
SUBSTITUTE SENATE BILL 6448

State of Washington

61st Legislature

2010 Regular Session

By Senate Natural Resources, Ocean & Recreation (originally sponsored by Senator Jacobsen)

READ FIRST TIME 02/04/10.

1 AN ACT Relating to providing the department of fish and wildlife
2 authority to improve permitting of hydraulic projects; amending RCW
3 77.55.011, 77.55.021, 77.15.300, and 77.55.291; adding new sections to
4 chapter 77.55 RCW; adding a new section to chapter 76.09 RCW; creating
5 new sections; prescribing penalties; and providing an effective date.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that the
8 department of fish and wildlife issues thousands of hydraulic project
9 approval permits each year at a substantial commitment of government
10 resources. The legislature recognizes the importance of the hydraulic
11 project approval process to ensure that hydraulic projects provide for
12 the proper protection of fish life.

13 (2) The legislature further finds that other permit streamlining
14 measures, such as issuing multiple-site permits or general permits
15 within a defined geographic area, will benefit the applicant and the
16 department, and provide for the protection of fish life.

17 (3) The legislature further finds that the department of fish and
18 wildlife and the applicant may realize staffing and fiscal efficiencies
19 by using these permit streamlining measures. The department shall use

1 the savings from those efficiencies to monitor hydraulic projects to
2 ensure hydraulic projects are achieving the protection of fish life
3 required by chapter 77.55 RCW, and to emphasize application review and
4 permitting of hydraulic projects that pose the greatest risk to fish
5 life.

6 (4) The legislature further finds that the establishment of a fee
7 schedule for hydraulic project approval permits will relieve state
8 taxpayers from a portion of the cost of the hydraulic project approval
9 permit program. The legislature does not intend the fee schedule to
10 fully fund the program.

11 (5) The legislature further finds that private forest landowners
12 have shown a strong commitment to protecting valuable public resources
13 and satisfying the needs of the state and federal government in regards
14 to protecting endangered species by conducting their operations
15 pursuant to the conditions of a habitat conservation plan approved
16 under the federal endangered species act. This commitment comes at
17 great cost to the forest practices industry, and as a reflection of
18 that financial commitment, the legislature intends to exempt certain
19 common forest practices from the requirements of chapter 77.55 RCW.

20 NEW SECTION. **Sec. 2.** A new section is added to chapter 77.55 RCW
21 to read as follows:

22 (1) The department may continue the use of any general permits
23 authorized as of the effective date of this section and may issue up to
24 four additional pilot general permits authorizing hydraulic projects
25 for water crossing structure installation, removal, and replacement to
26 appropriate, willing, private sector applicants by July 1, 2014.

27 (2) The department must work with stakeholders identified by the
28 department to identify appropriate general permit applicants and
29 projects.

30 (3) The department shall collect information during the life of the
31 pilot general permits to determine whether staffing and fiscal
32 efficiencies are realized by the department and applicants. The
33 department shall work cooperatively with applicants and tribes to
34 ensure that the pilot general permits provide for the protection of
35 fish life. The department shall also use that information to modify
36 how it uses general permits to authorize hydraulic projects and to
37 adjust the permit fee schedule authorized under section 6 of this act.

1 **Sec. 3.** RCW 77.55.011 and 2009 c 549 s 1028 are each amended to
2 read as follows:

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

5 (1) "Bed" means the land below the ordinary high water lines of
6 state waters. This definition does not include irrigation ditches,
7 canals, storm water runoff devices, or other artificial watercourses
8 except where they exist in a natural watercourse that has been altered
9 artificially.

10 (2) "Board" means the hydraulic appeals board created in RCW
11 77.55.301.

12 (3) "Commission" means the state fish and wildlife commission.

13 (4) "Department" means the department of fish and wildlife.

14 (5) "Director" means the director of the department of fish and
15 wildlife.

16 (6) "Emergency" means an immediate threat to life, the public,
17 property, or of environmental degradation.

