
SENATE BILL 5862

State of Washington

62nd Legislature

2011 Regular Session

By Senators Hargrove, Pridemore, and Swecker; by request of Department of Fish and Wildlife and Department of Natural Resources

Read first time 03/02/11. Referred to Committee on Natural Resources & Marine Waters.

1 AN ACT Relating to the administration of natural resources
2 programs; amending RCW 77.55.021, 77.55.031, 77.55.141, 77.15.300,
3 77.55.231, 76.09.040, 76.09.050, 76.09.150, 76.09.065, and 76.09.030;
4 reenacting and amending RCW 77.55.011 and 76.09.060; adding new
5 sections to chapter 77.55 RCW; creating new sections; repealing RCW
6 77.55.291; prescribing penalties; and providing an expiration date.

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

8 NEW SECTION. **Sec. 1.** (1) The legislature finds that the state of
9 Washington is responsible for protecting public resources, including
10 fish life. The department of fish and wildlife issues thousands of
11 hydraulic project approval permits each year at a substantial
12 commitment of government resources. The legislature recognizes the
13 importance of maintaining and enhancing the hydraulic project approval
14 process to ensure that hydraulic projects provide for the proper
15 protection of fish life.

16 (2) The legislature further finds that targeted permit streamlining
17 measures, such as integrating hydraulic project approvals into forest
18 practices applications for forest practices-related hydraulic projects,
19 will benefit both the applicant and the departments, while providing

1 for the protection of fish life. The legislature expects that permit
2 integration will yield multiple benefits, including a higher rate of
3 overall compliance.

4 (3) The legislature further finds that the department of fish and
5 wildlife has adopted, and will periodically update, appropriate rules
6 that protect fish life from the detrimental impacts of hydraulic
7 projects. The legislature intends for the forest practices board to
8 incorporate these rules by reference into all forest practices
9 activities containing hydraulic project components.

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

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

18 (6) The legislature further finds that the department of fish and
19 wildlife's current civil enforcement authority for hydraulic projects
20 provides an inadequate alternative to its criminal enforcement
21 authority. The legislature intends to provide improved civil
22 enforcement authority that will increase compliance and encourage
23 remediation of damage to fish life and fish habitat.

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

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

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

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

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

36 (4) "Date of receipt" has the same meaning as defined in RCW
37 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) "Hydraulic project" means the construction or performance of
7 work that will use, divert, obstruct, or change the natural flow or bed
8 of any of the salt or freshwaters of the state.

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

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

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

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

1 saltwater is the line of mean higher high tide and the ordinary high
2 water mark adjoining fresh water is the line of mean high water.

3 (13) "Permit" means a hydraulic project approval (~~(permit)~~) issued
4 under this chapter.

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

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

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

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

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

20 (19) "Waters of the state" and "state waters" means all salt and
21 fresh waters waterward of the ordinary high water (~~(line)~~) mark and
22 within the territorial boundary of the state.

23 (20) "Emergency permit" means a verbal hydraulic project approval
24 or the written follow-up to the verbal approval issued to a person
25 under RCW 77.55.021(12).

26 (21) "Expedited permit" means a hydraulic project approval issued
27 to a person under RCW 77.55.021 (14) and (16).

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

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

37 (24) "Permit modification" means a hydraulic project approval

1 issued to a person under RCW 77.55.021 that extends, renews, or changes
2 the conditions of a previously issued hydraulic project approval.

3 (25) "Sandbar" means a ridge of sediment built up by water
4 currents.

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

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

12 (1)(a) Except as provided in RCW 77.55.031, 77.55.041, and
13 77.55.051(~~(7)~~) and (~~(77.55.041)~~) section 9 of this act, in the event
14 that any person (~~(or government agency)~~) desires to undertake a
15 hydraulic project, the person (~~(or government agency)~~) shall(~~(, before~~
16 ~~commencing work thereon,~~) secure the approval of the department in the
17 form of a permit as to the adequacy of the means proposed for the
18 protection of fish life before conducting work on that project.

