agricultural land as defined in RCW  
17 84.34.020, the burden is on the department to show that changed  
18 conditions warrant the modification in order to protect fish life.

19 (7) A permittee may request modification of a permit due to changed  
20 conditions. The request must be processed within forty-five calendar  
21 days of receipt of the written request. A decision by the department  
22 may be appealed to the board within thirty days of the notice of the  
23 decision. For hydraulic projects that divert water for agricultural  
24 irrigation or stock watering purposes, or when the hydraulic project or  
25 other work is associated with streambank stabilization to protect farm  
26 and agricultural land as defined in RCW 84.34.020, the burden is on the  
27 permittee to show that changed conditions warrant the requested  
28 modification and that such a modification will not impair fish life.

29 (8) The department or the county legislative authority may declare  
30 and continue an emergency. The county legislative authority shall  
31 immediately notify the department if it declares an emergency under  
32 this subsection. The department, through its authorized  
33 representatives, shall issue immediately, upon request, oral approval  
34 for a stream crossing, or work to remove any obstructions, repair  
35 existing structures, restore streambanks, protect fish life, or protect  
36 property threatened by the stream or a change in the stream flow  
37 without the necessity of obtaining a written permit prior to commencing  
38 work. Conditions of the emergency oral permit must be established by

1 the department and reduced to writing within thirty days and complied  
2 with as provided for in this chapter. The department may not require  
3 the provisions of the state environmental policy act, chapter 43.21C  
4 RCW, to be met as a condition of issuing a permit under this  
5 subsection.

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

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

27 (11) For any property, except for property located on a marine  
28 shoreline, that has experienced at least two consecutive years of  
29 flooding or erosion that has damaged or has threatened to damage a  
30 structure, water supply system, septic system, or access to any road or  
31 highway, the county legislative authority must determine that a chronic  
32 danger exists. The county legislative authority shall notify the  
33 department, in writing, when a chronic danger exists. In cases of  
34 chronic danger, the department shall issue a permit, upon request, for  
35 work to remove any obstructions, repair existing structures, restore  
36 banks, restore road or highway access, protect fish resources, or  
37 protect property. Permit requests must be made and processed in  
38 accordance with subsections (2) and (3) of this section.

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

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