18 (7) "Hydraulic project" means the construction or performance of
19 work that will use, divert, obstruct, or change the natural flow or bed
20 of any of the salt or freshwaters of the state.

21 (8) "Imminent danger" means a threat by weather, water flow, or
22 other natural conditions that is likely to occur within sixty days of
23 a request for a permit application.

24 (9) "Marina" means a public or private facility providing boat
25 moorage space, fuel, or commercial services. Commercial services
26 include but are not limited to overnight or live-aboard boating
27 accommodations.

28 (10) "Marine terminal" means a public or private commercial wharf
29 located in the navigable water of the state and used, or intended to be
30 used, as a port or facility for the storing, handling, transferring, or
31 transporting of goods to and from vessels.

32 (11) "Ordinary high water line" means the mark on the shores of all
33 water that will be found by examining the bed and banks and
34 ascertaining where the presence and action of waters are so common and
35 usual, and so long continued in ordinary years as to mark upon the soil
36 or vegetation a character distinct from the abutting upland. Provided,
37 that in any area where the ordinary high water line cannot be found,

1 the ordinary high water line adjoining saltwater is the line of mean
2 higher high water and the ordinary high water line adjoining fresh
3 water is the elevation of the mean annual flood.

4 (12) "Permit" means a hydraulic project approval permit issued
5 under this chapter.

6 (13) "Sandbars" includes, but is not limited to, sand, gravel,
7 rock, silt, and sediments.

8 (14) "Small scale prospecting and mining" means the use of only the
9 following methods: Pans; nonmotorized sluice boxes; concentrators; and
10 minirocker boxes for the discovery and recovery of minerals.

11 (15) "Spartina," "purple loosestrife," and "aquatic noxious weeds"
12 have the same meanings as defined in RCW 17.26.020.

13 (16) "Streambank stabilization" means those projects that prevent
14 or limit erosion, slippage, and mass wasting. These projects include,
15 but are not limited to, bank resloping, log and debris relocation or
16 removal, planting of woody vegetation, bank protection using rock or
17 woody material or placement of jetties or groins, gravel removal, or
18 erosion control.

19 (17) "Tide gate" means a one-way check valve that prevents the
20 backflow of tidal water.

21 (18) "Waters of the state" and "state waters" means all salt and
22 fresh waters waterward of the ordinary high water line and within the
23 territorial boundary of the state.

24 (19) "Application submittal fee" means the fee that accompanies an
25 application for hydraulic project approval submitted under RCW
26 77.55.021 for the initial application intake, entry into the
27 department's database, determination of application completeness, and
28 assessment of appropriate permit processing fees.

29 (20) "Emergency permit" means a verbal hydraulic project approval
30 or the written follow-up to the verbal approval issued to a person or
31 government agency under RCW 77.55.021(11).

32 (21) "Expedited permit" means a hydraulic project approval issued
33 to a person or government agency under RCW 77.55.021 (13), (14), or
34 (15).

35 (22) "General permit" means a hydraulic project approval issued to
36 a person or government agency under RCW 77.55.021 for multiple
37 hydraulic projects occurring over a defined geographic area but for

1 which specific project sites have not been designated, and for which
2 impacts are well-understood and proven mitigation measures exist.

3 (23) "Multiple-site permit" means a hydraulic project approval
4 issued to a person or government agency under RCW 77.55.021 for
5 hydraulic projects occurring at more than one specific location.

6 (24) "Permit modification" means a hydraulic project approval
7 issued to a person or government agency under RCW 77.55.021 that
8 extends, renews, or changes the conditions of a previously issued
9 hydraulic project approval.

10 (25) "Permit processing fee" means the fee for evaluating the
11 impacts of, and resultant mitigation for, proposed hydraulic projects,
12 and for processing applications under RCW 77.55.021.

13 (26) "Single-site permit" means a hydraulic project approval issued
14 to a person or government agency under RCW 77.55.021 for a single
15 hydraulic project location.

