
HOUSE BILL 1588

State of Washington

62nd Legislature

2011 Regular Session

By Representatives Dunshee, Chandler, Van De Wege, and Tharinger; by request of Department of Fish and Wildlife

Read first time 01/26/11. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to hydraulic project approval; amending RCW
2 77.55.011, 77.55.021, 77.55.031, and 77.55.141; adding new sections to
3 chapter 77.55 RCW; creating new sections; repealing RCW 77.15.300 and
4 77.55.291; prescribing penalties; and providing expiration dates.

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

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

12 (2) The legislature further finds that targeted permit streamlining
13 measures, such as creating a category of hydraulic projects that may be
14 conducted upon notification to the department, will benefit both the
15 applicant and the department, while providing for the protection of
16 fish life due to the lower risk these projects pose to 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 these 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 educating permittees about
12 how the requirements of the hydraulic code protect fish life will
13 increase compliance with permit requirements.

14 **Sec. 2.** RCW 77.55.011 and 2010 c 210 s 26 are each amended to read
15 as follows:

16 The definitions in this section apply throughout this chapter
17 unless the context clearly requires otherwise.

18 (1) "Bed" means the land below the ordinary high water (~~(lines))~~
19 marks of state waters. This definition does not include irrigation
20 ditches, canals, storm water runoff devices, or other artificial
21 watercourses except where they exist in a natural watercourse that has
22 been altered artificially.

23 (2) "Board" means the pollution control hearings board created in
24 chapter 43.21B RCW.

25 (3) "Class I hydraulic project" means a hydraulic project for the
26 removal or control of aquatic noxious weeds conducted under the aquatic
27 plants and fish pamphlet authorized by RCW 77.55.081, or for mineral
28 prospecting and mining conducted under the gold and fish pamphlet
29 authorized by RCW 77.55.091.

30 (4) "Class II hydraulic project" means a hydraulic project that is
31 routine in nature and therefore can be conducted without site-specific
32 conditions or compensatory mitigation requirements to avoid impacts to
33 fish life when conducted in accordance with the rules established by
34 the department regulating the conduct and timing of the project.

35 (5) "Class III hydraulic project" means any hydraulic project that
36 is not a class I hydraulic project or a class II hydraulic project.

37 (6) "Commission" means the state fish and wildlife commission.

1 ~~((+4))~~ (7) "Date of receipt" has the same meaning as defined in
2 RCW 43.21B.001.

3 ~~((+5))~~ (8) "Department" means the department of fish and wildlife.
4 ~~((+6))~~ (9) "Director" means the director of the department of fish
5 and wildlife.

6 ~~((+7))~~ (10) "Emergency" means an immediate threat to life, the
7 public, property, or of environmental degradation.

8 ~~((+8))~~ (11) "Emergency permit" means a verbal hydraulic project
9 approval or the written follow-up to the verbal approval issued to a
10 person under RCW 77.55.021(14).

11 (12) "Expedited permit" means a hydraulic project approval issued
12 to a person under RCW 77.55.021 (16) and (18).

13 (13) "General permit" means a hydraulic project approval issued to
14 a person under RCW 77.55.021 for multiple hydraulic projects occurring
15 over a defined geographic area but for which specific project sites
16 have not been designated, and for which impacts are well-understood and
17 proven mitigation measures exist.

18 (14) "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 ~~((+9))~~ (15) "Imminent danger" means a threat by weather, water
22 flow, or other natural conditions that is likely to occur within sixty
23 days of a request for a permit application.

24 ~~((+10))~~ (16) "Marina" means a public or private facility providing
25 boat moorage space, fuel, or commercial services. Commercial services
26 include but are not limited to overnight or live-aboard boating
27 accommodations.

28 ~~((+11))~~ (17) "Marine terminal" means a public or private
29 commercial wharf located in the navigable water of the state and used,
30 or intended to be used, as a port or facility for the storing,
31 handling, transferring, or transporting of goods to and from vessels.

32 ~~((+12))~~ (18) "Multiple-site permit" means a hydraulic project
33 approval issued to a person under RCW 77.55.021 for hydraulic projects
34 occurring at more than one specific location and which includes site-
35 specific requirements.

