

with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this act in its application to the agencies concerned.

Passed the House March 11, 1986.

Passed the Senate March 11, 1986.

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CHAPTER 173

[Engrossed Substitute House Bill No. 1545]

HYDRAULIC PERMITS

AN ACT Relating to hydraulic permits; amending RCW 75.20.100, 43.21B.005, and 75.20.050; adding new sections to chapter 75.20 RCW; and prescribing penalties.

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 75, chapter 46, Laws of 1983 1st ex. sess. 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 ~~((river or stream or that will utilize any))~~ of the salt or fresh waters of the state ~~((or materials from the stream beds))~~, 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 ~~((having jurisdiction of the site))~~ of fisheries or the department of game as to the adequacy of the means proposed for the protection of fish life. This approval shall not be unreasonably withheld. The ~~((appropriate))~~ department of fisheries or the department of game 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 ~~((appropriate))~~ department of

fisheries or the department of game 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 ((hydraulic permit)) approval within two years of the date of issuance. If ((approval is denied, the appropriate)) either the department of fisheries or the department of game 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 ((appropriate)) department of fisheries or the department of game 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 section 2 of this 1986 act, "bed" shall mean ((that portion of a river or stream and the shorelands within or ordinary high water lines)) 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((s)) of fisheries and the department of game shall mutually agree on ((which one)) whether the department of fisheries or the department of game 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 ((a)) the department of fisheries or the department of game receives an application concerning a site not in its jurisdiction, it shall transmit the application to the ((appropriate)) 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, through their authorized representatives, shall issue immediately upon request oral (~~((permits to a riparian owner or lessee))~~) 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 (~~((permit))~~) approval prior to commencing work. Conditions of an oral (~~((permit))~~) 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. These irrigation or stock watering diversion projects shall be governed by section 2 of this 1986 act.

NEW SECTION. Sec. 2. 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 and when the construction or other work 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 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 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 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. 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 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 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 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 shall mutually agree on whether the department of fisheries or the

department of game 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 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, 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.

Sec. 3. Section 2, chapter 47, Laws of 1979 ex. sess. and RCW 43.21B.005 are each amended to read as follows:

There is created an environmental hearings office of the state of Washington. The environmental hearings office shall consist of the pollution control hearings board created in RCW 43.21B.010, the forest practices appeals board created in RCW 76.09.210, ~~((and))~~ the shorelines hearings board created in RCW 90.58.170, and the hydraulic appeals board created in section 4 of this 1986 act. The chairman of the pollution control hearings board shall be the chief executive officer of the environmental hearings office. Membership, powers, functions, and duties of the pollution control hearings board, the forest practices appeals board, ~~((and))~~ the shorelines hearings board, and the hydraulic appeals board shall be as provided by law.

The chief executive officer of the environmental hearings office may appoint, discharge, and fix the compensation of such staff as may be necessary or may contract for required services. Employees of the environmental hearings office shall serve each board at the direction of the chief executive officer of the environmental hearings office.

NEW SECTION. Sec. 4. (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 under the authority granted in section 2 of this act for the diversion of water for agricultural irrigation or stock watering purposes.

(6) (a) Any person aggrieved by the approval, denial, conditioning, or modification of a hydraulic approval pursuant to section 2 of this act 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. 5. (1) In all appeals over which the hydraulic appeals board has jurisdiction, a party taking an appeal may elect either a formal or informal hearing. Such election shall be made according to the rules of practice and procedure to be adopted by the hydraulic appeals board. In the event that appeals are taken from the same decision, order, or determination, by different parties and only one of such parties elects a formal hearing, a formal hearing shall be granted.

(2) In all appeals, the hydraulic appeals board shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions but such powers shall be exercised in conformity with chapter 34.04 RCW.

(3) In all appeals involving a formal hearing, the hydraulic appeals board, and each member thereof, shall be subject to all duties imposed upon and shall have all powers granted to, an agency by those provisions of chapter 34.04 RCW relating to contested cases.