16 **Sec. 4.** RCW 77.55.021 and 2008 c 272 s 1 are each amended to read
17 as follows:

18 (1) Except as provided in RCW 77.55.031, (~~(77.55.051, and)~~)
19 77.55.041, 77.55.051, and section 10 of this act, in the event that any
20 person or government agency desires to undertake a hydraulic project,
21 the person or government agency shall, before commencing work thereon,
22 secure the approval of the department in the form of a permit as to the
23 adequacy of the means proposed for the protection of fish life.

24 (2) A complete written application for a permit (~~(may)~~) must be
25 submitted (~~(in person or by registered mail)~~) to the department and
26 must contain the following:

27 (a) General plans for the overall project;

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

31 (c) Complete plans and specifications for the proper protection of
32 fish life; (~~and~~)

33 (d) Notice of compliance with any applicable requirements of the
34 state environmental policy act, unless otherwise provided for in this
35 chapter; and

36 (e) Payment of all applicable application submittal and permit
37 processing fees charged by the department under section 6 of this act.

1 (3) The department may accept complete, written applications as
2 provided in this section for multiple-site permits and general permits.
3 For multiple-site permits, each specific location must be identified.

4 (4) With the exception of emergency permits as provided in
5 subsection (11) of this section, applications for permits must be
6 submitted to the department's headquarter office. Requests for
7 emergency permits as provided in subsection (11) of this section may be
8 made to the permitting biologist assigned to the location in which the
9 emergency occurs, to the department's regional office in which the
10 emergency occurs, or to the department's headquarter office.

11 (5) Except as provided in subsections (11) and (13) of this
12 section, the department may not proceed with permit review until the
13 fees required by section 6 of this act are paid in full.

14 (6)(a) Protection of fish life is the only ground upon which
15 approval of a permit may be denied or conditioned. Approval of a
16 permit may not be unreasonably withheld or unreasonably conditioned.
17 Except as provided in this subsection and subsections (~~((8), (10), and~~
18 ~~(12))~~) (11), (13), and (15) of this section, the department has forty-
19 five calendar days upon receipt of a complete application to grant or
20 deny approval of a permit. The forty-five day requirement is suspended
21 if:

22 (i) After ten working days of receipt of the complete application,
23 the applicant remains unavailable or unable to arrange for a timely
24 field evaluation of the proposed project;

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

26 (iii) The applicant requests a delay; or

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

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

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

36 (~~((4))~~) (7) If the department denies approval of a permit, the
37 department shall provide the applicant a written statement of the
38 specific reasons why and how the proposed project would adversely

1 affect fish life. Only the issuance, denial, conditioning, or
2 modification of a permit shall be appealable to the department or the
3 board as specified in RCW 77.55.301 within thirty days of the notice of
4 decision.

5 ~~((+5))~~ (8)(a) The permittee must demonstrate substantial progress
6 on construction of that portion of the project relating to the permit
7 within two years of the date of issuance.

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

11 (c) A permit remains in effect without need for periodic renewal
12 for hydraulic projects that divert water for agricultural irrigation or
13 stock watering purposes and that involve seasonal construction or other
14 work. A permit for streambank stabilization projects to protect farm
15 and agricultural land as defined in RCW 84.34.020 remains in effect
16 without need for periodic renewal if the problem causing the need for
17 the streambank stabilization occurs on an annual or more frequent
18 basis. The permittee must notify the appropriate agency before
19 commencing the construction or other work within the area covered by
20 the permit.

21 ~~((+6))~~ (9) The department may, after consultation with the
22 permittee, modify a permit due to changed conditions as long as the
23 design, size, and scope of the previously approved project remains
24 unchanged. The modification becomes effective unless appealed to the
25 department or the board as specified in RCW 77.55.301 within thirty
26 days from the notice of the proposed modification. For hydraulic
27 projects that divert water for agricultural irrigation or stock
28 watering purposes, or when the hydraulic project or other work is
29 associated with streambank stabilization to protect farm and
30 agricultural land as defined in RCW 84.34.020, the burden is on the
31 department to show that changed conditions warrant the modification in
32 order to protect fish life. The department may not charge fees under
33 section 6 of this act if the modification is not requested by the
34 permittee.

