

Section 9 would mandate weekly safety meetings for asbestos projects. There is no flexibility for projects that might deserve more frequent or less frequent meetings. Requirements established by rule can better address the variety of different situations that would necessitate meetings. I am directing the Department of Labor and Industries to establish appropriate requirements through its rule-making authority. For this reason, I have vetoed section 9.

Section 14 would require the owners of all buildings and facilities public or private to inventory their property to identify all materials containing asbestos. Records of this inventory would have to be maintained and made available for inspection by the Department of Labor and Industries and other parties.

These inventories may be of value to companies. I would encourage the state's employers to undertake such surveys. The section is so broadly worded, however, that it is unworkable. The bill would technically require every citizen of the state who owns a building to conduct an inventory. It is not reasonable to expect homeowners to conduct an inventory in order that it be available whenever they plan remodeling or other work on their house. I feel that section 14 would create difficulties for individuals that it was not intended to affect.

I am asking the Department of Labor and Industries to review the issue and to suggest appropriate requirements for asbestos inventories. For these reasons, I have vetoed section 14.

Section 17 would require workers who are currently certified for a two-year period to be recertified after only one year. I do not feel that this is necessary, since these individuals will begin annual recertification when their current certification expires. Therefore, I have vetoed section 17.

With the exception of sections 3, 9, 14, and 17, Substitute House Bill No. 1592 is approved."

CHAPTER 272

[Substitute Senate Bill No. 6024]

HYDRAULIC PROJECTS—STREAMBANK STABILIZATION TO PROTECT FARM AND AGRICULTURAL LAND

AN ACT Relating to rivers and streams in agricultural areas; amending RCW 75.20.100, 75.20.103, and 75.20.130; and creating new sections.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 75.20.100, chapter 12, Laws of 1955 as last amended by section 1, chapter 173, Laws of 1986 and RCW 75.20.100 are each amended to read as follows:

In the event that any person or government agency desires to construct any form of hydraulic project or perform other work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state, such person or government agency shall, before commencing construction or work thereon and to ensure the proper protection of fish life, secure the written approval of the department of fisheries or the department of ((game)) wildlife as to the adequacy of the means proposed for the protection of fish life. This approval shall not be unreasonably withheld. The department of fisheries or the department of ((game)) wildlife shall grant or deny approval within forty-five calendar days of the receipt of a complete application and notice of compliance with any applicable requirements of

the state environmental policy act, made in the manner prescribed in this section. The applicant may document receipt of application by filing in person or by registered mail. A complete application for approval shall contain general plans for the overall project, complete plans and specifications of the proposed construction or work within the mean higher high water line in salt water or within the ordinary high water line in fresh water, and complete plans and specifications for the proper protection of fish life. The forty-five day requirement shall be suspended if (1) after ten working days of receipt of the application, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project; (2) the site is physically inaccessible for inspection; or (3) the applicant requests delay. Immediately upon determination that the forty-five day period is suspended, the department of fisheries or the department of ((game)) wildlife shall notify the applicant in writing of the reasons for the delay. Approval is valid for a period of up to five years from date of issuance. The permittee must demonstrate substantial progress on construction of that portion of the project relating to the approval within two years of the date of issuance. If either the department of fisheries or the department of ((game)) wildlife denies approval, that department shall provide the applicant, in writing, a statement of the specific reasons why and how the proposed project would adversely affect fish life. Protection of fish life shall be the only ground upon which approval may be denied or conditioned. Chapter 34.04 RCW applies to any denial of project approval, conditional approval, or requirements for project modification upon which approval may be contingent. If any person or government agency commences construction on any hydraulic works or projects subject to this section without first having obtained written approval of the department of fisheries or the department of ((game)) wildlife as to the adequacy of the means proposed for the protection of fish life, or if any person or government agency fails to follow or carry out any of the requirements or conditions as are made a part of such approval, the person or director of the agency is guilty of a gross misdemeanor. If any such person or government agency is convicted of violating any of the provisions of this section and continues construction on any such works or projects without fully complying with the provisions hereof, such works or projects are hereby declared a public nuisance and shall be subject to abatement as such.

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

The phrase "to construct any form of hydraulic project or perform other work" shall not include the act of driving across an established ford.

Driving across streams or on wetted stream beds at areas other than established fords requires approval. Work within the ordinary high water line of state waters to construct or repair a ford or crossing requires approval.

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

In case of an emergency arising from weather or stream flow conditions or other natural conditions, the department of fisheries or department of ((game)) wildlife, through their authorized representatives, shall issue immediately upon request oral approval for removing any obstructions, repairing existing structures, restoring stream banks, or to protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written approval prior to commencing work. Conditions of an oral approval shall be reduced to writing within thirty days and complied with as provided for in this section. Oral approval shall be granted immediately upon request, for a stream crossing during an emergency situation.

