

SSB 6448 - S AMD 351

By Senator Jacobsen

1       Strike everything after the enacting clause and insert the  
2 following:

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

9       (2) The legislature further finds that other permit streamlining  
10 measures, such as issuing multiple-site permits or general permits  
11 within a defined geographic area, will benefit the applicant and the  
12 department, and provide for the protection of fish life.

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

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

26       (5) The legislature further finds that private forest landowners  
27 have shown a strong commitment to protecting valuable public resources  
28 and satisfying the needs of the state and federal government in regards  
29 to protecting endangered species by conducting their operations  
30 pursuant to the conditions of a habitat conservation plan approved

1 under the federal endangered species act. This commitment comes at  
2 great cost to the forest practices industry, and as a reflection of  
3 that financial commitment, the legislature intends to exempt certain  
4 common forest practices from the requirements of chapter 77.55 RCW.

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

7 (1) The department may continue its practice of issuing general  
8 permits for the project types it has approved prior to the effective  
9 date of this section.

10 (2) In addition to the general permits authorized by subsection (1)  
11 of this section, the department may issue up to four pilot general  
12 permits by July 1, 2014. Each of these pilot general permits may  
13 authorize water crossing structure installation, removal, and  
14 replacement for a single, appropriate, willing, applicant.

15 (3) The department must work with stakeholders identified by the  
16 department to identify appropriate general permit applicants and  
17 projects for the pilot general permits authorized in subsection (2) of  
18 this section.

19 (4) The department shall collect information during the life of the  
20 pilot general permits authorized in subsection (2) of this section to  
21 determine compliance with the permit as well as whether staffing and  
22 fiscal efficiencies are realized by the department and applicants. The  
23 department shall work cooperatively with applicants and tribes to  
24 ensure that the pilot general permits provide for the protection of  
25 fish life. The department shall also use that information to modify  
26 how it uses general permits to authorize hydraulic projects and to  
27 recommend adjustments to the permit fee schedule in its report to the  
28 legislature required by section 7 of this act.

29 **Sec. 3.** RCW 77.55.011 and 2009 c 549 s 1028 are each amended to  
30 read as follows:

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

33 (1) "Bed" means the land below the ordinary high water lines of  
34 state waters. This definition does not include irrigation ditches,  
35 canals, storm water runoff devices, or other artificial watercourses

1 except where they exist in a natural watercourse that has been altered  
2 artificially.

3 (2) "Board" means the hydraulic appeals board created in RCW  
4 77.55.301.

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

6 (4) "Department" means the department of fish and wildlife.

7 (5) "Director" means the director of the department of fish and  
8 wildlife.

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

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

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

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

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

25 (11) "Ordinary high water line" means the mark on the shores of all  
26 water that will be found by examining the bed and banks and  
27 ascertaining where the presence and action of waters are so common and  
28 usual, and so long continued in ordinary years as to mark upon the soil  
29 or vegetation a character distinct from the abutting upland. Provided,  
30 that in any area where the ordinary high water line cannot be found,  
31 the ordinary high water line adjoining saltwater is the line of mean  
32 higher high water and the ordinary high water line adjoining fresh  
33 water is the elevation of the mean annual flood.

34 (12) "Permit" means a hydraulic project approval permit issued  
35 under this chapter.

36 (13) "Sandbars" includes, but is not limited to, sand, gravel,  
37 rock, silt, and sediments.

1 (14) "Small scale prospecting and mining" means the use of only the  
2 following methods: Pans; nonmotorized sluice boxes; concentrators; and  
3 minirocker boxes for the discovery and recovery of minerals.

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

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

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

14 (18) "Waters of the state" and "state waters" means all salt and  
15 fresh waters waterward of the ordinary high water line and within the  
16 territorial boundary of the state.

17 (19) "Application submittal fee" means the fee that accompanies an  
18 application for hydraulic project approval submitted under RCW  
19 77.55.021 for the initial application intake, entry into the  
20 department's database, determination of application completeness, and  
21 assessment of appropriate permit processing fees.

22 (20) "Emergency permit" means a verbal hydraulic project approval  
23 or the written follow-up to the verbal approval issued to a person or  
24 government agency under RCW 77.55.021(11).