35 ~~((+7))~~ (10) A permittee may request modification of a permit due
36 to changed conditions as long as the design, size, and scope of the
37 previously approved project remains unchanged. The request must
38 include payment of the permit modification fee charged by the

1 department under section 6 of this act. The request must be processed
2 (~~within forty five calendar days of receipt of the written request~~)
3 according to subsections (4), (5), and (6) of this section. A decision
4 by the department may be appealed to the board within thirty days of
5 the notice of the decision. For hydraulic projects that divert water
6 for agricultural irrigation or stock watering purposes, or when the
7 hydraulic project or other work is associated with streambank
8 stabilization to protect farm and agricultural land as defined in RCW
9 84.34.020, the burden is on the permittee to show that changed
10 conditions warrant the requested modification and that such a
11 modification will not impair fish life.

12 ~~((+8))~~ (11)(a) The department, the county legislative authority,
13 or the governor may declare and continue an emergency. If the county
14 legislative authority declares an emergency under this subsection, it
15 shall immediately notify the department. A declared state of emergency
16 by the governor under RCW 43.06.010 shall constitute a declaration
17 under this subsection.

18 (b) The department, through its authorized representatives, shall
19 issue immediately, upon request, oral approval for a stream crossing,
20 or work to remove any obstructions, repair existing structures, restore
21 streambanks, protect fish life, or protect property threatened by the
22 stream or a change in the stream flow without the necessity of
23 obtaining a written permit prior to commencing work. Conditions of the
24 emergency oral permit must be established by the department and reduced
25 to writing within thirty days and complied with as provided for in this
26 chapter.

27 (c) The department may not require the provisions of the state
28 environmental policy act, chapter 43.21C RCW, to be met as a condition
29 of issuing a permit under this subsection.

30 ~~((+9))~~ (d) The department shall charge permittees application
31 submittal and permit processing fees authorized by section 6 of this
32 act after an emergency permit is reduced to writing and issued under
33 this subsection. The department may not require payment of permit fees
34 prior to the department reducing the emergency permits to writing.

35 (12) All state and local agencies with authority under this chapter
36 to issue permits or other authorizations in connection with emergency
37 water withdrawals and facilities authorized under RCW 43.83B.410 shall
38 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+))~~ (13)(a) The department or the county legislative authority
5 may determine an imminent danger exists. The county legislative
6 authority shall notify the department, in writing, if it determines
7 that an imminent danger exists. In cases of imminent danger, the
8 department shall issue an expedited written permit, upon request, for
9 work to remove any obstructions, repair existing structures, restore
10 banks, protect fish resources, or protect property. Expedited permit
11 requests require a complete written application as provided in
12 subsection (2) of this section and must be issued within fifteen
13 calendar days of the receipt of a complete written application.
14 Approval of an expedited permit is valid for up to sixty days from the
15 date of issuance. The department may not require the provisions of the
16 state environmental policy act, chapter 43.21C RCW, to be met, or the
17 payment of a permit processing fee, as a condition of issuing a permit
18 under this subsection.

19 ~~((+11+))~~ (b) The department shall charge permittees permit
20 processing fees authorized by section 6 of this act after an expedited
21 permit is issued under this subsection.

22 (14)(a) For any property, except for property located on a marine
23 shoreline, that has experienced at least two consecutive years of
24 flooding or erosion that has damaged or has threatened to damage a
25 major structure, water supply system, septic system, or access to any
26 road or highway, the county legislative authority may determine that a
27 chronic danger exists. The county legislative authority shall notify
28 the department, in writing, when it determines that a chronic danger
29 exists. In cases of chronic danger, the department shall issue a
30 permit, upon request, for work necessary to abate the chronic danger by
31 removing any obstructions, repairing existing structures, restoring
32 banks, restoring road or highway access, protecting fish resources, or
33 protecting property. Permit requests must be made and processed in
34 accordance with subsections (2) ~~((and))~~, (3), and (4) of this section.

