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 77.55.011, 77.55.021, 77.55.031, and 77.55.141; adding new sections to chapter 77.55 RCW; creating new sections; repealing RCW 77.15.300 and 77.55.291; prescribing penalties; and providing expiration dates.

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

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

(2) The legislature further finds that targeted permit streamlining measures, such as creating a category of hydraulic projects that may be conducted upon notification to the department, will benefit both the applicant and the department, while providing for the protection of fish life due to the lower risk these projects pose to fish life.

(3) The legislature further finds that the department of fish and wildlife and the applicant may realize staffing and fiscal efficiencies by using these permit streamlining measures. The department shall use
the savings from these efficiencies to monitor hydraulic projects to
ensure hydraulic projects are achieving the protection of fish life
required by chapter 77.55 RCW, and to emphasize application review and
permitting of hydraulic projects that pose the greatest risk to fish
life.

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

(5) The legislature further finds that educating permittees about
how the requirements of the hydraulic code protect fish life will
increase compliance with permit requirements.

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

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

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

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

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

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

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

(6) "Commission" means the state fish and wildlife commission.
"Date of receipt" has the same meaning as defined in RCW 43.21B.001.

"Department" means the department of fish and wildlife.

"Director" means the director of the department of fish and wildlife.

"Emergency" means an immediate threat to life, the public, property, or of environmental degradation.

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

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

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

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

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

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

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

"Multiple-site permit" means a hydraulic project approval issued to a person under RCW 77.55.021 for hydraulic projects occurring at more than one specific location and which includes site-specific requirements.

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

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

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

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

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

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

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

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

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

(28) "Waters of the state" and "state waters" means all salt and fresh waters waterward of the ordinary high water mark and within the territorial boundary of the state.

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

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

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

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

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

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

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

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

((i)) General plans for the overall project;
((b)) (ii) Complete plans and specifications of the proposed construction or work within the mean higher high water line in saltwater or within the ordinary high water line in freshwater;

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

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

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

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

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

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

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

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

(i) After ten working days of receipt of the application for a permit for a class III hydraulic project, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project;
(ii) The site is physically inaccessible for inspection;
(iii) The applicant requests a delay; or
(iv) The department is issuing a permit for a storm water discharge and is complying with the requirements of RCW 77.55.161(3)(b).

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

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

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

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

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

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

(b)) Approval of a permit for a class III hydraulic project and a general permit is valid for ((a period of)) up to five years from the date of issuance, except as provided in ((4)) (b) of this subsection and in RCW 77.55.151.

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

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

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

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

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

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

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

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

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

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

((17)) (a) For any property, except for property located on a marine shoreline, that has experienced at least two consecutive years of flooding or erosion that has damaged or has threatened to damage a major structure, water supply system, septic system, or access to any road or highway, the county legislative authority may determine that a chronic danger exists. The county legislative authority shall notify the department, in writing, when it determines that a chronic danger exists. In cases of chronic danger, the department shall issue a
permit, upon request, for work necessary to abate the chronic danger by
removing any obstructions, repairing existing structures, restoring
banks, restoring road or highway access, protecting fish resources, or
protecting property. Permit requests must be made and processed in
accordance with subsections (((2))) (4) and (((3))) (9) of this
section.

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

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

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

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

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

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

(4) This section expires June 30, 2014.
NEW SECTION. Sec. 5. (1) A person applying for approval to conduct a class II hydraulic project under the pilot project established in section 4 of this act must submit written notification of the class II hydraulic project to the department in the manner, content, and form prescribed by the department, and payment of all fees required under section 8 of this act.

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

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

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

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

(6) This section expires June 30, 2014.

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

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

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

(1) In order to protect the property of marine waterfront shoreline owners it is necessary to facilitate issuance of permits for bulkheads or rockwalls under certain conditions.
(2) The department shall issue a permit with or without conditions within forty-five days of receipt of a complete and accurate application which authorizes commencement of construction, replacement, or repair of a marine beach front protective bulkhead or rockwall for single-family type residences or property under the following conditions:

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

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

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

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

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

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

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

(1) Except as provided in this section, the department shall charge fees for hydraulic project permits issued under RCW 77.55.021 to
recover a portion of the costs for processing and issuing decisions on permit notifications and applications, administering fee collections, and compliance and effectiveness monitoring and enforcement of projects requiring a permit. The fees must be based on the scale and complexity of the project and the relative effort required for department staff to review the application, conduct site visits, and consult with applicants as necessary.

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

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

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

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

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

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

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

(9) The following hydraulic projects are exempt from all fees listed under this section:
(a) Projects approved under the cost-sharing program for fish passage barriers authorized in RCW 76.13.150;
(b) Projects conducted under the pamphlets developed under RCW 77.55.081 or 77.55.091;
(c) Fish passage barrier correction projects associated with an approved forest practices permit granted under chapter 76.09 RCW;
(d) Approved fish habitat enhancement projects authorized under RCW 77.55.181; and
(e) Hydraulic projects approved under applicant-funded contracts with the department that pay for the costs of processing those projects.

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

(11) The department shall refund fifty percent of the permit processing fee to any person that properly applies for any permit or permit modification under RCW 77.55.021 if the department:
(a) Fails to process the application or request within the timelines required by RCW 77.55.021; or
(b) Denies the permit because the proposed project would adversely affect fish life.