36 (19) "Ordinary high water ~~((line))~~ mark" means ~~((the mark on the~~
37 ~~shores of all water that will be found by examining the bed and banks~~
38 ~~and ascertaining where the presence and action of waters are so common~~

1 and usual, and so long continued in ordinary years as to mark upon the
2 soil or vegetation a character distinct from the abutting upland.
3 Provided, that in any area where the ordinary high water line cannot be
4 found, the ordinary high water line adjoining saltwater is the line of
5 mean higher high water and the ordinary high water line adjoining fresh
6 water is the elevation of the mean annual flood)) that mark on the
7 shores of all lakes, streams, and tidal water that will be found by
8 examining the bed and banks and ascertaining where the presence and
9 action of waters are so common and usual, and so long continued in all
10 ordinary years, as to mark upon the soil a character distinct from that
11 of the abutting upland, in respect to vegetation as that condition
12 exists on June 1, 1971, as it may naturally change thereafter, or as it
13 may change thereafter in accordance with permits issued by a local
14 government or the department. However, in any area where the ordinary
15 high water mark cannot be found, the ordinary high water mark adjoining
16 saltwater is the line of mean higher high tide and the ordinary high
17 water mark adjoining fresh water is the line of mean high water.

18 ((+13)) (20) "Permit" means a hydraulic project approval
19 ((permit)) for a class I, II, or III hydraulic project issued under
20 this chapter.

21 ((+14) "Sandbars" includes, but is not limited to, sand, gravel,
22 rock, silt, and sediments)) (21) "Permit modification" means a
23 hydraulic project approval issued to a person under RCW 77.55.021 that
24 extends, renews, or changes the conditions of a previously issued
25 hydraulic project approval.

26 (22) "Person" means an individual or a public or private entity or
27 organization. The term "person" includes local, state, and federal
28 government agencies and all business organizations.

29 (23) "Sandbar" means a ridge of sediment built up by water
30 currents.

31 ((+15)) (24) "Small scale prospecting and mining" means the use of
32 only the following methods: Pans; nonmotorized sluice boxes;
33 concentrators; and minirocker boxes for the discovery and recovery of
34 minerals.

35 ((+16)) (25) "Spartina," "purple loosestrife," and "aquatic
36 noxious weeds" have the same meanings as defined in RCW 17.26.020.

37 ((+17)) (26) "Streambank stabilization" means those projects that
38 prevent or limit erosion, slippage, and mass wasting. These projects

1 include, but are not limited to, bank resloping, log and debris
2 relocation or removal, planting of woody vegetation, bank protection
3 using rock or woody material or placement of jetties or groins, gravel
4 removal, or erosion control.

5 ~~((+18))~~ (27) "Tide gate" means a one-way check valve that prevents
6 the backflow of tidal water.

7 ~~((+19))~~ (28) "Waters of the state" and "state waters" means all
8 salt and fresh waters waterward of the ordinary high water ~~((line))~~
9 mark and within the territorial boundary of the state.

10 **Sec. 3.** RCW 77.55.021 and 2010 c 210 s 27 are each amended to read
11 as follows:

12 (1)(a) Except as provided in RCW 77.55.031, 77.55.041, and
13 77.55.051, ~~((and 77.55.041,))~~ in the event that any person ~~((or~~
14 ~~government agency))~~ desires to undertake a hydraulic project, the
15 person ~~((or government agency))~~ shall ~~((, before commencing work~~
16 ~~thereon,))~~ secure the approval of the department ~~((in the form of a~~
17 ~~permit as to the adequacy of the means proposed for the protection of~~
18 ~~fish life))~~ before conducting work on that project.

19 (b) When issuing approval for hydraulic projects, the department
20 shall provide for the protection of fish life.

21 (2)(a) A class I hydraulic project may be conducted without
22 submitting an application or notification.

23 (b) If a project does not meet the requirements of a class I
24 hydraulic project, a person may apply for a permit for a class III
25 hydraulic project under subsection (4) of this section.

26 (3) Until the department implements the pilot project for class II
27 hydraulic projects under section 4 of this act, and after the pilot
28 project ends, all class II hydraulic projects must be considered, and
29 applications for permits processed as, class III hydraulic projects.