(4) All proceedings, including both formal and informal hearings, before the hydraulic appeals board or any of its members shall be conducted in accordance with such rules of practice and procedure as the board may prescribe. Such rules shall be published and distributed.

(5) Judicial review of a decision of the hydraulic appeals board shall be de novo except when the decision has been rendered pursuant to the formal hearing, in which event judicial review may be obtained only pursuant to RCW 34.04.130 and 34.04.140.

NEW SECTION. Sec. 6. The department of fisheries and the department of game may each levy civil penalties of up to one hundred dollars per day for violation of any provisions of RCW 75.20.100 or section 2 of this act. The penalty provided shall be imposed by notice in writing, either by certified mail or personal service to the person incurring the penalty, from the director of the appropriate department or that director's designee describing the violation. Any person incurring any penalty under this chapter may appeal the same under chapter 34.04 RCW to the director of the department levying the penalty. Appeals shall be filed within thirty days of receipt of notice imposing any penalty. The penalty imposed shall become due and payable thirty days after receipt of a notice imposing the penalty unless an appeal is filed. Whenever an appeal of any penalty incurred under this chapter is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part.

If the amount of any penalty is not paid within thirty days after it becomes due and payable the attorney general, upon the request of the director of the department of fisheries or the department of game shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action. All penalties recovered under this section shall be paid into the state's general fund.

Sec. 7. Section 75.20.050, chapter 12, Laws of 1955 as amended by section 71, chapter 46, Laws of 1983 1st ex. sess. and RCW 75.20.050 are each amended to read as follows:

It is the policy of this state that a flow of water sufficient to support game fish and food fish populations be maintained at all times in the streams of this state.

The director of ecology shall give the director of fisheries and the director of game notice of each application for a permit to divert or store water (~~(, or other hydraulic permit)~~). The director of fisheries and director of game have thirty days after receiving the notice to state their objections to the application. The permit shall not be issued until the thirty-day period has elapsed.

The director of ecology may refuse to issue a permit if, in the opinion of the director of fisheries or director of game, issuing the permit might result in lowering the flow of water in a stream below the flow necessary to adequately support food fish and game fish populations in the stream.

The provisions of this section shall in no way affect existing water rights.

NEW SECTION. Sec. 8. Sections 2 and 4 through 6 of this act are each added to chapter 75.20 RCW.

Passed the House March 8, 1986.

Passed the Senate March 1, 1986.

Approved by the Governor April 1, 1986.

Filed in Office of Secretary of State April 1, 1986.

CHAPTER 174

[Engrossed House Bill No. 1614]

MOTOR VEHICLE REGISTRATION—REVIEW OF MERITS AND COSTS OF PROGRAM REQUIRING DRIVER'S LICENSE AS A PREREQUISITE TO REGISTRATION

AN ACT Relating to prerequisites for the issuance of vehicle licenses; amending section 2, chapter 424, Laws of 1985 (uncodified); creating new sections; and providing an effective date.

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

Sec. 1. Section 2, chapter 424, Laws of 1985 (uncodified) is amended to read as follows:

This act shall take effect on (~~July 1, 1986~~) January 1, 1990.

NEW SECTION. Sec. 2. The legislature recognizes that a program to require a person to possess a valid driver's license as a prerequisite for the registration of motor vehicles can help improve highway safety in the state. The legislature also recognizes that such a program should be carefully analyzed and planned before implementation to ensure that it is as cost effective as possible.

NEW SECTION. Sec. 3. The legislative transportation committee shall review the merits and costs of implementing the program established by chapter 424, Laws of 1985, including data on deaths and injuries caused by unlicensed drivers, and report back to the legislature prior to January 1, 1989.

Passed the House March 12, 1986.

Passed the Senate March 12, 1986.

Approved by the Governor April 1, 1986.

Filed in Office of Secretary of State April 1, 1986.

CHAPTER 175

[House Bill No. 1631]

NURSING HOME COST REIMBURSEMENT

AN ACT Relating to nursing home cost reimbursement; amending RCW 74.46.360 and 74.46.410; and creating a new section.

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