(12) The department shall refund one hundred percent of all fees if:
(a) No permit is required for the proposed work; or
(b) A person has applied for approval of a class II hydraulic project, but the department rejects the proposed project as not qualifying as a class II hydraulic project.

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

(14) All fees collected under this section must be deposited in the hydraulic project approval account created in section 11 of this act.
NEW SECTION. Sec. 9. A new section is added to chapter 77.55 RCW to read as follows:

To ensure that hydraulic projects provide for the protection of fish life, the department shall, by January 1, 2012, develop and implement a program to monitor the compliance with and effectiveness of the approvals it grants under this chapter. The department shall gather data through this program to ensure permits authorized under this chapter protect fish life. If the department identifies approvals that do not provide for protection of fish life, the department shall use adaptive management principles to ensure protection and compliance.

NEW SECTION. Sec. 10. By December 31, 2013, the department of fish and wildlife shall report to the legislature consistent with RCW 43.01.036 on the impact of the classification system on permit numbers and permit compliance and effectiveness, the outcome of and recommendations resulting from the class II pilot project under section 4 of this act, the impact of fees on applicants, actual versus expected fees collected by the department, the impact of fee collection on the department's hydraulic project approval permit program, and recommendations for improving the department's permit streamlining efforts and permit fee schedule.

NEW SECTION. Sec. 11. A new section is added to chapter 77.55 RCW to read as follows:

(1) The hydraulic project approval account is created in the state treasury. All receipts from notification/application submittal fees and permit processing fees for hydraulic project approval applications in section 8 of this act must be deposited into the account.

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

(3) Expenditures from the hydraulic project approval account may be used only to fund department activities relating to processing and issuing hydraulic project approval decisions, compliance and effectiveness monitoring, enforcement activities related to this chapter, conducting informal appeals or participating in administrative or judicial appeals of hydraulic project approval decisions, providing technical assistance by biologists and environmental engineers on
project design and implementation that provides for the protection of
fish life, and for the associated management and administrative costs
incurred to implement and operate the hydraulic project approval
program.

NEW SECTION. Sec. 12. A new section is added to chapter 77.55 RCW
to read as follows:
(1) The following common forest practices do not require a
hydraulic project approval permit under this chapter when those
projects are conducted under an approved forest practices permit
granted under chapter 76.09 RCW that incorporates rules adopted under
subsection (2) of this section:
(a) Timber felling and yarding activities;
(b) Bridge repair, including painting, redecking, and curbing or
railing repair; and
(c) Removal of woody debris not embedded in the stream bed or
stream banks from upstream bridge openings.
(2) The forest practices board, in collaboration with interested
and affected parties, and upon approval by the department
representative on the forest practices board, shall adopt by rule the
requirements for the project types in subsection (1) of this section
necessary to protect fish life.

NEW SECTION. Sec. 13. A new section is added to chapter 77.55 RCW
to read as follows:
(1) A person is guilty of unlawfully undertaking hydraulic project
activities if the person:
(a) Constructs any form of hydraulic project or performs other work
on a hydraulic project and fails to have a hydraulic project approval
required under this chapter for the construction or work;
(b) Violates any requirements or conditions of the hydraulic
project approval for the construction or other activities;
(c) Violates any notice to comply or stop work order issued under
subsection (5) of this section; or
(d) Violates any department rule that identifies the conditions
under which a hydraulic project is approved.
(2) Violation of a notice to comply or a stop work order must be
punished as a separate offense from the underlying hydraulic code violation.

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

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

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

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

(a) The notice to comply must:

(i) Be served upon the person and any known agents and applicants;

(ii) Specify the nature, extent, date, and time of violation;

(iii) Specify any necessary corrective action; and

(iv) Specify the right of the person to an appeal.

(b) The stop work order must:

(i) Be served upon the person and any known agents;

(ii) Specify the nature, extent, date, and time of violation;

(iii) Include an order to stop all work connected with the violation;

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

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

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

(6) Consistent with the penalty schedule described in subsection (10) of this section, the department may levy civil penalties of up to
ten thousand dollars for every violation of this chapter or the rules
adopted to implement this chapter. Each and every violation is a
separate and distinct civil offense. The penalty provided must be
imposed by notice in writing by the department, either by certified
mail or personal service to the person incurring the penalty,
describing the violation. The civil penalty notice must specify the:

(a) Basis for the penalty and the amount levied; and
(b) Right of the person to an appeal.

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

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

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

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

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

(a) Previous violation history;

(b) Severity of the impact on fish and fish habitat;

(c) Whether the violation of this chapter or its rules was intentional;

(d) Cooperation with the department;

(e) Reparability of the adverse effect from the violation; and

(f) The extent to which a penalty to be imposed on a person for a violation committed by another should be reduced if the person was unaware of the violation and has not received a substantial economic benefit from the violation.

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

(a) Department personnel need to inspect the project site to ensure compliance with this chapter and rules adopted under this chapter; or

(b) Department personnel have reasonable cause to believe that a violation of this chapter or of the rules adopted under this chapter is occurring or has occurred.

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

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

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

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

NEW SECTION. Sec. 16. The following acts or parts of acts are each repealed:
(1) RCW 77.15.300 (Unlawful hydraulic project activities--Penalty) and 2000 c 107 s 239 & 1998 c 190 s 52; and

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

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