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

21 (2) Except for pamphlet hydraulic projects and forest practices
22 qualifying under the provisions of section 9 of this act, a complete
23 written application for a permit (~~(may)~~) must be submitted (~~(in person~~
24 ~~or by registered mail)~~) to the department and must contain the
25 following:

26 (~~(a) ((General plans for the overall project;~~
27 ~~(b))~~) Complete plans and specifications (~~(of the proposed~~
28 ~~construction or work within the mean higher high water line in~~
29 ~~saltwater or within the ordinary high water line in freshwater)) for~~

30 the overall hydraulic project;
31 (~~(c) Complete plans and specifications)) (b) Proposed measures for
32 the proper protection of fish life; (~~(and~~~~

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

36 (d) Payment of all applicable application submittal and permit
37 processing fees charged by the department under section 6 of this act.

1 (3) The department may establish direct billing accounts or other
2 funds transfer methods with permit applicants to satisfy the fee
3 payment requirements of section 6 of this act.

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

7 (5) With the exception of emergency permits as provided in
8 subsection (12) of this section, applications for permits must be
9 submitted to the department's headquarters office in Olympia. Requests
10 for emergency permits as provided in subsection (12) of this section
11 may be made to the permitting biologist assigned to the location in
12 which the emergency occurs, to the department's regional office in
13 which the emergency occurs, or to the department's headquarters office.

14 (6) Except as provided for emergency permits in subsection (12) of
15 this section, the department may not proceed with permit review until
16 all fees are paid in full as required in section 6 of this act.

17 ~~((3))~~ (7)(a) Protection of fish life is the only ground upon
18 which approval of a permit may be denied or conditioned. Approval of
19 a permit may not be unreasonably withheld or unreasonably conditioned.
20 Except as provided in this subsection and subsections ~~((8), (10),~~
21 ~~and~~) (12) through (14) and (16) of this section, the department has
22 forty-five calendar days upon receipt of a complete application to
23 grant or deny approval of a permit. The forty-five day requirement is
24 suspended if:

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

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

29 (iii) The applicant requests a delay; or

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

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

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

1 ~~((4))~~ (8) If the department denies approval of a permit, the
2 department shall provide the applicant a written statement of the
3 specific reasons why and how the proposed project would adversely
4 affect fish life.

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

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

16 ~~((5))~~ (9)(a) ~~((The permittee must demonstrate substantial
17 progress on construction of that portion of the project relating to the
18 permit within two years of the date of issuance.~~

19 ~~(b))~~ Approval of a permit is valid for ~~((a period of))~~ up to five
20 years from the date of issuance, except as provided in ~~((e))~~ (b) of
21 this subsection and in RCW 77.55.151.

22 ~~((e))~~ (b) A permit remains in effect without need for periodic
23 renewal for hydraulic projects that divert water for agricultural
24 irrigation or stock watering purposes and that involve seasonal
25 construction or other work. A permit for streambank stabilization
26 projects to protect farm and agricultural land as defined in RCW
27 84.34.020 remains in effect without need for periodic renewal if the
28 problem causing the need for the streambank stabilization occurs on an
29 annual or more frequent basis. The permittee must notify the
30 appropriate agency before commencing the construction or other work
31 within the area covered by the permit.

32 ~~((6))~~ (10) The department may, after consultation with the
33 permittee, modify a permit due to changed conditions. The modification
34 is appealable as provided in subsection ~~((4))~~ (8) of this section.
35 For a hydraulic project~~((s))~~ that diverts water for agricultural
36 irrigation or stock watering purposes, ~~((e))~~ when the hydraulic
37 project or other work is associated with streambank stabilization to

1 protect farm and agricultural land as defined in RCW 84.34.020, the
2 burden is on the department to show that changed conditions warrant the
3 modification in order to protect fish life.

4 ~~((+7))~~ (11) A permittee may request modification of a permit due
5 to changed conditions. The request must be processed within forty-five
6 calendar days of receipt of the written request and payment of
7 applicable fees under section 6 of this act. A decision by the
8 department is appealable as provided in subsection ~~((+4))~~ (8) of this
9 section. For a hydraulic project~~((s))~~ that diverts water for
10 agricultural irrigation or stock watering purposes, ~~((e))~~ when the
11 hydraulic project or other work is associated with streambank
12 stabilization to protect farm and agricultural land as defined in RCW
13 84.34.020, the burden is on the permittee to show that changed
14 conditions warrant the requested modification and that such a
15 modification will not impair fish life.