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

Sec. 2. Section 2, chapter 173, Laws of 1986 and RCW 75.20.103 are each amended to read as follows:

In the event that any person or government agency desires to construct any form of hydraulic project or other work that diverts water for agricultural irrigation or stock watering purposes, or when such hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, and when ~~((the construction or other work))~~ such diversion or streambank stabilization will use, divert, obstruct, or change the natural flow or bed of any river or stream or will utilize any waters of the state or materials from the stream beds, the person or government agency shall, before commencing construction or work thereon and to ensure the proper protection of fish life, secure a written approval from the department of fisheries or the department of

((game)) wildlife as to the adequacy of the means proposed for the protection of fish life. This approval shall not be unreasonably withheld. The department of fisheries or the department of ((game)) wildlife shall grant or deny the approval within forty-five calendar days of the receipt of a complete application and notice of compliance with any applicable requirements of the state environmental policy act, made in the manner prescribed in this section. The applicant may document receipt of application by filing in person or by registered mail. A complete application for an approval shall contain general plans for the overall project, complete plans and specifications of the proposed construction or work within ordinary high water line, and complete plans and specifications for the proper protection of fish life. The forty-five day requirement shall be suspended if (1) after ten working days of receipt of the application, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project; (2) the site is physically inaccessible for inspection; or (3) the applicant requests delay.

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

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

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

The department granting approval may, after consultation with the permittee, modify an approval due to changed conditions. The modifications shall become effective unless appealed to the hydraulic appeals board within thirty days from the notice of the proposed modification. The burden is on the department issuing the approval to show that changed conditions warrant the modification in order to protect fish life.

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

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

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

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

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

Sec. 3. Section 4, chapter 173, Laws of 1986 and RCW 75.20.130 are each amended to read as follows:

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

(2) The hydraulic appeals board shall consist of three members: The director of the department of ecology or the director's designee, the director of the department of agriculture or the director's designee, and the director or the director's designee of the department whose action is appealed under subsection (6) of this section. A decision must be agreed to by at least two members of the board to be final.

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

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

(5) The board has exclusive jurisdiction to hear appeals arising from the approval, denial, conditioning, or modification of a hydraulic approval issued by either the department of fisheries or the department of ~~((game))~~ wildlife under the authority granted in RCW 75.20.103 for the diversion of water for agricultural irrigation or stock watering purposes or when associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020.

(6) (a) Any person aggrieved by the approval, denial, conditioning, or modification of a hydraulic approval pursuant to RCW 75.20.103 may seek review from the board by filing a request for the same within thirty days of notice of the approval, denial, conditioning, or modification of such approval.

(b) The review proceedings authorized in (a) of this subsection are subject to the provisions of chapter 34.04 RCW pertaining to procedures in contested cases.

****NEW SECTION. Sec. 4. In certain agricultural areas of the state the composition of the soil and the topography combine to create flood-prone conditions. Unless accumulated sand and gravel are removed from these rivers and streams on a regular basis a heavy rainstorm may cause a disastrous flood. The practices of the department of natural resources in establishing rates charged to commercial sand and gravel businesses cause the businesses to obtain their product from upland sources rather than from rivers and streams. As a consequence, sand and gravel accumulate in the streams and many communities are threatened with periodic, severe floods. These floods are more frequent and severe because of the accumulation of material in the rivers.***

*Sec. 4 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 5. The department of natural resources and the department of ecology shall study methods of diminishing flood risks by encouraging sand and gravel businesses to remove excess accumulation of materials from the beds of rivers and streams in agricultural areas. By December 1, 1989, the department of natural resources and the department of ecology shall report the results of this study to the appropriate legislative committees. In preparing the study and report, the departments shall work with the Washington association of conservation districts, the conservation commission, representation from the private sand and gravel industry, the department of fisheries, and the department of wildlife to identify alternative aquatic land management policies to diminish the risks of flooding and identify methods of adjusting sand and gravel prices annually to reflect local market conditions.

NEW SECTION. Sec. 6. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate March 7, 1988.

Passed the House March 4, 1988.

Approved by the Governor March 24, 1988, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State March 24, 1988.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 4, Substitute Senate Bill No. 6024 entitled:

"AN ACT Relating to rivers and streams in agricultural areas."

At this time, counties throughout the state are developing flood control management plans that will provide a comprehensive review of flood control issues. Section 4, however, includes a finding that the accumulation of sand and gravel in the state's river and stream beds substantially increases the risks of disastrous floods. Although sand and gravel removal are expected to be elements of these plans, other more environmentally sensitive methods should be encouraged and studied before the state begins implementing a response.

With the exception of section 4, Substitute Senate Bill No. 6024 is approved.

CHAPTER 273

[Senate Bill No. 6397]

FOREST FIRES

AN ACT Relating to forest fires; amending RCW 76.04.610 and 76.04.750; and adding new sections to chapter 76.04 RCW.

Be it enacted by the Legislature of the State of Washington:

***NEW SECTION.** Sec. 1. A new section is added to chapter 76.04 RCW to read as follows: