
HOUSE BILL 3037

State of Washington

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2010 Regular Session

By Representatives Darneille, Upthegrove, Dunshee, Hudgins, and Kenney

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1 AN ACT Relating to providing the department of fish and wildlife
2 authority to improve permitting of hydraulic projects; amending RCW
3 77.55.011, 77.55.021, 77.15.300, 77.55.291, 77.55.081, and 77.55.091;
4 adding new sections to chapter 77.55 RCW; creating a new section;
5 prescribing penalties; and providing an expiration date.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that the department of
8 fish and wildlife issues thousands of hydraulic project approvals each
9 year at a substantial commitment of government resources for individual
10 permit review and writing. The legislature recognizes the importance
11 of the individual approval processes to ensure that hydraulic project
12 approval decisions provide for the proper protection of fish life.
13 However, the legislature also recognizes that permitting of certain
14 routine, low-risk activities can be streamlined by issuing pamphlet
15 permits that describe specific rules that, if complied with, will
16 ensure proper protection of fish life and lessen the regulatory burden
17 on applicants. The legislature also finds that other permit
18 streamlining measures, such as issuing multiple site permits or general
19 permits authorizing work within a broad, defined geographic area for

1 specific applicants will benefit both the applicant and the department
2 of fish and wildlife, and provide for the protection of fish life.
3 Furthermore, the legislature finds that the department of fish and
4 wildlife should establish fees for the hydraulic project approval
5 program to pay for a portion of the program's administrative,
6 compliance monitoring, and enforcement costs.

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

9 (1) As an alternative to requiring and issuing individual hydraulic
10 project approvals under RCW 77.55.021, the department may adopt rules
11 under which certain hydraulic projects may be conducted without an
12 individual hydraulic project approval, provided the rules are followed.
13 The rules must:

14 (a) Ensure that this alternative hydraulic project approval is only
15 available for repetitive, low-risk hydraulic projects for which
16 potential impacts to fish life are well understood and proven
17 mitigation measures are available that can be incorporated into the
18 rule;

19 (b) Describe the time, manner, locations, methods, or other
20 conditions under which the described activity is approved;

21 (c) Describe the activity that is exempt from individual hydraulic
22 project approval, if conducted in compliance with the rules; and

23 (d) Be published in pamphlets or online, which may provide other
24 reasonably necessary information or educational materials designed to
25 aid compliance with the approved time, manner, methods, or other
26 requirements provided by rule.

27 (2) Rules adopted under this section may require possession of the
28 pamphlet at the hydraulic project activity site or while conducting the
29 activity. The rules may also require possession of proof of payment of
30 applicable fees authorized by this act and post-activity reporting of
31 activities conducted under this section. The rules must be enforced
32 under RCW 77.15.300.

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

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

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

6 (2) "Board" means the hydraulic appeals board created in RCW
7 77.55.301.

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

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

10 (5) "Director" means the director of the department of fish and
11 wildlife.

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

14 (7) "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 (8) "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 (9) "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 (10) "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 (11) "Ordinary high water line" means the mark on the shores of all
29 water that will be found by examining the bed and banks and
30 ascertaining where the presence and action of waters are so common and
31 usual, and so long continued in ordinary years as to mark upon the soil
32 or vegetation a character distinct from the abutting upland. Provided,
33 that in any area where the ordinary high water line cannot be found,
34 the ordinary high water line adjoining saltwater is the line of mean
35 higher high water and the ordinary high water line adjoining fresh
36 water is the elevation of the mean annual flood.

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

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

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

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

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

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

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

19 (19) "Application submittal fee" means the fee that accompanies an
20 application for hydraulic project approval submitted under RCW
21 77.55.021 for the initial application intake, entry into the
22 department's database, determination of application completeness, and
23 assessment of appropriate permit processing fees. For projects in the
24 low category, this fee also serves as the permit processing fee.

25 (20) "Emergency permit" means a verbal hydraulic project approval
26 or the written follow-up to the verbal approval issued under RCW
27 77.55.021(15).

28 (21) "Expedited permit" means a hydraulic project approval issued
29 under RCW 77.55.021 (14) or (15).

30 (22) "General permit" means a hydraulic project approval issued
31 under RCW 77.55.021 for multiple routine hydraulic projects occurring
32 over a wide geographic area but for which specific project sites have
33 not been designated.

34 (23) "Pamphlet permit" means a hydraulic project approval that
35 contains the rules under which routine, low-risk hydraulic projects may
36 be conducted. Pamphlet permits are issued in printed or online
37 pamphlet format under RCW 77.55.081, 77.55.091, or section 2 of this
38 act.

1 (24) "Permit modification" means a hydraulic project approval
2 issued under RCW 77.55.021 that extends, renews, or changes the
3 conditions of a previously issued hydraulic project approval, provided
4 the design, size, and scope of the previously approved project remain
5 unchanged.