30 (4)(a) A class III hydraulic project may be conducted following
31 receipt of the department's written approval of a complete application
32 described in this subsection.

33 (b) A complete written application for a permit ~~((may))~~ for a class
34 III hydraulic project must be submitted ~~((in person or by registered~~
35 ~~mail))~~ to the department and must contain the following:

36 ~~((+a))~~ (i) General plans for the overall project;

1 ~~((b))~~ (ii) Complete plans and specifications of the proposed
2 construction or work within the mean higher high water line in
3 saltwater or within the ordinary high water line in freshwater;

4 ~~((c))~~ (iii) Complete plans and specifications for the proper
5 protection of fish life; ~~(and~~

6 ~~(d))~~ (iv) Notice of compliance with any applicable requirements of
7 the state environmental policy act, unless otherwise provided for in
8 this chapter; and

9 (v) Payment of all applicable application submittal and permit
10 processing fees charged by the department under section 8 of this act.

11 (5) The department may establish direct billing accounts or other
12 funds transfer methods with permit applicants to satisfy the fee
13 payment requirements of this section and section 5 of this act.

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

17 (7) With the exception of emergency permits as provided in
18 subsection (14) of this section, applications for permits must be
19 submitted to the department's headquarter office in Olympia. Requests
20 for emergency permits as provided in subsection (14) of this section
21 may be made to the permitting biologist assigned to the location in
22 which the emergency occurs, to the department's regional office in
23 which the emergency occurs, or to the department's headquarters office.

24 (8) Except as provided for emergency permits in subsection (14) of
25 this section, the department may not proceed with permit review until
26 fees are paid in full.

27 ~~((3))~~ (9)(a) Protection of fish life is the only ground upon
28 which approval of a permit may be denied or conditioned. Approval of
29 a permit may not be unreasonably withheld or unreasonably conditioned.
30 Except as provided in this subsection and subsections ~~((8), (10), and~~
31 ~~(12))~~ (14), (15), (16), and (18) of this section, the department has
32 forty-five calendar days upon receipt of a complete application for a
33 permit for a class III hydraulic project to grant or deny approval of
34 a permit. The forty-five day requirement is suspended if:

35 (i) After ten working days of receipt of the application for a
36 permit for a class III hydraulic project, the applicant remains
37 unavailable or unable to arrange for a timely field evaluation of the
38 proposed project;

1 (ii) The site is physically inaccessible for inspection;
2 (iii) The applicant requests a delay; or
3 (iv) The department is issuing a permit for a storm water discharge
4 and is complying with the requirements of RCW 77.55.161(3)(b).

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

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

12 ~~((+4))~~ (10) If the department denies approval of a permit, the
13 department shall provide the applicant a written statement of the
14 specific reasons why and how the proposed project would adversely
15 affect fish life.

16 (a) Except as provided in (b) of this subsection, issuance, denial,
17 conditioning, or modification of a permit shall be appealable to the
18 board within thirty days from the date of receipt of the decision as
19 provided in RCW 43.21B.230.

20 (b) Issuance, denial, conditioning, or modification of a permit may
21 be informally appealed to the department within thirty days from the
22 date of receipt of the decision. Requests for informal appeals must be
23 filed in the form and manner prescribed by the department by rule. A
24 permit decision that has been informally appealed to the department is
25 appealable to the board within thirty days from the date of receipt of
26 the department's decision on the informal appeal.

27 ~~((+5))~~ (11)(a) ~~((The permittee must demonstrate substantial
28 progress on construction of that portion of the project relating to the
29 permit within two years of the date of issuance.~~

30 ~~(b))~~ Approval of a permit for a class III hydraulic project and a
31 general permit is valid for ~~((a period of))~~ up to five years from the
32 date of issuance, except as provided in ~~((+e))~~ (b) of this subsection
33 and in RCW 77.55.151.