35 (b) Any projects proposed to address a chronic danger identified
36 under (a) of this subsection that satisfies the project description
37 identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions

1 of the state environmental policy act, chapter 43.21C RCW. However,
2 the project is subject to the review process established in RCW
3 77.55.181(3) as if it were a fish habitat improvement project.

4 ~~((+12+))~~ (15)(a) The department may issue an expedited written
5 permit in those instances where normal permit processing would result
6 in significant hardship for the applicant or unacceptable damage to the
7 environment. Expedited permit requests require a complete written
8 application as provided in subsection (2) of this section and must be
9 issued within fifteen calendar days of the receipt of a complete
10 written application. Approval of an expedited permit is valid for up
11 to sixty days from the date of issuance. The department may not
12 require the provisions of the state environmental policy act, chapter
13 43.21C RCW, to be met, or the payment of a permit processing fee, as a
14 condition of issuing a permit under this subsection.

15 (b) The department shall charge permittees permit processing fees
16 authorized by section 6 of this act after an expedited permit is issued
17 under this subsection.

18 **Sec. 5.** RCW 77.15.300 and 2000 c 107 s 239 are each amended to
19 read as follows:

20 (1) A person is guilty of unlawfully undertaking hydraulic project
21 activities if the person:

22 (a)(i) Constructs any form of hydraulic project or performs other
23 work on a hydraulic project; and(~~(+~~

24 ~~(a+))~~ (ii) Fails to have a hydraulic project approval required
25 under chapter 77.55 RCW for such construction or work; or

26 (b) Violates any requirements or conditions of the hydraulic
27 project approval for such construction or work; or

28 (c) Violates any rule adopted under RCW 77.55.021, 77.55.081,
29 77.55.091, or section 2 of this act that identifies the time, manner,
30 locations, methods, or other conditions under which an activity is
31 approved or not approved.

32 (2) Unlawfully undertaking hydraulic project activities is a gross
33 misdemeanor.

34 NEW SECTION. **Sec. 6.** A new section is added to chapter 77.55 RCW
35 to read as follows:

36 (1) The department shall charge fees for permits issued under RCW

1 77.55.021 to recover a portion of the existing costs for processing and
2 issuing decisions on permit applications, for the new costs of
3 administering fee collections, and for costs related to compliance
4 monitoring and enforcement of projects requiring a permit. The fees
5 are based on the scale and complexity of the project and the relative
6 effort required for department staff to review the application, conduct
7 site visits, consult with applicants as necessary, and issue or deny
8 the permit.

9 (2) For the purposes of assessing fees for permits under subsection
10 (1) of this section, the department must categorize the following
11 repair or maintenance hydraulic projects as low complexity:

- 12 (a) Emergencies;
- 13 (b) Freshwater beach habitat creation;
- 14 (c) Beaver dams;
- 15 (d) Breeding substrate;
- 16 (e) Large woody material work;
- 17 (f) Riparian habitat work;
- 18 (g) Wetlands or estuarine habitat work;
- 19 (h) Conduit or cable work using boring;
- 20 (i) Dredging less than fifty cubic yards of bed material;
- 21 (j) Water crossings, including a bridge, culvert, or ford, in
22 nonfish-bearing waters;
- 23 (k) Bridge work exclusively above the ordinary high water line;
- 24 (l) Shoreline modification or bank protection of less than one
25 hundred feet, not associated with jetties, dikes, or levees;
- 26 (m) Booms;
- 27 (n) Anchoring or mooring buoys and navigation aids;
- 28 (o) Piling work;
- 29 (p) Overwater structures, not including marinas or marine
30 terminals;
- 31 (q) Boat lifts or railway launches;
- 32 (r) Boat ramps or launches;
- 33 (s) Timber felling and yarding activities;
- 34 (t) Temporary or permanent stream gauges or other scientific
35 instruments;
- 36 (u) Outfalls;
- 37 (v) Tidegates;

1 (w) Mechanical aquatic plant control not addressed by the aquatic
2 plants and fish pamphlet;

3 (x) Pump water diversions and fish screens; and
4 (y) Gravity water diversions and fish screens.

