
HOUSE BILL 1263

State of Washington

59th Legislature

2005 Regular Session

By Representatives Upthegrove, Hunt, Williams, Dickerson, Dunshee, McCoy, Simpson and Chase

Read first time 01/19/2005. Referred to Committee on Natural Resources, Ecology & Parks.

1 AN ACT Relating to hydraulic project approvals; amending RCW
2 76.09.030, 77.12.170, 43.135.055, and 77.15.300; adding new sections to
3 chapter 77.55 RCW; adding a new section to chapter 76.09 RCW; creating
4 a new section; and repealing RCW 77.55.140.

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

6 **Sec. 1.** RCW 76.09.030 and 2003 c 39 s 32 are each amended to read
7 as follows:

8 (1) There is hereby created the forest practices board of the state
9 of Washington as an agency of state government consisting of members as
10 follows:

11 (a) The commissioner of public lands or the commissioner's
12 designee;

13 (b) The director of the department of community, trade, and
14 economic development or the director's designee;

15 (c) The director of the department of agriculture or the director's
16 designee;

17 (d) The director of the department of ecology or the director's
18 designee;

1 (e) The director of the department of fish and wildlife or the
2 director's designee;

3 (f) An elected member of a county legislative authority appointed
4 by the governor: PROVIDED, That such member's service on the board
5 shall be conditioned on the member's continued service as an elected
6 county official; and

7 (g) Six members of the general public appointed by the governor,
8 one of whom shall be an owner of not more than five hundred acres of
9 forest land, and one of whom shall be an independent logging
10 contractor.

11 ~~(2) ((The director of the department of fish and wildlife's service
12 on the board may be terminated two years after August 18, 1999, if the
13 legislature finds that after two years the department has not made
14 substantial progress toward integrating the laws, rules, and programs
15 governing forest practices, chapter 76.09 RCW, and the laws, rules, and
16 programs governing hydraulic projects, chapter 77.55 RCW. Such a
17 finding shall be based solely on whether the department of fish and
18 wildlife makes substantial progress as defined in this subsection, and
19 will not be based on other actions taken as a member of the board.
20 Substantial progress shall include recommendations to the legislature
21 for closer integration of the existing rule-making authorities of the
22 board and the department of fish and wildlife, and closer integration
23 of the forest practices and hydraulics permitting processes, including
24 exploring the potential for a consolidated permitting process. These
25 recommendations shall be designed to resolve problems currently
26 associated with the existing dual regulatory and permitting processes.~~

27 ~~(3))~~ The members of the initial board appointed by the governor
28 shall be appointed so that the term of one member shall expire December
29 31, 1975, the term of one member shall expire December 31, 1976, the
30 term of one member shall expire December 31, 1977, the terms of two
31 members shall expire December 31, 1978, and the terms of two members
32 shall expire December 31, 1979. Thereafter, each member shall be
33 appointed for a term of four years. Vacancies on the board shall be
34 filled in the same manner as the original appointments. Each member of
35 the board shall continue in office until his or her successor is
36 appointed and qualified. The commissioner of public lands or the
37 commissioner's designee shall be the chairman of the board.

1 (~~(4)~~) (3) The board shall meet at such times and places as shall
2 be designated by the chairman or upon the written request of the
3 majority of the board. The principal office of the board shall be at
4 the state capital.

5 (~~(5)~~) (4) Members of the board, except public employees and
6 elected officials, shall be compensated in accordance with RCW
7 43.03.250. Each member shall be entitled to reimbursement for travel
8 expenses incurred in the performance of their duties as provided in RCW
9 43.03.050 and 43.03.060.

10 (~~(6)~~) (5) The board may employ such clerical help and staff
11 pursuant to chapter 41.06 RCW as is necessary to carry out its duties.

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

14 The department shall, whenever practical, integrate the rules and
15 programs developed under this chapter with the rules and programs
16 developed by the department of natural resources governing forest
17 practices under chapter 76.09 RCW.

18 NEW SECTION. Sec. 3. A new section is added to chapter 76.09 RCW
19 to read as follows:

20 The department shall, whenever practical, integrate the rules and
21 programs developed under this chapter with the rules and programs
22 developed by the department of fish and wildlife governing hydraulic
23 projects under chapter 77.55 RCW.

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

26 (1) The department may charge a fee for processing and issuing
27 decisions on hydraulic project approval applications under this
28 chapter. The fee must be based on the scale and complexity of the
29 project.

30 (2) By July 31, 2006, the commission, in collaboration with
31 interested and affected parties, must adopt rules that set forth the
32 fee criteria and the fee amount for various categories of approvals.
33 The criteria and amounts must be based on a workload analysis conducted
34 by the department as part of the rule development process. The fee
35 criteria may include the capital cost of the project.

1 (3) Habitat enhancement projects conducted under RCW 77.55.290 are
2 exempted from any fees under this section.

3 (4) Revenue generated by the fees under this section must be
4 deposited into the state wildlife fund created in RCW 77.12.170 and
5 must be dedicated to fund hydraulic project approval processing and
6 issuing decisions conducted by the department. Fee revenues may also
7 be used to fund continuing training and professional development for
8 department employees charged with implementing the duties required by
9 this chapter.

10 (5) A fee established under this section is exempt from the fee
11 restriction provisions found under RCW 43.135.055.

12 **Sec. 5.** RCW 77.12.170 and 2004 c 248 s 4 are each amended to read
13 as follows:

14 (1) There is established in the state treasury the state wildlife
15 fund which consists of moneys received from:

16 (a) Rentals or concessions of the department;

17 (b) The sale of real or personal property held for department
18 purposes;

19 (c) The sale of licenses, permits, tags, and stamps required by
20 chapter 77.32 RCW and RCW 77.65.490, except annual resident adult
21 saltwater and all annual razor clam and shellfish licenses, which shall
22 be deposited into the state general fund;

23 (d) Fees for informational materials published by the department;

24 (e) Fees for personalized vehicle license plates as provided in
25 chapter 46.16 RCW;

26 (f) Articles or wildlife sold by the director under this title;

27 (g) Compensation for damage to department property or wildlife
28 losses or contributions, gifts, or grants received under RCW 77.12.320;

29 (h) Excise tax on anadromous game fish collected under chapter
30 82.27 RCW;

31 (i) The sale of personal property seized by the department for
32 fish, shellfish, or wildlife violations;

33 (j) The department's share of revenues from auctions and raffles
34 authorized by the commission; (~~and~~)

35 (k) The sale of watchable wildlife decals under RCW 77.32.560; and

36 (l) Fees for processing and issuing decisions for hydraulic project
37 approvals collected under section 4 of this act.

1 (2) State and county officers receiving any moneys listed in
2 subsection (1) of this section shall deposit them in the state treasury
3 to be credited to the state wildlife fund.

4 **Sec. 6.** RCW 43.135.055 and 2001 c 314 s 19 are each amended to
5 read as follows:

6 (1) No fee may increase in any fiscal year by a percentage in
7 excess of the fiscal growth factor for that fiscal year without prior
8 legislative approval.

9 (2) This section does not apply to an assessment made by an
10 agricultural commodity commission or board created by state statute or
11 created under a marketing agreement or order under chapter 15.65 or
12 15.66 RCW, or to the forest products commission, if the assessment is
13 approved by referendum in accordance with the provisions of the
14 statutes creating the commission or board or chapter 15.65 or 15.66 RCW
15 for approving such assessments.

16 (3) This section does not apply to fees charged by the department
17 of fish and wildlife to process hydraulic project approval applications
18 under section 4 of this act.

19 NEW SECTION. **Sec. 7.** (1) The department of fish and wildlife is
20 authorized to conduct a pilot project testing the applicability and
21 enforceability of using general permits to satisfy the requirements of
22 chapter 77.55 RCW as they relate to approvals for hydraulic projects.

23 (2) Under the pilot project, the department of fish and wildlife
24 may only develop general permits for activities determined by the
25 department to be common and routine and to have a low level of
26 environmental impact. The general permits must be designed to improve
27 the predictability and efficiency of the hydraulic project approval
28 program, while still containing provisions necessary to protect aquatic
29 life. Compliance with the terms of these general permits by the
30 project applicant is considered to be approval under chapter 77.55 RCW
31 for a hydraulic project.

32 (3) All general permits created under the pilot project must apply
33 to specific applications. To ensure that this occurs, a project
34 applicant must, prior to receiving coverage under a general permit,
35 send a notice of intent to follow the conditions of the general permit
36 to the department of fish and wildlife twenty-one days before

1 construction is to begin and post the general permit prominently at the
2 worksite. Within ten days of receipt of a notice of intent from a
3 project applicant, the department must notify the applicant of the
4 status of general permit coverage.

5 (4) Any violation of the terms or requirements of a general permit
6 may be punished as a natural resource infraction under chapter 7.84 RCW
7 or as a gross misdemeanor under RCW 77.15.300.

8 (5) Authority to conduct the pilot project authorized by this
9 section ends December 31, 2008, on which date the department of fish
10 and wildlife must report to the appropriate committees of the
11 legislature either why they decided not to conduct a pilot project, or
12 what outcomes, suggestions, and lessons arose from the pilot project.
13 The final report must also contain information obtained by the
14 department through intensive monitoring of all projects operating under
15 general permits. This monitoring must, at a minimum, evaluate the
16 environmental conditions at the site before, during, and after the
17 project.

18 (6) The results of one-time projects authorized under the general
19 permit pilot project may continue to exist after the expiration of the
20 authority for the department of fish and wildlife to operate the pilot
21 project. However, ongoing projects must comply with chapter 77.55 RCW
22 after the expiration of the department of fish and wildlife's
23 authority.

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

26 (1) If any person or government agency fails to follow the
27 requirements of obtaining hydraulic project approval under this
28 chapter, or fails to carry out any of the requirements or conditions of
29 a hydraulic project approval issued under this chapter, the department
30 may issue an order to that person or government agency. The order may
31 require the person or government agency to stop work on any or all of
32 the activities subject to the hydraulic project approval, to correct or
33 to restore the nonconforming site, or to both stop work and to correct
34 or to restore the nonconforming site.

35 (2) Unless the department extends by rule the maximum time for
36 filing, a person receiving an order from the department under this
37 section may file a written petition with the department appealing the

1 order within twenty days of service of the order. The filed petition
2 must be treated as an application for an adjudicative proceeding under
3 chapter 34.05 RCW. In the event of an appeal, a person or government
4 agency may seek interim relief from an order under this section as
5 provided in chapter 34.05 RCW.

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

8 The department may adopt rules to designate that certain violations
9 of the terms or conditions of hydraulic project approvals or orders
10 issued under section 8 of this act are a civil infraction to be
11 punished as a natural resource infraction as provided by chapter 7.84
12 RCW. Any fines issued under this section shall be supplemental to any
13 remedies provided by section 8 of this act.

14 **Sec. 10.** RCW 77.15.300 and 2000 c 107 s 239 are each amended to
15 read as follows:

16 (1) Unless the violation has been identified by rule under section
17 9 of this act as a civil infraction, a person is guilty of unlawfully
18 undertaking hydraulic project activities if the person constructs any
19 form of hydraulic project or performs other work on a hydraulic project
20 and:

21 (a) Fails to have a hydraulic project approval required under
22 chapter 77.55 RCW for such construction or work; ~~((or))~~

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

25 (c) Violates any stop work or correction order issued under section
26 8 of this act.

27 (2) Unlawfully undertaking hydraulic project activities is a gross
28 misdemeanor.

29 NEW SECTION. **Sec. 11.** RCW 77.55.140 (Hydraulic projects--Civil
30 penalty) and 2000 c 107 s 19, 1993 sp.s. c 2 s 35, 1988 c 36 s 35, &
31 1986 c 173 s 6 are each repealed.

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