34 ~~((+e))~~ (b) A permit remains in effect without need for periodic
35 renewal for hydraulic projects that divert water for agricultural
36 irrigation or stock watering purposes and that involve seasonal
37 construction or other work. A permit for streambank stabilization
38 projects to protect farm and agricultural land as defined in RCW

1 84.34.020 remains in effect without need for periodic renewal if the
2 problem causing the need for the streambank stabilization occurs on an
3 annual or more frequent basis. The permittee must notify the
4 appropriate agency before commencing the construction or other work
5 within the area covered by the permit.

6 ~~((+6))~~ (12) The department may, after consultation with the
7 permittee, modify a permit due to changed conditions. The modification
8 is appealable as provided in subsection ~~((+4))~~ (10) of this section.
9 For a hydraulic project~~((s))~~ that diverts water for agricultural
10 irrigation or stock watering purposes, ~~((e))~~ when the hydraulic
11 project or other work is associated with streambank stabilization to
12 protect farm and agricultural land as defined in RCW 84.34.020, the
13 burden is on the department to show that changed conditions warrant the
14 modification in order to protect fish life.

15 ~~((+7))~~ (13) A permittee may request modification of a permit due
16 to changed conditions. The request must be processed within forty-five
17 calendar days of receipt of the written request and payment of
18 applicable fees under section 8 of this act. A decision by the
19 department is appealable as provided in subsection ~~((+4))~~ (10) of this
20 section. For a hydraulic project~~((s))~~ that diverts water for
21 agricultural irrigation or stock watering purposes, ~~((e))~~ when the
22 hydraulic project or other work is associated with streambank
23 stabilization to protect farm and agricultural land as defined in RCW
24 84.34.020, the burden is on the permittee to show that changed
25 conditions warrant the requested modification and that such a
26 modification will not impair fish life.

27 ~~((+8))~~ (14)(a) The department, the county legislative authority,
28 or the governor may declare and continue an emergency. If the county
29 legislative authority declares an emergency under this subsection, it
30 shall immediately notify the department. A declared state of emergency
31 by the governor under RCW 43.06.010 shall constitute a declaration
32 under this subsection.

33 (b) The department, through its authorized representatives, shall
34 issue immediately, upon request, ~~((e))~~ verbal approval for a stream
35 crossing, or work to remove any obstructions, repair existing
36 structures, restore streambanks, protect fish life, or protect property
37 threatened by the stream or a change in the stream flow without the
38 necessity of obtaining a written permit prior to commencing work.

1 Conditions of the emergency (~~oral~~) verbal permit must be
2 (~~established by the department and~~) reduced to writing within thirty
3 days and complied with as provided for in this chapter.

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

7 (d) The department may not charge a person requesting an emergency
8 permit any of the fees authorized by section 8 of this act until after
9 the emergency permit is issued and reduced to writing.

10 (~~(+9)~~) (15) All state and local agencies with authority under this
11 chapter to issue permits or other authorizations in connection with
12 emergency water withdrawals and facilities authorized under RCW
13 43.83B.410 shall expedite the processing of such permits or
14 authorizations in keeping with the emergency nature of such requests
15 and shall provide a decision to the applicant within fifteen calendar
16 days of the date of application.

17 (~~(+10)~~) (16) The department or the county legislative authority
18 may determine an imminent danger exists. The county legislative
19 authority shall notify the department, in writing, if it determines
20 that an imminent danger exists. In cases of imminent danger, the
21 department shall issue an expedited written permit, upon request, for
22 work to remove any obstructions, repair existing structures, restore
23 banks, protect fish resources, or protect property. Expedited permit
24 requests require a complete written application as provided in
25 subsection (~~(+2)~~) (4) of this section and must be issued within
26 fifteen calendar days of the receipt of a complete written application.
27 Approval of an expedited permit is valid for up to sixty days from the
28 date of issuance. The department may not require the provisions of the
29 state environmental policy act, chapter 43.21C RCW, to be met as a
30 condition of issuing a permit under this subsection.