5 (3) When assessing fees for permits under subsection (1) of this
6 section, the department must categorize the following new, replacement,
7 or removal hydraulic projects as low complexity:

8 (a) Beaver dams;
9 (b) Conduit or cable work using boring;
10 (c) Bridge work exclusively above the ordinary high water line;
11 (d) Booms;
12 (e) Anchoring or mooring buoys and navigation aids;
13 (f) Overwater structures in the current footprint, not including
14 marinas or marine terminals;
15 (g) Boat ramps or launches within the existing footprint of an
16 existing structure;
17 (h) Timber felling and yarding activities; and
18 (i) Temporary or permanent stream gauges or other scientific
19 instruments.

20 (4) When assessing fees for permits under subsection (1) of this
21 section, the department must categorize the following repair or
22 maintenance hydraulic projects as medium complexity:

23 (a) Aquaculture;
24 (b) Off channel, side channel, or in-channel enhancement or
25 restoration work, not including projects that are exclusively large
26 woody material work;
27 (c) Channel realignment work;
28 (d) Bed modification, not including habitat enhancement or
29 restoration and dredging;
30 (e) Conduit or cable work using trenching;
31 (f) Dredging greater than fifty cubic yards of bed material;
32 (g) Water crossings, including a bridge, culvert, or ford, in fish-
33 bearing waters, not including fish passage retrofits;
34 (h) Fish passage barrier removal with replacement or retrofit using
35 such methods as baffles or log controls for passage through or over a
36 structure;
37 (i) Fish passage not associated with a water crossing structure,
38 such as a bypass of a natural barrier or a fishway to bypass a dam;

1 (j) Shoreline modification or bank protection greater than one
2 hundred feet that is not associated with jetties, dikes, or levees;

3 (k) Jetties, dikes, or levees;

4 (l) Overwater structures outside of the footprint of an existing
5 structure, not including marinas or marine terminals;

6 (m) Marinas and marine terminals; and

7 (n) Dams not under jurisdiction of the federal energy regulatory
8 commission.

9 (5) When assessing fees for permits under subsection (1) of this
10 section, the department must categorize the following new, replacement,
11 or removal hydraulic projects as medium complexity:

12 (a) Emergencies;

13 (b) Aquaculture;

14 (c) Freshwater beach habitat creation;

15 (d) Breeding substrate;

16 (e) Large woody material work;

17 (f) Riparian habitat work;

18 (g) Conduit or cable work using trenching;

19 (h) Dredging less than fifty cubic yards of bed material;

20 (i) Water crossings, including a bridge, culvert, or ford, in
21 nonfish-bearing waters;

22 (j) Shoreline modification or bank protection less than one hundred
23 feet, not associated with jetties, dikes, or levees;

24 (k) Piling work;

25 (l) Overwater structures outside of the footprint of an existing
26 structure, not including marinas or marine terminals;

27 (m) Boat lifts or railway launches;

28 (n) Boat ramps or launches outside of the footprint of an existing
29 structure;

30 (o) Outfalls;

31 (p) Tidegates;

32 (q) Mechanical aquatic plant control not addressed by the aquatic
33 plants and fish pamphlet;

34 (r) Mineral prospecting not addressed by the gold and fish
35 pamphlet;

36 (s) Pump water diversions and fish screens; and

37 (t) Gravity water diversions and fish screens.

