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HOUSE BILL 2579

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State of Washington

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By Representatives Tarleton and Pollet

Read first time 01/21/14. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to small scale prospecting and mining hydraulic  
2 projects in state waters; amending RCW 77.55.021, 77.55.091, and  
3 77.55.321; reenacting and amending RCW 77.55.011; adding a new section  
4 to chapter 77.55 RCW; and creating new sections.

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

6 **Sec. 1.** RCW 77.55.011 and 2012 1st sp.s. c 1 s 101 are each  
7 reenacted and amended to read as follows:

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

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

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

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

18 (4) "Date of receipt" has the same meaning as defined in RCW  
19 43.21B.001.

1 (5) "Department" means the department of fish and wildlife.  
2 (6) "Director" means the director of the department of fish and  
3 wildlife.  
4 (7) "Emergency" means an immediate threat to life, the public,  
5 property, or of environmental degradation.  
6 (8) "Emergency permit" means a verbal hydraulic project approval or  
7 the written follow-up to the verbal approval issued to a person under  
8 RCW 77.55.021(12).  
9 (9) "Expedited permit" means a hydraulic project approval issued to  
10 a person under RCW 77.55.021 (14) and (16).  
11 (10) "Forest practices hydraulic project" means a hydraulic project  
12 that requires a forest practices application or notification under  
13 chapter 76.09 RCW.  
14 (11) "Hydraulic project" means the construction or performance of  
15 work that will use, divert, obstruct, or change the natural flow or bed  
16 of any of the salt or freshwaters of the state.  
17 (12) "Imminent danger" means a threat by weather, water flow, or  
18 other natural conditions that is likely to occur within sixty days of  
19 a request for a permit application.  
20 (13) "Marina" means a public or private facility providing boat  
21 moorage space, fuel, or commercial services. Commercial services  
22 include but are not limited to overnight or live-aboard boating  
23 accommodations.  
24 (14) "Marine terminal" means a public or private commercial wharf  
25 located in the navigable water of the state and used, or intended to be  
26 used, as a port or facility for the storing, handling, transferring, or  
27 transporting of goods to and from vessels.  
28 (15) "Multiple site permit" means a hydraulic project approval  
29 issued to a person under RCW 77.55.021 for hydraulic projects occurring  
30 at more than one specific location and which includes site-specific  
31 requirements.  
32 (16) "Ordinary high water line" means the mark on the shores of all  
33 water that will be found by examining the bed and banks and  
34 ascertaining where the presence and action of waters are so common and  
35 usual, and so long continued in ordinary years as to mark upon the soil  
36 or vegetation a character distinct from the abutting upland. Provided,  
37 that in any area where the ordinary high water line cannot be found,

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

4 (17) "Pamphlet hydraulic project" means a hydraulic project for the  
5 removal or control of aquatic noxious weeds conducted under the aquatic  
6 plants and fish pamphlet authorized by RCW 77.55.081, or for mineral  
7 prospecting and mining conducted under the gold and fish pamphlet  
8 authorized by RCW 77.55.091.

9 (18) "Permit" means a hydraulic project approval permit issued  
10 under this chapter.

11 (19) "Permit modification" means a hydraulic project approval  
12 issued to a person under RCW 77.55.021 that extends, renews, or changes  
13 the conditions of a previously issued hydraulic project approval.

14 (20) "Sandbars" includes, but is not limited to, sand, gravel,  
15 rock, silt, and sediments.

16 (21) "Small scale prospecting and mining" means the use of only the  
17 following methods: Pans; nonmotorized sluice boxes; concentrators; and  
18 minirocker boxes for the discovery and recovery of minerals.

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

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

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

29 (25) "Waters of the state" and "state waters" means all salt and  
30 freshwaters waterward of the ordinary high water line and within the  
31 territorial boundary of the state.

32 (26) "Suction dredge" means a machine used to move submerged  
33 aggregate via hydraulic suction and that processes the aggregate  
34 through an attached sluice box for the recovery of gold and other  
35 minerals.

