
HOUSE BILL 2135

State of Washington 62nd Legislature 2011 2nd Special Session

By Representatives Hudgins and Hunter; by request of Department of Fish and Wildlife

Read first time 11/30/11. Referred to Committee on Ways & Means.

1 AN ACT Relating to charging an application fee for hydraulic
2 project permits; amending RCW 77.55.021; adding new sections to chapter
3 77.55 RCW; providing an effective date; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 77.55 RCW
6 to read as follows:

7 (1) The department shall charge a one hundred fifty dollar
8 application fee for all applications for hydraulic project permits
9 under this chapter to recover the costs for processing permit
10 applications.

11 (2) Hydraulic project permits issued as emergency approvals under
12 RCW 77.55.021(8) are exempt from the application fee.

13 (3) Hydraulic projects approved under applicant-funded contracts
14 with the department that pay for the costs of processing those projects
15 are exempt from the application fee.

16 (4) All fees collected under this section must be deposited in the
17 hydraulic project approval account created in section 2 of this act.

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

3 (1) The hydraulic project approval account is created in the state
4 treasury. All receipts from application fees collected under section
5 1 of this act must be deposited into the account.

6 (2) Except for unanticipated receipts under RCW 43.79.260 through
7 43.79.282, moneys in the hydraulic project approval account may be
8 spent only after appropriation.

9 (3) Expenditures from the hydraulic project approval account may be
10 used only to fund department activities relating to processing
11 hydraulic project permit applications.

12 NEW SECTION. **Sec. 3.** A new section is added to chapter 77.55 RCW
13 to read as follows:

14 The fees contained in section 1 of this act are prospective only.
15 The department may not charge fees for hydraulic project permits issued
16 under this title prior to the effective date of this section. However,
17 if a person requests modification of a hydraulic project permit that
18 was issued by the department prior to the effective date of this
19 section, the department shall charge all applicable fees as provided in
20 section 1 of this act.

21 **Sec. 4.** RCW 77.55.021 and 2010 c 210 s 27 are each amended to read
22 as follows:

23 (1) Except as provided in RCW 77.55.031, 77.55.051, and 77.55.041,
24 in the event that any person or government agency desires to undertake
25 a hydraulic project, the person or government agency shall, before
26 commencing work thereon, secure the approval of the department in the
27 form of a permit as to the adequacy of the means proposed for the
28 protection of fish life.

29 (2) A complete written application for a permit may be submitted in
30 person or by registered mail and must contain the following:

31 (a) General plans for the overall project;

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

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

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

4 (e) Payment of application fee as specified in section 1 of this
5 act.

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

13 (i) After ten working days of receipt of the application, the
14 applicant remains unavailable or unable to arrange for a timely field
15 evaluation of the proposed project;

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

17 (iii) The applicant requests a delay; or

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

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

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

27 (4) If the department denies approval of a permit, the department
28 shall provide the applicant a written statement of the specific reasons
29 why and how the proposed project would adversely affect fish life.

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

34 (b) Issuance, denial, conditioning, or modification of a permit may
35 be informally appealed to the department within thirty days from the
36 date of receipt of the decision. Requests for informal appeals must be
37 filed in the form and manner prescribed by the department by rule. A

1 permit decision that has been informally appealed to the department is
2 appealable to the board within thirty days from the date of receipt of
3 the department's decision on the informal appeal.

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

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

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

20 (6) The department may, after consultation with the permittee,
21 modify a permit due to changed conditions. The department may not
22 charge an application fee for department-initiated modifications. The
23 modification is appealable as provided in subsection (4) of this
24 section. For hydraulic projects that divert water for agricultural
25 irrigation or stock watering purposes, or when the hydraulic project or
26 other work is associated with streambank stabilization to protect farm
27 and agricultural land as defined in RCW 84.34.020, the burden is on the
28 department to show that changed conditions warrant the modification in
29 order to protect fish life.

30 (7) A permittee may request modification of a permit due to changed
31 conditions. The request must be accompanied by payment of the one
32 hundred fifty dollar application fee authorized in section 1 of this
33 act. The request must be processed within forty-five calendar days of
34 receipt of the (~~written~~) request and application fee. A decision by
35 the department is appealable as provided in subsection (4) of this
36 section. For hydraulic projects that divert water for agricultural
37 irrigation or stock watering purposes, or when the hydraulic project or
38 other work is associated with streambank stabilization to protect farm

1 and agricultural land as defined in RCW 84.34.020, the burden is on the
2 permittee to show that changed conditions warrant the requested
3 modification and that such a modification will not impair fish life.

4 (8)(a) The department, the county legislative authority, or the
5 governor may declare and continue an emergency. If the county
6 legislative authority declares an emergency under this subsection, it
7 shall immediately notify the department. A declared state of emergency
8 by the governor under RCW 43.06.010 shall constitute a declaration
9 under this subsection.

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

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

22 (9) All state and local agencies with authority under this chapter
23 to issue permits or other authorizations in connection with emergency
24 water withdrawals and facilities authorized under RCW 43.83B.410 shall
25 expedite the processing of such permits or authorizations in keeping
26 with the emergency nature of such requests and shall provide a decision
27 to the applicant within fifteen calendar days of the date of
28 application.

29 (10) The department or the county legislative authority may
30 determine an imminent danger exists. The county legislative authority
31 shall notify the department, in writing, if it determines that an
32 imminent danger exists. In cases of imminent danger, the department
33 shall issue an expedited written permit, upon request, for work to
34 remove any obstructions, repair existing structures, restore banks,
35 protect fish resources, or protect property. Expedited permit requests
36 require a complete written application as provided in subsection (2) of
37 this section and must be issued within fifteen calendar days of the
38 receipt of a complete written application. Approval of an expedited

1 permit is valid for up to sixty days from the date of issuance. The
2 department may not require the provisions of the state environmental
3 policy act, chapter 43.21C RCW, to be met as a condition of issuing a
4 permit under this subsection.

5 (11)(a) For any property, except for property located on a marine
6 shoreline, that has experienced at least two consecutive years of
7 flooding or erosion that has damaged or has threatened to damage a
8 major structure, water supply system, septic system, or access to any
9 road or highway, the county legislative authority may determine that a
10 chronic danger exists. The county legislative authority shall notify
11 the department, in writing, when it determines that a chronic danger
12 exists. In cases of chronic danger, the department shall issue a
13 permit, upon request, for work necessary to abate the chronic danger by
14 removing any obstructions, repairing existing structures, restoring
15 banks, restoring road or highway access, protecting fish resources, or
16 protecting property. Permit requests must be made and processed in
17 accordance with subsections (2) and (3) of this section.

18 (b) Any projects proposed to address a chronic danger identified
19 under (a) of this subsection that satisfies the project description
20 identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions
21 of the state environmental policy act, chapter 43.21C RCW. However,
22 the project is subject to the review process established in RCW
23 77.55.181(3) as if it were a fish habitat improvement project.

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

34 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
35 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect
2 January 1, 2012.

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