16 ~~((+8))~~ (12)(a) The department, the county legislative authority,
17 or the governor may declare and continue an emergency. If the county
18 legislative authority declares an emergency under this subsection, it
19 shall immediately notify the department. A declared state of emergency
20 by the governor under RCW 43.06.010 shall constitute a declaration
21 under this subsection.

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

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

34 (d) The department may not charge a person requesting an emergency
35 permit any of the fees authorized by section 6 of this act until after
36 the emergency permit is issued and reduced to writing.

37 ~~((+9))~~ (13) All state and local agencies with authority under this
38 chapter to issue permits or other authorizations in connection with

1 emergency water withdrawals and facilities authorized under RCW
2 43.83B.410 shall expedite the processing of such permits or
3 authorizations in keeping with the emergency nature of such requests
4 and shall provide a decision to the applicant within fifteen calendar
5 days of the date of application.

6 ~~((+10+))~~ (14) The department or the county legislative authority
7 may determine an imminent danger exists. The county legislative
8 authority shall notify the department, in writing, if it determines
9 that an imminent danger exists. In cases of imminent danger, the
10 department shall issue an expedited written permit, upon request, for
11 work to remove any obstructions, repair existing structures, restore
12 banks, protect fish resources, or protect property. Expedited permit
13 requests require a complete written application as provided in
14 subsection (2) of this section and must be issued within fifteen
15 calendar days of the receipt of a complete written application.
16 Approval of an expedited permit is valid for up to sixty days from the
17 date of issuance. The department may not require the provisions of the
18 state environmental policy act, chapter 43.21C RCW, to be met as a
19 condition of issuing a permit under this subsection.

20 ~~((+11+))~~ (15)(a) For any property, except for property located on
21 a marine shoreline, that has experienced at least two consecutive years
22 of flooding or erosion that has damaged or has threatened to damage a
23 major structure, water supply system, septic system, or access to any
24 road or highway, the county legislative authority may determine that a
25 chronic danger exists. The county legislative authority shall notify
26 the department, in writing, when it determines that a chronic danger
27 exists. In cases of chronic danger, the department shall issue a
28 permit, upon request, for work necessary to abate the chronic danger by
29 removing any obstructions, repairing existing structures, restoring
30 banks, restoring road or highway access, protecting fish resources, or
31 protecting property. Permit requests must be made and processed in
32 accordance with subsections (2) and ~~((+3+))~~ (7) of this section.

33 (b) Any projects proposed to address a chronic danger identified
34 under (a) of this subsection that satisfies the project description
35 identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions
36 of the state environmental policy act, chapter 43.21C RCW. However,
37 the project is subject to the review process established in RCW
38 77.55.181(3) as if it were a fish habitat improvement project.

1 (~~(12)~~) (16) The department may issue an expedited written permit
2 in those instances where normal permit processing would result in
3 significant hardship for the applicant or unacceptable damage to the
4 environment. Expedited permit requests require a complete written
5 application as provided in subsection (2) of this section and must be
6 issued within fifteen calendar days of the receipt of a complete
7 written application. Approval of an expedited permit is valid for up
8 to sixty days from the date of issuance. The department may not
9 require the provisions of the state environmental policy act, chapter
10 43.21C RCW, to be met as a condition of issuing a permit under this
11 subsection.

12 **Sec. 4.** RCW 77.55.031 and 2005 c 146 s 301 are each amended to
13 read as follows:

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

19 **Sec. 5.** RCW 77.55.141 and 2010 c 210 s 28 are each amended to read
20 as follows:

21 (1) In order to protect the property of marine waterfront shoreline
22 owners it is necessary to facilitate issuance of permits for bulkheads
23 or rockwalls under certain conditions.

24 (2) The department shall issue a permit with or without conditions
25 within forty-five days of receipt of a complete and accurate
26 application which authorizes commencement of construction, replacement,
27 or repair of a marine beach front protective bulkhead or rockwall for
28 single-family type residences or property under the following
29 conditions:

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

35 (b) Any bulkhead or rockwall to replace or repair an existing
36 bulkhead or rockwall shall be placed along the same alignment as the

1 bulkhead or rockwall it is replacing. However, the replaced or
2 repaired bulkhead or rockwall may be placed waterward of and directly
3 abutting the existing structure only in cases where removal of the
4 existing bulkhead or rockwall would result in environmental degradation
5 or removal problems related to geological, engineering, or safety
6 considerations; (~~and~~)

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

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

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

18 (4) Any person aggrieved by the approval, denial, conditioning, or
19 modification of a permit under this section may appeal the decision as
20 provided in RCW 77.55.021(~~(4)~~) (8).