31 (~~(+11)~~) (17)(a) For any property, except for property located on
32 a marine shoreline, that has experienced at least two consecutive years
33 of flooding or erosion that has damaged or has threatened to damage a
34 major structure, water supply system, septic system, or access to any
35 road or highway, the county legislative authority may determine that a
36 chronic danger exists. The county legislative authority shall notify
37 the department, in writing, when it determines that a chronic danger
38 exists. In cases of chronic danger, the department shall issue a

1 permit, upon request, for work necessary to abate the chronic danger by
2 removing any obstructions, repairing existing structures, restoring
3 banks, restoring road or highway access, protecting fish resources, or
4 protecting property. Permit requests must be made and processed in
5 accordance with subsections ~~((+2+))~~ (4) and ~~((+3+))~~ (9) of this
6 section.

7 (b) Any projects proposed to address a chronic danger identified
8 under (a) of this subsection that satisfies the project description
9 identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions
10 of the state environmental policy act, chapter 43.21C RCW. However,
11 the project is subject to the review process established in RCW
12 77.55.181(3) as if it were a fish habitat improvement project.

13 ~~((+12+))~~ (18) The department may issue an expedited written permit
14 in those instances where normal permit processing would result in
15 significant hardship for the applicant or unacceptable damage to the
16 environment. Expedited permit requests require a complete written
17 application as provided in subsection ~~((+2+))~~ (4) of this section and
18 must be issued within fifteen calendar days of the receipt of a
19 complete written application. Approval of an expedited permit is valid
20 for up to sixty days from the date of issuance. The department may not
21 require the provisions of the state environmental policy act, chapter
22 43.21C RCW, to be met as a condition of issuing a permit under this
23 subsection.

24 NEW SECTION. **Sec. 4.** The department shall conduct a pilot project
25 to evaluate the effectiveness of streamlined permitting for class II
26 hydraulic projects.

27 (1) The department shall develop pilot rules with interested
28 parties that identify class II hydraulic projects eligible for
29 streamlined permit processing and the conditions under which qualifying
30 projects may be conducted. The department shall adopt those rules by
31 January 1, 2012.

32 (2) The pilot project must be conducted from the date the rules
33 become effective until the end of the 2014 regular legislative session.

34 (3) The definitions in RCW 77.55.011 apply throughout this section.

35 (4) This section expires June 30, 2014.

1 NEW SECTION. **Sec. 5.** (1) A person applying for approval to
2 conduct a class II hydraulic project under the pilot project
3 established in section 4 of this act must submit written notification
4 of the class II hydraulic project to the department in the manner,
5 content, and form prescribed by the department, and payment of all fees
6 required under section 8 of this act.

7 (2) Within fifteen calendar days of receipt of notification and
8 payment of fees for a class II hydraulic project, the department shall
9 provide written notification to the applicant of the department's
10 determination whether the proposed project qualifies as a class II
11 hydraulic project. If the proposed project does not qualify as a class
12 II hydraulic project, the department shall include in the written
13 notification the specific reasons why.

14 (3) A class II hydraulic project may be conducted following receipt
15 of the department's written notification that the proposed project
16 qualifies as a class II hydraulic project and that the applicant has
17 complied with the notification requirements and paid all applicable
18 fees charged by the department under section 8 of this act.

19 (4) If a project does not meet the requirements of a class II
20 hydraulic project, a person may apply for a class III hydraulic project
21 under RCW 77.55.021.

22 (5) The definitions in RCW 77.55.011 apply throughout this section.

23 (6) This section expires June 30, 2014.

24 **Sec. 6.** RCW 77.55.031 and 2005 c 146 s 301 are each amended to
25 read as follows:

26 The act of driving across an established ford is exempt from a
27 permit. Driving across streams or on wetted streambeds at areas other
28 than established fords requires a permit. Work within the ordinary
29 high water (~~(line)~~) mark of state waters to construct or repair a ford
30 or crossing requires a permit.

31 **Sec. 7.** RCW 77.55.141 and 2010 c 210 s 28 are each amended to read
32 as follows:

33 (1) In order to protect the property of marine waterfront shoreline
34 owners it is necessary to facilitate issuance of permits for bulkheads
35 or rockwalls under certain conditions.

1 (2) The department shall issue a permit with or without conditions
2 within forty-five days of receipt of a complete and accurate
3 application which authorizes commencement of construction, replacement,
4 or repair of a marine beach front protective bulkhead or rockwall for
5 single-family type residences or property under the following
6 conditions:

7 (a) The waterward face of a new bulkhead or rockwall shall be
8 located only as far waterward as is necessary to excavate for footings
9 or place base rock for the structure and under no conditions shall be
10 located more than six feet waterward of the ordinary high water
11 (~~line~~) mark;

12 (b) Any bulkhead or rockwall to replace or repair an existing
13 bulkhead or rockwall shall be placed along the same alignment as the
14 bulkhead or rockwall it is replacing. However, the replaced or
15 repaired bulkhead or rockwall may be placed waterward of and directly
16 abutting the existing structure only in cases where removal of the
17 existing bulkhead or rockwall would result in environmental degradation
18 or removal problems related to geological, engineering, or safety
19 considerations; (~~and~~)

20 (c) Construction of a new bulkhead or rockwall, or replacement or
21 repair of an existing bulkhead or rockwall waterward of the existing
22 structure shall not result in the permanent loss of critical food fish
23 or shellfish habitats; and

24 (d) Timing constraints shall be applied on a case-by-case basis for
25 the protection of critical habitats, including but not limited to
26 migration corridors, rearing and feeding areas, and spawning habitats,
27 for the proper protection of fish life.

28 (3) Any bulkhead or rockwall construction, replacement, or repair
29 not meeting the conditions in this section shall be processed under
30 this chapter in the same manner as any other application.

31 (4) Any person aggrieved by the approval, denial, conditioning, or
32 modification of a permit under this section may appeal the decision as
33 provided in RCW 77.55.021(~~(+4)~~) (10).

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

36 (1) Except as provided in this section, the department shall charge
37 fees for hydraulic project permits issued under RCW 77.55.021 to

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

8 (2) A permit for a class I hydraulic project is exempt from fees
9 under this section.

10 (3) The fee for a permit for a class II hydraulic project is one
11 hundred fifty dollars for notification/application submittal.

12 (4) The fee for a permit for a class III hydraulic project is one
13 hundred fifty dollars for notification/application submittal, and eight
14 hundred fifty dollars for permit processing.

15 (5) The fee for a general permit for class II or class III
16 hydraulic projects is one hundred fifty dollars for
17 notification/application submittal, and four thousand eight hundred
18 fifty dollars for permit processing.

19 (6) The fee for a multiple-site permit for class III hydraulic
20 projects is one hundred fifty dollars for notification/application
21 submittal, the applicable permit processing fee assessed under
22 subsection (3) or (4) of this section for one of the hydraulic project
23 sites identified in the permit application, and twenty percent of the
24 applicable permit processing fee assessed under subsection (4) of this
25 section for each additional site.

26 (7) The fee for permit modifications of class III hydraulic
27 projects, multiple-site permits, and general permits is one hundred
28 dollars for permit processing. Permit modifications of class III
29 hydraulic project permits, multiple-site permits, or general permits
30 issued under RCW 77.55.021(12) are exempt from fees under this section.

31 (8) The department may not charge fees for permits issued prior to
32 the effective date of this section. When a person requests
33 modification of a permit issued prior to the effective date of this
34 section, the department shall charge all applicable fees under this
35 section.

36 (9) The following hydraulic projects are exempt from all fees
37 listed under this section:

1 (a) Projects approved under the cost-sharing program for fish
2 passage barriers authorized in RCW 76.13.150;

3 (b) Projects conducted under the pamphlets developed under RCW
4 77.55.081 or 77.55.091;

5 (c) Fish passage barrier correction projects associated with an
6 approved forest practices permit granted under chapter 76.09 RCW;

7 (d) Approved fish habitat enhancement projects authorized under RCW
8 77.55.181; and

9 (e) Hydraulic projects approved under applicant-funded contracts
10 with the department that pay for the costs of processing those
11 projects.

12 (10) At its discretion, the department may reduce the fees charged
13 to a person under this section when the work required by the department
14 to receive and process that person's application or modify a permit is
15 substantially less than typically required. Decisions made by the
16 department under this subsection are not subject to appeal under RCW
17 77.55.021(10).