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

9 (26) "Single-site permit" means a hydraulic project approval issued
10 under RCW 77.55.021 for a single hydraulic project location.

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

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

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

22 (a) General plans for the overall project;

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

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

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

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

33 (3) The department may accept complete, written applications as
34 provided in this section for permits for hydraulic projects with
35 multiple sites or within broad geographic areas.

36 (4) With the exception of emergency oral permits as provided in
37 subsection (11) of this section, applications for permits must be

1 submitted to the department's headquarters office. Requests for
2 emergency oral permits as provided in subsection (11) of this section
3 may be made to the permitting biologist assigned to the location in
4 which the emergency occurs, to the department's regional office in
5 which the emergency occurs, or to the department's headquarters office.

6 (5) Except as provided in subsections (11) and (13) of this
7 section, the department may not proceed with permit review until the
8 fees set out in section 6 of this act are paid.

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

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

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

21 (iii) The applicant requests a delay; or

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

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

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

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

1 ~~((+5))~~ (8)(a) The permittee must demonstrate substantial progress
2 on construction of that portion of the project relating to the permit
3 within two years of the date of issuance.

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

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

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

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

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

4 ~~((+8))~~ (11)(a) The department, the county legislative authority,
5 or the governor may declare and continue an emergency. If the county
6 legislative authority declares an emergency under this subsection, it
7 shall immediately notify the department. A declared state of emergency
8 by the governor under RCW 43.06.010 shall constitute a declaration
9 under this subsection.

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

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

22 ~~((+9))~~ (d) The department shall charge permittees applicable
23 application submittal and permit processing fees after an emergency
24 permit is issued under this subsection. The department may not require
25 payment of permit fees prior to the issuance of emergency permits.

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

33 ~~((+10))~~ (13)(a) The department or the county legislative authority
34 may determine an imminent danger exists. The county legislative
35 authority shall notify the department, in writing, if it determines
36 that an imminent danger exists. In cases of imminent danger, the
37 department shall issue an expedited written permit, upon request, for
38 work to remove any obstructions, repair existing structures, restore

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

10 ~~((+11+))~~ (b) The department shall charge permittees applicable
11 permit processing fees after an expedited permit is issued under this
12 subsection.

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

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

32 ~~((+12+))~~ (15)(a) The department may issue an expedited written
33 permit in those instances where normal permit processing would result
34 in significant hardship for the applicant or unacceptable damage to the
35 environment. Expedited permit requests require a complete written
36 application as provided in subsection (2) of this section and must be
37 issued within fifteen calendar days of the receipt of a complete
38 written application. Approval of an expedited permit is valid for up

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

5 (b) The department shall charge permittees applicable permit
6 processing fees after an expedited permit is issued under this
7 subsection.

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

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

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

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

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

18 (c) Violates any rule adopted under RCW 77.55.021, 77.55.081,
19 77.55.091, or section 2 of this act that identifies the time, manner,
20 locations, methods, or other conditions under which an activity is
21 approved or not approved.

22 (2) Unlawfully undertaking hydraulic project activities is a gross
23 misdemeanor.

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

26 (1) Between July 1, 2010, and June 30, 2012, the department will
27 charge fees for permits issued under RCW 77.55.021 to recover a portion
28 of the existing costs for processing and issuing decisions on permit
29 applications, for the new costs of administering fee collections, and
30 for costs related to compliance monitoring and enforcement of projects
31 requiring a permit. The fees are based on the scale and complexity of
32 the project and the relative effort required for department staff to
33 review the application, conduct site visits and consult with applicants
34 as necessary, and issue or deny the permit.

35 (2) The department will charge the following fees:

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Permit Category	Fee	Notes
Pamphlet permit.	\$100	User must renew fee every five years.
Application submittal, required for low, medium, and high complexity permits, and general permits.	\$250	Covers the processing costs and the processing costs for a low complexity, single-site permit.
Permit processing fee for low complexity, single-site permit.	Not applicable: Processing fee is included in application submittal fee.	Total low complexity, single-site permit cost of \$250.
Permit processing fee for medium complexity, single-site permit.	\$275	Total medium complexity, single-site permit cost of \$525 (\$250 + \$275).
Permit processing fee for high complexity, single-site high permit.	\$1,200	Total high complexity, single-site permit cost of \$1,450 (\$250 + \$1,200).
Permit processing fee for additional sites consolidated into a single permit.	Twenty percent of the total low, medium, or high complexity category fee for each additional site.	Example: A medium permit with three sites would cost \$735 (\$525 + \$105 + \$105).
Permit processing fee for general permit.	\$5,250	
Permit modification.	\$150	

(3) In cases where hydraulic projects include work that falls into more than one of the permit categories outlined in subsection (2) of this section, the fee charged will be based on the most complex component of the project.