36 **Sec. 2.** RCW 77.55.021 and 2012 1st sp.s. c 1 s 102 are each  
37 amended to read as follows:

1 (1) Except as provided in RCW 77.55.031, 77.55.051, 77.55.041, and  
2 77.55.361, in the event that any person or government agency desires to  
3 undertake a hydraulic project, the person or government agency shall,  
4 before commencing work thereon, secure the approval of the department  
5 in the form of a permit as to the adequacy of the means proposed for  
6 the protection of fish life.

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

9 (a) General plans for the overall project;

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

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

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

18 (e) Payment of all applicable application fees charged by the  
19 department under RCW 77.55.321.

20 (3) The department may establish direct billing accounts or other  
21 funds transfer methods with permit applicants to satisfy the fee  
22 payment requirements of RCW 77.55.321.

23 (4) The department may accept complete, written applications as  
24 provided in this section for multiple site permits and may issue these  
25 permits. For multiple site permits, each specific location must be  
26 identified.

27 (5) With the exception of emergency permits as provided in  
28 subsection (12) of this section, applications for permits must be  
29 submitted to the department's headquarters office in Olympia. Requests  
30 for emergency permits as provided in subsection (12) of this section  
31 may be made to the permitting biologist assigned to the location in  
32 which the emergency occurs, to the department's regional office in  
33 which the emergency occurs, or to the department's headquarters office.

34 (6) Except as provided for emergency permits in subsection (12) of  
35 this section, the department may not proceed with permit review until  
36 all fees are paid in full as required in RCW 77.55.321.

37 (7)(a) Protection of fish life is the only ground upon which  
38 approval of a permit may be denied or conditioned. Approval of a

1 permit may not be unreasonably withheld or unreasonably conditioned.  
2 The department may not issue a permit under this chapter for the use of  
3 a suction dredge in any state waters that have been designated as  
4 critical habitat for threatened or endangered species by the United  
5 States fish and wildlife service or the United States national oceanic  
6 and atmospheric administration or in the tributaries of any freshwater  
7 state waters that have received critical habitat designation.

8 (b) Except as provided in this subsection and subsections (12)  
9 through (14) and (16) of this section, the department has forty-five  
10 calendar days upon receipt of a complete application to grant or deny  
11 approval of a permit. The forty-five day requirement is suspended if:

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

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

16 (iii) The applicant requests a delay; or

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

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

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

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

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

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

1    appealable to the board within thirty days from the date of receipt of  
2    the department's decision on the informal appeal.

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

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

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

19       (10) The department may, after consultation with the permittee,  
20   modify a permit due to changed conditions. A modification under this  
21   subsection is not subject to the fees provided under RCW 77.55.321.  
22   The modification is appealable as provided in subsection (8) of this  
23   section. For a hydraulic project that diverts water for agricultural  
24   irrigation or stock watering purposes, when the hydraulic project or  
25   other work is associated with streambank stabilization to protect farm  
26   and agricultural land as defined in RCW 84.34.020, the burden is on the  
27   department to show that changed conditions warrant the modification in  
28   order to protect fish life.

29       (11) A permittee may request modification of a permit due to  
30   changed conditions. The request must be processed within forty-five  
31   calendar days of receipt of the written request and payment of  
32   applicable fees under RCW 77.55.321. A decision by the department is  
33   appealable as provided in subsection (8) of this section. For a  
34   hydraulic project that diverts water for agricultural irrigation or  
35   stock watering purposes, when the hydraulic project or other work is  
36   associated with streambank stabilization to protect farm and  
37   agricultural land as defined in RCW 84.34.020, the burden is on the

1 permittee to show that changed conditions warrant the requested  
2 modification and that such a modification will not impair fish life.

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

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

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

20 (d) The department may not charge a person requesting an emergency  
21 permit any of the fees authorized by RCW 77.55.321 until after the  
22 emergency permit is issued and reduced to writing.