1 (6) When assessing fees for permits under subsection (1) of this
2 section, the department must categorize the following new, replacement,
3 or removal hydraulic projects as high complexity:

4 (a) Off channel, side channel, or in-channel enhancement or
5 restoration work, not including projects that are exclusively large
6 woody material work;

7 (b) Wetland or estuarine habitat work;

8 (c) Channel realignment work;

9 (d) Bed modification, not including habitat enhancement or
10 restoration and dredging;

11 (e) Dredging greater than fifty cubic yards of bed material;

12 (f) Water crossings, including a bridge, culvert, or ford, in fish-
13 bearing waters, not including fish passage retrofits;

14 (g) Fish passage barrier removal with replacement or retrofit using
15 such methods as baffles or log controls for passage through or over a
16 structure;

17 (h) Fish passage not associated with a water crossing structure,
18 such as a bypass of a natural barrier or a fishway to bypass a dam;

19 (i) Shoreline modification or bank protection greater than one
20 hundred feet, not associated with jetties, dikes, or levees;

21 (j) Jetties, dikes, or levees;

22 (k) Marinas and marine terminals; and

23 (l) Dams not under jurisdiction of the federal energy regulatory
24 commission.

25 (7) If the department receives applications for project types not
26 identified in subsections (2) through (6) of this section, it shall
27 categorize them as low, medium, or high risk and charge fees based on
28 those categories consistent with the most similar project types
29 identified in subsections (2) through (6) of this section.

30 (8) When applicable and except as provided in this section, the
31 department must charge the following fees, as modified as provided in
32 subsection (12) of this section:

33 (a) An application submittal fee, which is two hundred fifty
34 dollars for a:

35 (i) Low complexity permit;

36 (ii) Medium complexity permit;

37 (iii) High complexity permit; and

38 (iv) General permit;

1 (b) A permit processing fee for medium and high complexity permits,
2 which is:

3 (i) Two hundred seventy-five dollars for a medium complexity,
4 single-site permit; and

5 (ii) One thousand two hundred dollars for a high complexity,
6 single-site permit;

7 (c) A multiple-site permit processing fee, which is the applicable
8 permit processing fee assessed under this subsection (8)(c) for one of
9 the hydraulic project sites identified in the permit application, and
10 twenty percent of the applicable permit processing fee for each
11 additional site;

12 (d) A general permit processing fee, which is the lesser of five
13 thousand two hundred fifty dollars or a fee level negotiated between
14 the department and the general project applicant; and

15 (e) A permit modification fee, which is one hundred fifty dollars.

16 (9) In cases where hydraulic projects include work that falls into
17 more than one of the permit categories outlined in subsection (8) of
18 this section, the fee charged must be based on the most complex
19 component of the project.

20 (10) The following hydraulics projects are exempt from fees listed
21 under this section: Projects approved under the cost-sharing program
22 for fish passage barriers authorized in RCW 76.13.150; projects
23 conducted pursuant to pamphlets developed under RCW 77.55.081 or
24 77.55.091; and projects associated with an approved forest practices
25 permit granted under chapter 76.09 RCW.

26 (11) Hydraulic projects approved under applicant-funded contracts
27 with the department that pay for the costs of processing those projects
28 are exempt from fees listed under this section.

29 (12) On September 30th of each year, the department shall calculate
30 adjusted fees by the rate of inflation. The adjusted fees must be
31 calculated to the nearest dollar using the consumer price index for the
32 twelve months prior to each September 1st as calculated by the United
33 States department of labor. Each adjusted fee calculated under this
34 section takes effect on the following January 1st.

35 (13) All fees collected under this section must be deposited in the
36 hydraulic project approval account created in section 8 of this act.

1 NEW SECTION. **Sec. 7.** By December 31, 2012, the department of fish
2 and wildlife shall report to the legislature consistent with RCW
3 43.01.036 on the effectiveness of streamlined permitting authorized by
4 this act, the impact of fees on applicants, actual versus expected fees
5 collected by the department, the impact of fee collection on the
6 department's hydraulic project approval permit program, and
7 recommendations for improving the department's permit streamlining
8 efforts and permit fee schedule.

9 NEW SECTION. **Sec. 8.** A new section is added to chapter 77.55 RCW
10 to read as follows:

11 (1) The hydraulic project approval account is created in the state
12 treasury. All receipts from application submittal fees and permit
13 processing fees for hydraulic project approval applications in section
14 6 of this act must be deposited into the account.