(4) By July 1, 2012, the department, in collaboration with interested and affected parties, will establish by rule a fee schedule that sets forth the fee criteria and amount for the various categories of permits.

(a) The fee criteria 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, consult with applicants, and issue or deny the permit. The criteria may also include consideration of the capital cost of the project.

(b) The fee criteria and amounts may consider a workload analysis conducted by the department.

1 (c) The department may adjust the fee schedule no more often than
2 once every two years.

3 (5) Revenues generated by these fees must be deposited in the
4 hydraulic project approval account established in section 7 of this
5 act.

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

8 (1) The hydraulic project approval account is created in the state
9 treasury. All receipts from application submittal fees and permit
10 processing fees for hydraulic project approval applications in section
11 6 of this act must be deposited into the account.

12 (2) Expenditures from the hydraulic project approval account may be
13 used only to fund department activities relating to processing and
14 issuing hydraulic project approval decisions, compliance monitoring,
15 enforcement activities related to permits issued under RCW 77.55.021,
16 conducting or participating in administrative or judicial appeals of
17 hydraulic project approval decisions, and for the associated management
18 and administrative costs incurred to implement and operate the program.

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

22 **Sec. 8.** RCW 77.55.291 and 2005 c 146 s 701 are each amended to
23 read as follows:

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

27 (i) Constructs any form of hydraulic project or performs other work
28 on a hydraulic project and fails to have a hydraulic project approval
29 required under this chapter for such construction or work;

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

32 (iii) Fails to pay applicable application submittal or permit
33 processing fees within thirty days of receipt of expedited permits or
34 the written follow-up to emergency oral approvals under RCW 77.55.021;
35 or

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

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

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

12 (3) The penalty imposed shall become due and payable thirty days
13 after receipt of a notice imposing the penalty unless an appeal is
14 filed. Whenever an appeal of any penalty incurred under this chapter
15 is filed, the penalty shall become due and payable only upon completion
16 of all review proceedings and the issuance of a final order confirming
17 the penalty in whole or in part.

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

26 **Sec. 9.** RCW 77.55.081 and 2005 c 146 s 401 are each amended to
27 read as follows:

28 (1) By June 30, 1997, the department shall develop rules for
29 projects conducted solely for the removal or control of various aquatic
30 noxious weeds other than spartina and purple loosestrife and for
31 activities or hydraulic projects for controlling purple loosestrife not
32 covered by RCW 77.55.051(2). Following the adoption of the rules, the
33 department shall produce and distribute a pamphlet describing the
34 methods of removing or controlling the aquatic noxious weeds that are
35 approved under the rules. The pamphlet serves as the permit for any
36 project that is conducted solely for the removal or control of such

1 aquatic noxious weeds and that is conducted as described in the
2 pamphlet. No further permit is required for such a project.

3 (2) From time to time as information becomes available, the
4 department shall adopt similar rules for additional aquatic noxious
5 weeds or additional activities for removing or controlling aquatic
6 noxious weeds not governed by RCW 77.55.051 (1) and (2) and shall
7 produce and distribute one or more pamphlets describing these methods
8 of removal or control. Such a pamphlet serves as the permit for any
9 project that is conducted solely for the removal or control of such
10 aquatic noxious weeds and that is conducted as described in the
11 pamphlet. No further permit is required for such a project.

12 (3) Nothing in this section shall prohibit the department from
13 requiring a permit for those parts of hydraulic projects that are not
14 specifically for the control or removal of spartina, purple
15 loosestrife, or other aquatic noxious weeds.

16 (4) Permittees conducting activities under authority of pamphlets
17 issued under this section must possess proof of payment of any
18 applicable fees required by section 6 of this act.

19 **Sec. 10.** RCW 77.55.091 and 2005 c 146 s 402 are each amended to
20 read as follows:

21 (1) Small scale prospecting and mining shall not require a permit
22 under this chapter if the prospecting is conducted in accordance with
23 rules established by the department.

24 (2) By December 31, 1998, the department shall adopt rules
25 applicable to small scale prospecting and mining activities subject to
26 this section. The department shall develop the rules in cooperation
27 with the recreational mining community and other interested parties.

28 (3) Within two months of adoption of the rules, the department
29 shall distribute an updated gold and fish pamphlet that describes
30 methods of mineral prospecting that are consistent with the
31 department's rule. The pamphlet shall be written to clearly indicate
32 the prospecting methods that require a permit under this chapter and
33 the prospecting methods that require compliance with the pamphlet. To
34 the extent possible, the department shall use the provisions of the
35 gold and fish pamphlet to minimize the number of specific provisions of
36 a written permit issued under this chapter.

1 (4) Permittees conducting activities under authority of pamphlets
2 issued under this section must possess proof of payment of any
3 applicable fees required by section 6 of this act.

4 NEW SECTION. **Sec. 11.** Section 6 of this act expires July 1, 2012.

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