

HB 2710 - S COMM AMD

By Committee on Natural Resources, Ocean & Recreation

1 Strike everything after the enacting clause and insert the
2 following:

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

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

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

29 (i) After ten working days of receipt of the application, the

1 applicant remains unavailable or unable to arrange for a timely field
2 evaluation of the proposed project;

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

4 (iii) The applicant requests a delay; or

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

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

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

14 (4) If the department denies approval of a permit, the department
15 shall provide the applicant a written statement of the specific reasons
16 why and how the proposed project would adversely affect fish life.
17 Issuance, denial, conditioning, or modification of a permit shall be
18 appealable to (~~the department or~~) the board as specified in RCW
19 77.55.301 within thirty days of the notice of decision.

20 (5)(a) The permittee must demonstrate substantial progress on
21 construction of that portion of the project relating to the permit
22 within two years of the date of issuance.

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

26 (c) A permit remains in effect without need for periodic renewal
27 for hydraulic projects that divert water for agricultural irrigation or
28 stock watering purposes and that involve seasonal construction or other
29 work. A permit for streambank stabilization projects to protect farm
30 and agricultural land as defined in RCW 84.34.020 remains in effect
31 without need for periodic renewal if the problem causing the need for
32 the streambank stabilization occurs on an annual or more frequent
33 basis. The permittee must notify the appropriate agency before
34 commencing the construction or other work within the area covered by
35 the permit.

36 (6) The department may, after consultation with the permittee,
37 modify a permit due to changed conditions. The modification becomes
38 effective unless appealed to (~~the department or~~) the board as

1 specified in RCW 77.55.301 within thirty days from the notice of the
2 proposed modification. For hydraulic projects that divert water for
3 agricultural irrigation or stock watering purposes, or when the
4 hydraulic project or other work is associated with streambank
5 stabilization to protect farm and agricultural land as defined in RCW
6 84.34.020, the burden is on the department to show that changed
7 conditions warrant the modification in order to protect fish life.

8 (7) A permittee may request modification of a permit due to changed
9 conditions. The request must be processed within forty-five calendar
10 days of receipt of the written request. A decision by the department
11 may be appealed to the board as specified in RCW 77.55.301 within
12 thirty days of the notice of the decision. For hydraulic projects that
13 divert water for agricultural irrigation or stock watering purposes, or
14 when the hydraulic project or other work is associated with streambank
15 stabilization to protect farm and agricultural land as defined in RCW
16 84.34.020, the burden is on the permittee to show that changed
17 conditions warrant the requested modification and that such a
18 modification will not impair fish life.

19 (8) The department or the county legislative authority may declare
20 and continue an emergency. The county legislative authority shall
21 immediately notify the department if it declares an emergency under
22 this subsection. The department, through its authorized
23 representatives, shall issue immediately, upon request, oral approval
24 for a stream crossing, or work to remove any obstructions, repair
25 existing structures, restore streambanks, protect fish life, or protect
26 property threatened by the stream or a change in the stream flow
27 without the necessity of obtaining a written permit prior to commencing
28 work. Conditions of the emergency oral permit must be established by
29 the department and reduced to writing within thirty days and complied
30 with as provided for in this chapter. The department may not require
31 the provisions of the state environmental policy act, chapter 43.21C
32 RCW, to be met as a condition of issuing a permit under this
33 subsection.

34 (9) All state and local agencies with authority under this chapter
35 to issue permits or other authorizations in connection with emergency
36 water withdrawals and facilities authorized under RCW 43.83B.410 shall
37 expedite the processing of such permits or authorizations in keeping

1 with the emergency nature of such requests and shall provide a decision
2 to the applicant within fifteen calendar days of the date of
3 application.

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

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

28 **Sec. 2.** RCW 77.55.301 and 2005 c 146 s 801 are each amended to
29 read as follows:

30 (1) There is created within the environmental hearings office under
31 RCW 43.21B.005 the hydraulic appeals board of the state of Washington.

32 (2) The board consists of three members: The director of the
33 department of ecology or the director's designee, the director of the
34 department of agriculture or the director's designee, and the director
35 or the director's designee of the department. A decision must be
36 agreed to by at least two members of the board to be final.

1 (3) The board may adopt rules necessary for the conduct of its
2 powers and duties or for transacting other official business.

3 (4) The board shall make findings of fact and prepare a written
4 decision in each case decided by it. The finding and decision shall be
5 effective upon being signed by two or more board members and upon being
6 filed at the board's principal office, and shall be open to public
7 inspection at all reasonable times.

8 (5) The board has exclusive jurisdiction to hear appeals arising
9 from the approval, denial, conditioning, or modification of a permit
10 issued by the department(~~(a) Under the authority granted in RCW
11 77.55.021 for the diversion of water for agricultural irrigation or
12 stock watering purposes or when associated with streambank
13 stabilization to protect farm and agricultural land as defined in RCW
14 84.34.020; (b) under the authority granted in RCW 77.55.241 for off-
15 site mitigation proposals; (c) under the authority granted in RCW
16 77.55.141; or (d) under the authority granted in RCW 77.55.181)~~) under
17 this chapter.

18 (6)(a) Any person aggrieved by the approval, denial, conditioning,
19 or modification of a permit under ((~~RCW 77.55.021~~)) this chapter may,
20 except as otherwise provided in chapter 43.21L RCW, seek review from
21 the board by filing a request for the same within thirty days of notice
22 of the approval, denial, conditioning, or modification of the permit.

23 (b) Any person seeking review under (a) of this subsection must be
24 provided an opportunity for informal review with the department as
25 established by rule of the department. If, following this voluntary
26 informal review process, the person seeking review still wishes to
27 contest the agency action, they may proceed with the formal appeals
28 process.

29 (c) The review proceedings authorized in (a) of this subsection are
30 subject to the provisions of chapter 34.05 RCW pertaining to procedures
31 in adjudicative proceedings."

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1 On page 1, line 2 of the title, after "appeals;" strike the
2 remainder of the title and insert "and amending RCW 77.55.021 and
3 77.55.301."

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