25 (21) "Expedited permit" means a hydraulic project approval issued  
26 to a person or government agency under RCW 77.55.021 (13), (14), or  
27 (15).

28 (22) "General permit" means a hydraulic project approval issued to  
29 a person or government agency under RCW 77.55.021 for multiple  
30 hydraulic projects occurring over a defined geographic area but for  
31 which specific project sites have not been designated, and for which  
32 impacts are well-understood and proven mitigation measures exist.

33 (23) "Multiple-site permit" means a hydraulic project approval  
34 issued to a person or government agency under RCW 77.55.021 for  
35 hydraulic projects occurring at more than one specific location.

36 (24) "Permit modification" means a hydraulic project approval  
37 issued to a person or government agency under RCW 77.55.021 that

1 extends, renews, or changes the conditions of a previously issued  
2 hydraulic project approval.

3 (25) "Permit processing fee" means the fee for evaluating the  
4 impacts of, and resultant mitigation for, proposed hydraulic projects,  
5 and for processing applications under RCW 77.55.021.

6 (26) "Single-site permit" means a hydraulic project approval issued  
7 to a person or government agency under RCW 77.55.021 for a single  
8 hydraulic project location.

9 **Sec. 4.** RCW 77.55.021 and 2008 c 272 s 1 are each amended to read  
10 as follows:

11 (1) Except as provided in RCW 77.55.031, (~~77.55.051, and~~)  
12 77.55.041, 77.55.051, and section 10 of this act, in the event that any  
13 person or government agency desires to undertake a hydraulic project,  
14 the person or government agency shall, before commencing work thereon,  
15 secure the approval of the department in the form of a permit as to the  
16 adequacy of the means proposed for the protection of fish life.

17 (2) A complete written application for a permit (~~may~~) must be  
18 submitted (~~in person or by registered mail~~) to the department and  
19 must contain the following:

20 (a) General plans for the overall project;

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

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

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

29 (e) Payment of all applicable application submittal and permit  
30 processing fees charged by the department under section 6 of this act.

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

34 (4) With the exception of emergency permits as provided in  
35 subsection (11) of this section, applications for permits must be  
36 submitted to the department's headquarter office. Requests for  
37 emergency permits as provided in subsection (11) of this section may be

1 made to the permitting biologist assigned to the location in which the  
2 emergency occurs, to the department's regional office in which the  
3 emergency occurs, or to the department's headquarter office.

4 (5) Except as provided in subsections (11) and (13) of this  
5 section, the department may not proceed with permit review until the  
6 fees required by section 6 of this act are paid in full.

7 (6)(a) Protection of fish life is the only ground upon which  
8 approval of a permit may be denied or conditioned. Approval of a  
9 permit may not be unreasonably withheld or unreasonably conditioned.  
10 Except as provided in this subsection and subsections (~~((8), (10), and~~  
11 ~~(12))~~) (11), (13), and (15) of this section, the department has forty-  
12 five calendar days upon receipt of a complete application to grant or  
13 deny approval of a permit. The forty-five day requirement is suspended  
14 if:

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

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

19 (iii) The applicant requests a delay; or

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

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

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

29 (~~((4))~~) (7) If the department denies approval of a permit, the  
30 department shall provide the applicant a written statement of the  
31 specific reasons why and how the proposed project would adversely  
32 affect fish life. Only the issuance, denial, conditioning, or  
33 modification of a permit shall be appealable to the department or the  
34 board as specified in RCW 77.55.301 within thirty days of the notice of  
35 decision.

36 (~~((5))~~) (8)(a) The permittee must demonstrate substantial progress  
37 on construction of that portion of the project relating to the permit  
38 within two years of the date of issuance.

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

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

14 ~~((6))~~ (9) The department may, after consultation with the  
15 permittee, modify a permit due to changed conditions as long as the  
16 design, size, and scope of the previously approved project remains  
17 unchanged. The modification becomes effective unless appealed to the  
18 department or the board as specified in RCW 77.55.301 within thirty  
19 days from the notice of the proposed modification. For hydraulic  
20 projects that divert water for agricultural irrigation or stock  
21 watering purposes, or when the hydraulic project or other work is  
22 associated with streambank stabilization to protect farm and  
23 agricultural land as defined in RCW 84.34.020, the burden is on the  
24 department to show that changed conditions warrant the modification in  
25 order to protect fish life. The department may not charge fees under  
26 section 6 of this act if the modification is not requested by the  
27 permittee.

28 ~~((7))~~ (10) A permittee may request modification of a permit due  
29 to changed conditions as long as the design, size, and scope of the  
30 previously approved project remains unchanged. The request must  
31 include payment of the permit modification fee charged by the  
32 department under section 6 of this act. The request must be processed  
33 ~~((within forty five calendar days of receipt of the written request))~~  
34 according to subsections (4), (5), and (6) of this section. A decision  
35 by the department may be appealed to the board within thirty days of  
36 the notice of the decision. For hydraulic projects that divert water  
37 for agricultural irrigation or stock watering purposes, or when the  
38 hydraulic project or other work is associated with streambank

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

5 ~~((+8))~~ (11)(a) The department, the county legislative authority,  
6 or the governor may declare and continue an emergency. If the county  
7 legislative authority declares an emergency under this subsection, it  
8 shall immediately notify the department. A declared state of emergency  
9 by the governor under RCW 43.06.010 shall constitute a declaration  
10 under this subsection.

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

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

23 ~~((+9))~~ (d) The department shall charge permittees application  
24 submittal and permit processing fees authorized by section 6 of this  
25 act after an emergency permit is reduced to writing and issued under  
26 this subsection. The department may not require payment of permit fees  
27 prior to the department reducing the emergency permits to writing.

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

35 ~~((+10))~~ (13)(a) The department or the county legislative authority  
36 may determine an imminent danger exists. The county legislative  
37 authority shall notify the department, in writing, if it determines  
38 that an imminent danger exists. In cases of imminent danger, the



1 department shall issue an expedited written permit, upon request, for  
2 work to remove any obstructions, repair existing structures, restore  
3 banks, protect fish resources, or protect property. Expedited permit  
4 requests require a complete written application as provided in  
5 subsection (2) of this section and must be issued within fifteen  
6 calendar days of the receipt of a complete written application.  
7 Approval of an expedited permit is valid for up to sixty days from the  
8 date of issuance. The department may not require the provisions of the  
9 state environmental policy act, chapter 43.21C RCW, to be met, or the  
10 payment of a permit processing fee, as a condition of issuing a permit  
11 under this subsection.

12 ~~((+11+))~~ (b) The department shall charge permittees permit  
13 processing fees authorized by section 6 of this act after an expedited  
14 permit is issued under this subsection.

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

28 (b) Any projects proposed to address a chronic danger identified  
29 under (a) of this subsection that satisfies the project description  
30 identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions  
31 of the state environmental policy act, chapter 43.21C RCW. However,  
32 the project is subject to the review process established in RCW  
33 77.55.181(3) as if it were a fish habitat improvement project.

34 ~~((+12+))~~ (15)(a) The department may issue an expedited written  
35 permit in those instances where normal permit processing would result  
36 in significant hardship for the applicant or unacceptable damage to the  
37 environment. Expedited permit requests require a complete written  
38 application as provided in subsection (2) of this section and must be

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

7 (b) The department shall charge permittees permit processing fees  
8 authorized by section 6 of this act after an expedited permit is issued  
9 under this subsection.

10 **Sec. 5.** RCW 77.15.300 and 2000 c 107 s 239 are each amended to  
11 read as follows:

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

14 (a)(i) Constructs any form of hydraulic project or performs other  
15 work on a hydraulic project; and((+

16 +a)) (ii) Fails to have a hydraulic project approval required  
17 under chapter 77.55 RCW for such construction or work; or

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

20 (c) Violates any rule adopted under RCW 77.55.021, 77.55.081,  
21 77.55.091, or section 2 of this act that identifies the time, manner,  
22 locations, methods, or other conditions under which an activity is  
23 approved or not approved.

24 (2) Unlawfully undertaking hydraulic project activities is a gross  
25 misdemeanor.

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

28 (1) The department shall charge fees for permits issued under RCW  
29 77.55.021 to recover a portion of the existing costs for processing and  
30 issuing decisions on permit applications, for the new costs of  
31 administering fee collections, and for costs related to compliance  
32 monitoring and enforcement of projects requiring a permit. The fees  
33 are based primarily on the scale and complexity of the project and the  
34 relative effort required for department staff to review the  
35 application, conduct site visits, consult with applicants as necessary,  
36 and issue or deny the permit.

1 (2) For the purposes of assessing fees for permits under subsection  
2 (1) of this section, the department must categorize the following  
3 repair or maintenance hydraulic projects as low complexity:

- 4 (a) Emergencies;
- 5 (b) Freshwater beach habitat creation;
- 6 (c) Beaver dams;
- 7 (d) Breeding substrate;
- 8 (e) Large woody material work;
- 9 (f) Riparian habitat work;
- 10 (g) Wetlands or estuarine habitat work;
- 11 (h) Conduit or cable work using boring;
- 12 (i) Dredging less than fifty cubic yards of bed material;
- 13 (j) Water crossings, including a bridge, culvert, or ford, in  
14 nonfish-bearing waters;
- 15 (k) Bridge work exclusively above the ordinary high water line;
- 16 (l) Shoreline modification or bank protection of less than one  
17 hundred feet, not associated with jetties, dikes, or levees;
- 18 (m) Booms;
- 19 (n) Anchoring or mooring buoys and navigation aids;
- 20 (o) Piling work;
- 21 (p) Overwater structures, not including marinas or marine  
22 terminals;
- 23 (q) Boat lifts or railway launches;
- 24 (r) Boat ramps or launches;
- 25 (s) Timber felling and yarding activities;
- 26 (t) Temporary or permanent stream gauges or other scientific  
27 instruments;
- 28 (u) Outfalls;
- 29 (v) Tidegates;
- 30 (w) Mechanical aquatic plant control not addressed by the aquatic  
31 plants and fish pamphlet;
- 32 (x) Pump water diversions and fish screens; and
- 33 (y) Gravity water diversions and fish screens.

34 (3) When assessing fees for permits under subsection (1) of this  
35 section, the department must categorize the following new, replacement,  
36 or removal hydraulic projects as low complexity:

- 37 (a) Beaver dams;
- 38 (b) Conduit or cable work using boring;

- 1 (c) Bridge work exclusively above the ordinary high water line;
- 2 (d) Booms;
- 3 (e) Anchoring or mooring buoys and navigation aids;
- 4 (f) Overwater structures in the current footprint, not including
- 5 marinas or marine terminals;
- 6 (g) Boat ramps or launches within the existing footprint of an
- 7 existing structure;
- 8 (h) Timber felling and yarding activities; and
- 9 (i) Temporary or permanent stream gauges or other scientific
- 10 instruments.

11 (4) When assessing fees for permits under subsection (1) of this  
12 section, the department must categorize the following repair or  
13 maintenance hydraulic projects as medium complexity:

- 14 (a) Aquaculture;
- 15 (b) Off channel, side channel, or in-channel enhancement or
- 16 restoration work, not including projects that are exclusively large
- 17 woody material work;
- 18 (c) Channel realignment work;
- 19 (d) Bed modification, not including habitat enhancement or
- 20 restoration and dredging;
- 21 (e) Conduit or cable work using trenching;
- 22 (f) Dredging greater than fifty cubic yards of bed material;
- 23 (g) Water crossings, including a bridge, culvert, or ford, in fish-
- 24 bearing waters, not including fish passage retrofits;
- 25 (h) Fish passage barrier removal with replacement or retrofit using
- 26 such methods as baffles or log controls for passage through or over a
- 27 structure;
- 28 (i) Fish passage not associated with a water crossing structure,
- 29 such as a bypass of a natural barrier or a fishway to bypass a dam;
- 30 (j) Shoreline modification or bank protection greater than one
- 31 hundred feet that is not associated with jetties, dikes, or levees;
- 32 (k) Jetties, dikes, or levees;
- 33 (l) Overwater structures outside of the footprint of an existing
- 34 structure, not including marinas or marine terminals;
- 35 (m) Marinas and marine terminals; and
- 36 (n) Dams not under jurisdiction of the federal energy regulatory
- 37 commission.

1 (5) When assessing fees for permits under subsection (1) of this  
2 section, the department must categorize the following new, replacement,  
3 or removal hydraulic projects as medium complexity:

4 (a) Emergencies;

5 (b) Aquaculture;

6 (c) Freshwater beach habitat creation;

7 (d) Breeding substrate;

8 (e) Large woody material work;

9 (f) Riparian habitat work;

10 (g) Conduit or cable work using trenching;

11 (h) Dredging less than fifty cubic yards of bed material;

12 (i) Water crossings, including a bridge, culvert, or ford, in  
13 nonfish-bearing waters;

14 (j) Shoreline modification or bank protection less than one hundred  
15 feet, not associated with jetties, dikes, or levees;

16 (k) Piling work;

17 (l) Overwater structures outside of the footprint of an existing  
18 structure, not including marinas or marine terminals;

19 (m) Boat lifts or railway launches;

20 (n) Boat ramps or launches outside of the footprint of an existing  
21 structure;

22 (o) Outfalls;

23 (p) Tidegates;

24 (q) Mechanical aquatic plant control not addressed by the aquatic  
25 plants and fish pamphlet;

26 (r) Mineral prospecting not addressed by the gold and fish  
27 pamphlet;

28 (s) Pump water diversions and fish screens; and

29 (t) Gravity water diversions and fish screens.

30 (6) When assessing fees for permits under subsection (1) of this  
31 section, the department must categorize the following new, replacement,  
32 or removal hydraulic projects as high complexity:

33 (a) Off channel, side channel, or in-channel enhancement or  
34 restoration work, not including projects that are exclusively large  
35 woody material work;

36 (b) Wetland or estuarine habitat work;

37 (c) Channel realignment work;

1 (d) Bed modification, not including habitat enhancement or  
2 restoration and dredging;

3 (e) Dredging greater than fifty cubic yards of bed material;

4 (f) Water crossings, including a bridge, culvert, or ford, in fish-  
5 bearing waters, not including fish passage retrofits;

6 (g) Fish passage barrier removal with replacement or retrofit using  
7 such methods as baffles or log controls for passage through or over a  
8 structure;

9 (h) Fish passage not associated with a water crossing structure,  
10 such as a bypass of a natural barrier or a fishway to bypass a dam;

11 (i) Shoreline modification or bank protection greater than one  
12 hundred feet, not associated with jetties, dikes, or levees;

13 (j) Jetties, dikes, or levees;

14 (k) Marinas and marine terminals; and

15 (l) Dams not under jurisdiction of the federal energy regulatory  
16 commission.

17 (7) If the department receives applications for project types not  
18 identified in subsections (2) through (6) of this section, it shall  
19 categorize them as low, medium, or high risk and charge fees based on  
20 those categories consistent with the most similar project types  
21 identified in subsections (2) through (6) of this section.

22 (8) When applicable and except as provided in this section, the  
23 department must charge the following fees, as modified as provided in  
24 subsection (13) of this section:

25 (a) An application submittal fee, which is three hundred forty-two  
26 dollars for a:

27 (i) Low complexity permit;

28 (ii) Medium complexity permit;

29 (iii) High complexity permit; and

30 (iv) General permit;

31 (b) A permit processing fee for medium and high complexity permits,  
32 which is:

33 (i) Three hundred seventy-six dollars for a medium complexity,  
34 single-site permit; and

35 (ii) One thousand six hundred thirty-nine dollars for a high  
36 complexity, single-site permit;

37 (c) A multiple-site permit processing fee, which is the applicable  
38 permit processing fee assessed under this subsection (8)(c) for one of

1 the hydraulic project sites identified in the permit application, and  
2 twenty percent of the applicable permit processing fee for each  
3 additional site;

4 (d) A general permit processing fee, which is the lesser of seven  
5 thousand one hundred thirty-three dollars or a fee level negotiated  
6 between the department and the general project applicant; and

7 (e) A permit modification fee, which is two hundred five dollars.

8 (9) In cases where hydraulic projects include work that falls into  
9 more than one of the permit categories outlined in subsection (8) of  
10 this section, the fee charged must be based on the most complex  
11 component of the project.

12 (10) Because the forest products industry conducts their operations  
13 pursuant to the conditions of a habitat conservation plan approved  
14 under the federal endangered species act, the forest products industry  
15 shall be charged reduced application submittal and permit processing  
16 fees. Except as provided in subsections (11) and (12) of this section,  
17 the department shall charge an application submittal fee of fifty  
18 dollars and permit processing fee of two hundred seventy-five dollars  
19 for projects conducted under an approved forest practices permit  
20 granted under chapter 76.09 RCW. This subsection does not apply to  
21 pilot general permits authorized under section 2 of this act.

22 (11) The following hydraulic projects are exempt from fees listed  
23 under this section: Projects approved under the cost-sharing program  
24 for fish passage barriers authorized in RCW 76.13.150; projects  
25 conducted pursuant to pamphlets developed under RCW 77.55.081 or  
26 77.55.091; the forest practices identified in section 10 of this act;  
27 road abandonments, including construction of new, relocated replacement  
28 roads that provide for enhanced fish protection, when conducted under  
29 a road maintenance and abandonment plan under chapter 76.09 RCW; and  
30 projects conducted under chapter 76.09 RCW resulting in fish passage  
31 barrier correction. This subsection does not apply to pilot general  
32 permits authorized under section 2 of this act.

33 (12) Hydraulic projects approved under applicant-funded contracts  
34 with the department that pay for the costs of processing those projects  
35 are exempt from fees listed under this section.

36 (13) On September 30th of each year, the department shall calculate  
37 adjusted fees by the rate of inflation. The adjusted fees must be  
38 calculated to the nearest dollar using the consumer price index for the

1 twelve months prior to each September 1st as calculated by the United  
2 States department of labor. Each adjusted fee calculated under this  
3 section takes effect on the following January 1st.

4 (14) All fees collected under this section must be deposited in the  
5 hydraulic project approval account created in section 8 of this act.

6 NEW SECTION. **Sec. 7.** By December 31, 2012, the department of fish  
7 and wildlife shall report to the legislature consistent with RCW  
8 43.01.036 on the effectiveness of streamlined permitting authorized by  
9 this act, the impact of fees on applicants, actual versus expected fees  
10 collected by the department, the impact of fee collection on the  
11 department's hydraulic project approval permit program, and  
12 recommendations for improving the department's permit streamlining  
13 efforts and permit fee schedule.

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

16 (1) The hydraulic project approval account is created in the state  
17 treasury. All receipts from application submittal fees and permit  
18 processing fees for hydraulic project approval applications in section  
19 6 of this act must be deposited into the account.

20 (2) Except for unanticipated receipts under RCW 43.79.260 through  
21 43.79.282, moneys in the hydraulic project approval account may be  
22 spent only after appropriation.

23 (3) Expenditures from the hydraulic project approval account may be  
24 used only to fund department activities relating to processing and  
25 issuing hydraulic project approval decisions, compliance monitoring,  
26 enforcement activities related to permits issued under RCW 77.55.021,  
27 conducting or participating in administrative or judicial appeals of  
28 hydraulic project approval decisions, and for the associated management  
29 and administrative costs incurred to implement and operate the program.

30 **Sec. 9.** RCW 77.55.291 and 2005 c 146 s 701 are each amended to  
31 read as follows:

32 (1)(a) The department may levy civil penalties of up to one hundred  
33 dollars per day (~~for violation of any provisions of RCW 77.55.021.~~)  
34 when a person:



1        (i) Constructs any form of hydraulic project or performs other work  
2 on a hydraulic project and fails to have a hydraulic project approval  
3 required under this chapter for the construction or work;

4        (ii) Violates any requirements or conditions of the hydraulic  
5 project approval for the construction or work;

6        (iii) Fails to pay applicable application submittal or permit  
7 processing fees within thirty days of receipt of expedited permits or  
8 emergency permits reduced to writing under RCW 77.55.021; or

9        (iv) Violates any rule adopted under RCW 77.55.021, 77.55.081,  
10 77.55.091, or section 2 of this act that identifies the time, manner,  
11 locations, methods, or other conditions under which an activity is  
12 approved or not approved.

13        (b) The penalty provided shall be imposed by notice in writing,  
14 either by certified mail or personal service to the person incurring  
15 the penalty, from the director or the director's designee describing  
16 the violation.

17        (2) Any person incurring any penalty under this chapter may appeal  
18 the same under chapter 34.05 RCW to the director. Appeals shall be  
19 filed within thirty days of receipt of notice imposing any penalty.

20        (3) The penalty imposed and any fees due for violations of section  
21 6 of this act shall become due and payable thirty days after receipt of  
22 a notice imposing the penalty unless an appeal is filed. Whenever an  
23 appeal of any penalty incurred under this chapter is filed, the penalty  
24 shall become due and payable only upon completion of all review  
25 proceedings and the issuance of a final order confirming the penalty in  
26 whole or in part.

27        (4) If the amount of any penalty is not paid within thirty days  
28 after it becomes due and payable, the attorney general, upon the  
29 request of the director, shall bring an action in the name of the state  
30 of Washington in the superior court of Thurston county or of any county  
31 in which such violator may do business, to recover such penalty. In  
32 all such actions the procedure and rules of evidence shall be the same  
33 as an ordinary civil action. All penalties recovered under this  
34 section shall be paid into the state's general fund.

35        NEW SECTION. Sec. 10. A new section is added to chapter 77.55 RCW  
36 to read as follows:

37        (1) The following common forest practices do not require a

1 hydraulic project approval permit under this chapter when those  
2 projects are conducted under an approved forest practices permit  
3 granted under chapter 76.09 RCW that incorporates rules adopted under  
4 section 11 of this section:

5 (a) The removal or modification of newly constructed beaver dams  
6 less than one-year old;

7 (b) Timber felling and yarding activities;

8 (c) Bridge painting, redecking, and curbing or railing repair; and

9 (d) Removal of woody debris contacting culverts and bridges,  
10 provided the woody debris is not embedded in the stream bed or stream  
11 banks.

12 (2) The department shall assist the forest practices board, in  
13 collaboration with interested and affected parties, to adopt by rule  
14 the requirements for the project types in subsection (1) of this  
15 section necessary to protect fish life. The rules must be incorporated  
16 into forest practices permits for those activities.

17 NEW SECTION. **Sec. 11.** A new section is added to chapter 76.09 RCW  
18 to read as follows:

19 (1) By July 1, 2012, the board shall adopt rules under section 10  
20 of this act after collaborating with interested and affected parties.

21 (2) The board must ensure that forest practices permits issued for  
22 activities identified in section 10 of this act incorporate the  
23 requirements of the rules adopted under that section.

24 NEW SECTION. **Sec. 12.** This act takes effect July 1, 2010."

**SSB 6448** - S AMD  
By Senator

25 On page 1, line 2 of the title, after "projects;" strike the  
26 remainder of the title and insert "amending RCW 77.55.011, 77.55.021,  
27 77.15.300, and 77.55.291; adding new sections to chapter 77.55 RCW;

1 adding a new section to chapter 76.09 RCW; creating new sections;  
2 prescribing penalties; and providing an effective date."

EFFECT: The striking amendment:

Provides that the department of fish and wildlife may issue general permits for hydraulic project types for which it has issued a general permit prior to the effective date of the bill;

Allows the department of fish and wildlife to issue the pilot general permits authorized in the bill to public or private sector applicants;

Increases the fees included in the statutory fee schedule established in the bill by approximately 35 percent;

Narrows the general fee exemption for hydraulic projects associated with forest practices to an exemption for: Road abandonments conducted under a road maintenance and abandonment plan; forest practices resulting in fish passage barrier correction; and forest practices receiving a forest practices permit that includes provisions for the protection of fish life;

Generally provides reduced fees for hydraulic projects associated with forest practices that are not exempt from fees; and

Narrows the list of forest practices that do not require a hydraulic project approval permit when provisions for the protection of fish life are incorporated into the forest practices permit. By July 1, 2012, forest practices rules must incorporate necessary protections for fish life for the specified forest practices.

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