15 (2) Except for unanticipated receipts under RCW 43.79.260 through
16 43.79.282, moneys in the hydraulic project approval account may be
17 spent only after appropriation.

18 (3) Expenditures from the hydraulic project approval account may be
19 used only to fund department activities relating to processing and
20 issuing hydraulic project approval decisions, compliance monitoring,
21 enforcement activities related to permits issued under RCW 77.55.021,
22 conducting or participating in administrative or judicial appeals of
23 hydraulic project approval decisions, and for the associated management
24 and administrative costs incurred to implement and operate the program.

25 **Sec. 9.** RCW 77.55.291 and 2005 c 146 s 701 are each amended to
26 read as follows:

27 (1)(a) The department may levy civil penalties of up to one hundred
28 dollars per day (~~for violation of any provisions of RCW 77.55.021.~~)
29 when a person:

30 (i) Constructs any form of hydraulic project or performs other work
31 on a hydraulic project and fails to have a hydraulic project approval
32 required under this chapter for the construction or work;

33 (ii) Violates any requirements or conditions of the hydraulic
34 project approval for the construction or work;

35 (iii) Fails to pay applicable application submittal or permit

1 processing fees within thirty days of receipt of expedited permits or
2 emergency permits reduced to writing under RCW 77.55.021; or

3 (iv) Violates any rule adopted under RCW 77.55.021, 77.55.081,
4 77.55.091, or section 2 of this act that identifies the time, manner,
5 locations, methods, or other conditions under which an activity is
6 approved or not approved.

7 (b) The penalty provided shall be imposed by notice in writing,
8 either by certified mail or personal service to the person incurring
9 the penalty, from the director or the director's designee describing
10 the violation.

11 (2) Any person incurring any penalty under this chapter may appeal
12 the same under chapter 34.05 RCW to the director. Appeals shall be
13 filed within thirty days of receipt of notice imposing any penalty.

14 (3) The penalty imposed and any fees due for violations of section
15 6 of this act shall become due and payable thirty days after receipt of
16 a notice imposing the penalty unless an appeal is filed. Whenever an
17 appeal of any penalty incurred under this chapter is filed, the penalty
18 shall become due and payable only upon completion of all review
19 proceedings and the issuance of a final order confirming the penalty in
20 whole or in part.

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

29 NEW SECTION. Sec. 10. A new section is added to chapter 77.55 RCW
30 to read as follows:

31 (1) The following common forest practices do not require a
32 hydraulic project approval permit under this chapter when those
33 projects are conducted under an approved forest practices permit
34 granted under chapter 76.09 RCW that incorporates rules adopted under
35 subsection (2) of this section:

36 (a) The removal or modification of newly constructed beaver dams;

37 (b) Timber felling and yarding activities;

1 (c) Bridge repair, including painting, redecking, and curbing or
2 railing repair;

3 (d) Construction and repair of a ford, including the use of
4 standard equipment to do so;

5 (e) Removal of woody debris from culverts and culvert openings;

6 (f) Removal of woody debris not imbedded in the stream bed or
7 stream banks from upstream bridge openings; and

8 (g) Single lane forestry road water crossing structures on type F
9 waters, as defined in WAC 222-16-030 as it existed on the effective
10 date of this section, including bridges, temporary culvert
11 installations, or permanent culvert installations.

12 (2) The department and the forest practices board, in collaboration
13 with interested and affected parties, shall jointly establish by rule
14 the requirements for the project types in subsection (1) of this
15 section necessary to protect fish life. The rules must be incorporated
16 into forest practices permits for those activities.

17 NEW SECTION. **Sec. 11.** A new section is added to chapter 76.09 RCW
18 to read as follows:

19 The board must ensure that forest practices permits issued for
20 activities identified in section 10 of this act incorporate the
21 requirements of the rules adopted pursuant to that section.

22 NEW SECTION. **Sec. 12.** This act takes effect July 1, 2010.

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