18 (11) The department shall refund fifty percent of the permit
19 processing fee to any person that properly applies for any permit or
20 permit modification under RCW 77.55.021 if the department:

21 (a) Fails to process the application or request within the
22 timelines required by RCW 77.55.021; or

23 (b) Denies the permit because the proposed project would adversely
24 affect fish life.

25 (12) The department shall refund one hundred percent of all fees
26 if:

27 (a) No permit is required for the proposed work; or

28 (b) A person has applied for approval of a class II hydraulic
29 project, but the department rejects the proposed project as not
30 qualifying as a class II hydraulic project.

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

37 (14) All fees collected under this section must be deposited in the
38 hydraulic project approval account created in section 11 of this act.

1 project design and implementation that provides for the protection of
2 fish life, and for the associated management and administrative costs
3 incurred to implement and operate the hydraulic project approval
4 program.

5 NEW SECTION. **Sec. 12.** A new section is added to chapter 77.55 RCW
6 to read as follows:

7 (1) The following common forest practices do not require a
8 hydraulic project approval permit under this chapter when those
9 projects are conducted under an approved forest practices permit
10 granted under chapter 76.09 RCW that incorporates rules adopted under
11 subsection (2) of this section:

12 (a) Timber felling and yarding activities;

13 (b) Bridge repair, including painting, redecking, and curbing or
14 railing repair; and

15 (c) Removal of woody debris not embedded in the stream bed or
16 stream banks from upstream bridge openings.

17 (2) The forest practices board, in collaboration with interested
18 and affected parties, and upon approval by the department
19 representative on the forest practices board, shall adopt by rule the
20 requirements for the project types in subsection (1) of this section
21 necessary to protect fish life.

22 NEW SECTION. **Sec. 13.** A new section is added to chapter 77.55 RCW
23 to read as follows:

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

26 (a) Constructs any form of hydraulic project or performs other work
27 on a hydraulic project and fails to have a hydraulic project approval
28 required under this chapter for the construction or work;

29 (b) Violates any requirements or conditions of the hydraulic
30 project approval for the construction or other activities;

31 (c) Violates any notice to comply or stop work order issued under
32 subsection (5) of this section; or

33 (d) Violates any department rule that identifies the conditions
34 under which a hydraulic project is approved.

35 (2) Violation of a notice to comply or a stop work order must be

1 punished as a separate offense from the underlying hydraulic code
2 violation.

3 (3) Unlawfully undertaking hydraulic project activities is a gross
4 misdemeanor.

5 (4)(a) When the department determines that a violation has or is
6 about to occur, it shall first attempt to achieve voluntary compliance,
7 provided the violation is not causing irreparable harm to fish life or
8 fish habitat. As part of this first response, the department shall
9 offer information and technical assistance to the person, identifying
10 one or more means to accomplish the person's purposes within the
11 framework of the law.

12 (b) If the department determines that a violation is causing
13 irreparable harm to fish life or fish habitat, the department shall
14 take immediate action to end the violation.

15 (5) If a person violates this chapter, or any of the rules adopted
16 by the department that implement this chapter, the department may issue
17 a notice to comply or a stop work order. The notice to comply may
18 require that the person take corrective action to prevent, correct, or
19 compensate for adverse impacts to fish life. The stop work order may
20 require that the person stop all work connected with the violation or
21 stop work until corrective action is taken.

22 (a) The notice to comply must:

- 23 (i) Be served upon the person and any known agents and applicants;
- 24 (ii) Specify the nature, extent, date, and time of violation;
- 25 (iii) Specify any necessary corrective action; and
- 26 (iv) Specify the right of the person to an appeal.

27 (b) The stop work order must:

- 28 (i) Be served upon the person and any known agents;
- 29 (ii) Specify the nature, extent, date, and time of violation;
- 30 (iii) Include an order to stop all work connected with the
31 violation;

32 (iv) Specify any necessary action before work may resume; and

33 (v) Specify the right of the person to an appeal.

34 (c) Within thirty days from the date of receipt of a notice to
35 comply or stop work order issued under this section, a person may file
36 a written request appealing the notice or order to the board.