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

23 (1) Except as otherwise provided in this section, the department
24 shall charge a one hundred fifty dollar submittal fee and a processing
25 fee, established by the department consistent with this section, for
26 all hydraulic project permits issued under RCW 77.55.021, other than
27 hydraulic project permits related to forest practices qualifying under
28 section 7 of this act, to recover a portion of the costs for processing
29 and issuing decisions on permit notifications and applications,
30 administering fee collections, and compliance and effectiveness
31 monitoring and enforcement of projects requiring a permit. Pamphlet
32 hydraulic projects must be issued without collecting a submittal or
33 processing fee.

34 (2)(a) Unless the department establishes a lower fee consistent
35 with this section, a hydraulic project permit application must be
36 assessed one of the following processing fees:

1 (i) Eight hundred fifty dollars for a single site hydraulic project
2 permit;

3 (ii) Four thousand eight hundred fifty dollars for a general
4 permit; and

5 (iii) For a multiple site permit, the applicable permit processing
6 fee assessed under this subsection for one of the hydraulic project
7 sites identified in the permit application, and twenty percent of the
8 applicable permit processing fee assessed under this subsection for
9 each additional site.

10 (b) An application for mineral prospecting and mining activities
11 shall be exempt from permit processing fees.

12 (3) Unless the department establishes a lower fee consistent with
13 this section, all permit modifications must be assessed a one hundred
14 dollar processing fee, except for multiple site permits, general
15 permits associated with streambank stabilization as outlined in RCW
16 77.55.021(10), and those for mineral prospecting and mining activities.

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

19 (a) Projects approved under the cost-sharing program for fish
20 passage barriers authorized in RCW 76.13.150;

21 (b) Projects conducted under the pamphlets developed under RCW
22 77.55.081 or 77.55.091;

23 (c) Approved fish habitat enhancement projects authorized under RCW
24 77.55.181; and

25 (d) Hydraulic projects approved under applicant-funded contracts
26 with the department that pay for the costs of processing those
27 projects.

28 (5) The fees assessed in this section must be based on the scale
29 and complexity of the project and the relative effort required for
30 department staff to review the application, conduct site visits, and
31 consult with applicants as necessary. As such, at its discretion, the
32 department may reduce the fees charged to a person under this section
33 when the work required by the department to receive and process that
34 person's application or modify a permit is substantially less than
35 typically required. Decisions made by the department under this
36 subsection are not subject to appeal under RCW 77.55.021(8).

37 (6) The department shall refund fifty percent of the permit

1 processing fee to any person that properly applies for any permit or
2 permit modification under RCW 77.55.021 if the department:

3 (a) Fails to process the application or request within the
4 timelines required by RCW 77.55.021; or

5 (b) Denies the permit because the proposed project would adversely
6 affect fish life.

7 (7) The department shall refund one hundred percent of all fees if
8 no permit is required for the proposed work.

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

15 (9) All fees collected under this section must be deposited in the
16 hydraulic project approval account created in section 12 of this act.

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

19 The department shall notify the forest practices board when rule
20 making regarding the protection of fish life within fish-bearing waters
21 is being considered by the commission.

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

24 (1) The department and the department of natural resources shall
25 enter into, and maintain, a memorandum of agreement between the two
26 agencies that describes how to transition and implement integration of
27 hydraulic project approvals into forest practices applications
28 consistent with this act.

29 (2) The initial memorandum of agreement between the two departments
30 must be executed by October 31, 2011. The memorandum of agreement may
31 be amended as agreed to by the two departments.

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

34 (1) The requirements of RCW 77.55.021 are satisfied for any project

1 that requires a forest practices application under chapter 76.09 RCW
2 and for any activities that are associated with any project that
3 requires a forest practices application under chapter 76.09 RCW.

4 (2) The commission shall amend chapter 220-110 WAC as necessary to
5 clarify that forest practices conducted under an approved forest
6 practices application do not require a permit under this chapter.

7 (3) Until the forest practices board incorporates by reference the
8 applicable provisions of chapter 220-110 WAC, those rules apply to
9 hydraulic projects on forested lands.