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

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

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

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

19 (b) Any projects proposed to address a chronic danger identified  
20 under (a) of this subsection that satisfies the project description  
21 identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions  
22 of the state environmental policy act, chapter 43.21C RCW. However,  
23 the project is subject to the review process established in RCW  
24 77.55.181(3) as if it were a fish habitat improvement project.

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

35 **Sec. 3.** RCW 77.55.091 and 2005 c 146 s 402 are each amended to  
36 read as follows:

37 (1) (~~Small scale prospecting and mining shall not require a permit~~)

1 ~~under this chapter if the prospecting is conducted in accordance with~~  
2 ~~rules established by the department.))~~ The department shall require the  
3 permit for mineral prospecting and mining described in section 4 of  
4 this act for activities conducted in accordance with the gold and fish  
5 pamphlet.

6 (2) ~~((By December 31, 1998, the department shall adopt rules~~  
7 ~~applicable to small scale prospecting and mining activities subject to~~  
8 ~~this section. The department shall develop the rules in cooperation~~  
9 ~~with the recreational mining community and other interested parties.~~

10 ~~(3) Within two months of adoption of the rules,~~) The department  
11 shall distribute ((an updated)) a gold and fish pamphlet that describes  
12 methods of mineral prospecting that are consistent with the  
13 department's rule. The pamphlet shall be written to clearly indicate  
14 the mineral prospecting and mining methods that require a permit under  
15 this chapter or section 4 of this act and the mineral prospecting and  
16 mining methods that require compliance with the pamphlet. To the  
17 extent possible, the department shall use the provisions of the gold  
18 and fish pamphlet to minimize the number of specific provisions of a  
19 written permit issued under this chapter.

20 NEW SECTION. Sec. 4. A new section is added to chapter 77.55 RCW  
21 to read as follows:

22 A mineral prospecting and mining permit is required to conduct  
23 small scale prospecting and mining and any mineral prospecting and  
24 mining not prohibited under RCW 77.55.021(7)(a). The fee for the  
25 permit is one hundred fifty dollars. In addition to the permit,  
26 compliance with the pamphlet referenced in RCW 77.55.091(2) is required  
27 in order to conduct mineral prospecting and mining. Permit applicants  
28 must submit a permit application and payment in a manner and form  
29 required by the department. Prior to prospecting and mining  
30 activities, the permit holder shall notify the department of the month  
31 and location that the prospecting and mining will be performed.

32 Sec. 5. RCW 77.55.321 and 2012 1st sp.s. c 1 s 103 are each  
33 amended to read as follows:

34 (1) The department shall charge an application fee of one hundred  
35 fifty dollars for a hydraulic project permit or permit modification

1 issued under RCW 77.55.021 where the project is located at or below the  
2 ordinary high water line. The application fee established under this  
3 subsection may not be charged after June 30, 2017.

4 (2) The following hydraulic projects are exempt from all fees  
5 listed under this section:

6 (a) Hydraulic projects approved under applicant-funded contracts  
7 with the department that pay for the costs of processing those  
8 projects;

9 (b) If RCW 77.55.361, 76.09.490, and 76.09.040 are enacted into law  
10 by June 30, 2012, forest practices hydraulic projects;

11 (c) Pamphlet hydraulic projects other than those authorized by the  
12 gold and fish pamphlet; and

13 (d) (~~Mineral prospecting and mining activities; and~~  
14 ~~(e)~~) Hydraulic projects occurring on farm and agricultural land,  
15 as that term is defined in RCW 84.34.020.

16 (3) All fees collected under this section must be deposited in the  
17 hydraulic project approval account created in RCW 77.55.331.

18 (4) The fee provisions contained in this section are prospective  
19 only. The department of fish and wildlife may not charge fees for  
20 hydraulic project permits issued under this title prior to July 10,  
21 2012.

22 (5) This section expires June 30, 2017.

23 NEW SECTION. **Sec. 6.** The department of fish and wildlife shall  
24 adopt rules necessary to implement this act.

25 NEW SECTION. **Sec. 7.** This act may be known and cited as the give  
26 fish a chance act.

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