37 (6) Consistent with the penalty schedule described in subsection
38 (10) of this section, the department may levy civil penalties of up to

1 ten thousand dollars for every violation of this chapter or the rules
2 adopted to implement this chapter. Each and every violation is a
3 separate and distinct civil offense. The penalty provided must be
4 imposed by notice in writing by the department, either by certified
5 mail or personal service to the person incurring the penalty,
6 describing the violation. The civil penalty notice must specify the:

7 (a) Basis for the penalty and the amount levied; and

8 (b) Right of the person to an appeal.

9 (7)(a) Issuance of a civil penalty may be informally appealed to
10 the department within thirty days from the date of receipt of the
11 penalty. Requests for informal appeal must be filed in the form and
12 manner prescribed by the department by rule. A civil penalty that has
13 been informally appealed to the department is appealable to the board
14 within thirty days from the date of receipt of the department's
15 decision on the informal appeal.

16 (b) Except as provided in this subsection, any person incurring a
17 penalty under this chapter may appeal the penalty to the board.
18 Appeals must be filed within thirty days from the date of receipt of
19 the penalty in accordance with RCW 43.21B.230.

20 (8) The penalty imposed becomes due and payable thirty days after
21 receipt of a notice imposing the penalty unless an appeal is filed.
22 Whenever an appeal of any penalty incurred under this chapter is filed,
23 the penalty becomes due and payable only upon completion of all
24 administrative and judicial review proceedings and the issuance of a
25 final decision confirming the penalty in whole or in part. When the
26 penalty becomes past due, it is also subject to interest at the rate
27 allowed by RCW 43.17.240 for debts owed to the state.

28 (9) If the amount of any penalty is not paid within thirty days
29 after it becomes due and payable, the attorney general, upon the
30 request of the director, shall bring an action in the name of the state
31 of Washington in the superior court of Thurston county or of any county
32 in which the violator may do business, to recover the penalty. In all
33 such actions, the procedure and rules of evidence are the same as an
34 ordinary civil action. All penalties received or recovered by state
35 agency action for violations as prescribed in subsection (1) of this
36 section must be deposited in the hydraulic project approval account as
37 described in section 11 of this act. The department is also entitled

1 to recover reasonable attorneys' fees and costs incurred in connection
2 with the penalty.

3 (10) The department shall establish by rule a penalty schedule to
4 be effective by January 1, 2012. The schedule must be developed in
5 consideration of the following:

- 6 (a) Previous violation history;
- 7 (b) Severity of the impact on fish and fish habitat;
- 8 (c) Whether the violation of this chapter or its rules was
9 intentional;
- 10 (d) Cooperation with the department;
- 11 (e) Reparability of the adverse effect from the violation; and
- 12 (f) The extent to which a penalty to be imposed on a person for a
13 violation committed by another should be reduced if the person was
14 unaware of the violation and has not received a substantial economic
15 benefit from the violation.

16 (11) The department may apply for an administrative inspection
17 warrant in either Thurston county superior court or the superior court
18 in the county where the project is located. The court may issue an
19 administrative inspection warrant where:

- 20 (a) Department personnel need to inspect the project site to ensure
21 compliance with this chapter and rules adopted under this chapter; or
- 22 (b) Department personnel have reasonable cause to believe that a
23 violation of this chapter or of the rules adopted under this chapter is
24 occurring or has occurred.

25 NEW SECTION. **Sec. 14.** A new section is added to chapter 77.55 RCW
26 to read as follows:

27 The department shall prepare and distribute technical and
28 educational information to the general public to assist the public in
29 complying with the requirements of this chapter.

30 NEW SECTION. **Sec. 15.** A new section is added to chapter 77.55 RCW
31 to read as follows:

32 This chapter may be known and cited as the hydraulic code.

33 NEW SECTION. **Sec. 16.** The following acts or parts of acts are
34 each repealed:

1 (1) RCW 77.15.300 (Unlawful hydraulic project activities--Penalty)
2 and 2000 c 107 s 239 & 1998 c 190 s 52; and

3 (2) RCW 77.55.291 (Civil penalty) and 2010 c 210 s 31, 2005 c 146
4 s 701, 2000 c 107 s 19, 1993 sp.s. c 2 s 35, 1988 c 36 s 35, & 1986 c
5 173 s 6.

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