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

12 To ensure that all hydraulic project approvals provide for the
13 protection of fish life, by January 1, 2012, the department shall
14 develop and implement a program to monitor the effectiveness of the
15 approvals it grants under this chapter and hydraulic projects approved
16 under chapter 76.09 RCW. For the purposes of this chapter,
17 effectiveness monitoring must evaluate if project standards are
18 adequate to protect overall fish life. If the department identifies
19 approvals that do not meet standards and provide for protection of fish
20 life, the department shall use adaptive management principles to ensure
21 protection under this chapter or work with the forest practices board
22 and the department of natural resources to make necessary modifications
23 to ensure protection.

24 NEW SECTION. **Sec. 11.** (1) By December 31, 2013, the department of
25 fish and wildlife shall report to the legislature consistent with RCW
26 43.01.036 on the impact of fee collection on the department's hydraulic
27 project approval permit program, and recommendations, developed in
28 consultation with affected stakeholders, for improving the department's
29 permit streamlining efforts and permit fee schedule.

30 (2) This section expires July 31, 2014.

31 NEW SECTION. **Sec. 12.** A new section is added to chapter 77.55 RCW
32 to read as follows:

33 (1) The hydraulic project approval account is created in the state
34 treasury. All receipts from submittal fees and permit processing fees

1 for hydraulic project approval applications collected under section 6
2 of this act must be deposited into the account.

3 (2) Except for unanticipated receipts under RCW 43.79.260 through
4 43.79.282, moneys in the hydraulic project approval account may be
5 spent only after appropriation.

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

17 **Sec. 13.** RCW 77.15.300 and 2000 c 107 s 239 are each amended to
18 read as follows:

19 (1) A person is guilty of unlawfully undertaking hydraulic project
20 activities if the person (~~constructs any form of hydraulic project or~~
21 ~~performs other work on a hydraulic project and:~~

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

24 ~~(b) Violates any requirements or conditions of the hydraulic~~
25 ~~project approval for such construction or work.~~

26 ~~(2) Unlawfully undertaking hydraulic project activities is a gross~~
27 ~~misdemeanor));~~

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

31 (b) Violates any requirements or conditions of the hydraulic
32 project approval for the construction or other activities;

33 (c) Violates any notice to comply or stop work order issued under
34 section 14 of this act; or

35 (d) Violates any department rule that identifies the conditions
36 under which a hydraulic project is approved.

1 (2) Violation of a notice to comply or a stop work order under
2 section 14 of this act must be punished as a separate offense from the
3 underlying hydraulic code violation.

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

6 (4) Notwithstanding the provisions of subsection (3) of this
7 section, the commission may by rule identify certain acts that violate
8 the hydraulic code as being of minimal impact to fish life, and may
9 classify these acts, on an individual basis, as infractions, punishable
10 under RCW 77.15.160 and chapter 7.84 RCW.

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

13 (1)(a) The department may issue a notice to comply or a stop work
14 order to a person who:

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

18 (ii) Violates any requirements or conditions of the hydraulic
19 project approval for the construction or other activities; or

20 (iii) Violates any department rule that identifies the conditions
21 under which a hydraulic project is approved.

22 (b) The notice to comply may require that the person take
23 corrective action to prevent, correct, or mitigate for adverse impacts
24 to fish life. The notice to comply must:

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

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

27 (iii) Specify any necessary corrective action; and

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

29 (c) The stop work order may require that the person stop all work
30 connected with the violation or stop work until corrective action is
31 taken. A stop work order is effective immediately and remains in
32 effect until withdrawn by the department or the board orders otherwise.

33 The stop work order must:

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

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

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

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

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

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

6 (e) A notice to comply or stop work order may be informally
7 appealed to the department within thirty days from the date of receipt
8 of the decision. Requests for informal appeals must be filed in the
9 form and manner prescribed by the department by rule. A notice to
10 comply or stop work order that has been informally appealed to the
11 department is appealable to the board within thirty days from the date
12 of receipt of the department's decision on the informal appeal.

13 (2)(a) Consistent with the penalty schedule described in this
14 subsection, the department may levy civil penalties of up to ten
15 thousand dollars for every violation of this chapter or the rules
16 adopted to implement this chapter. Each and every violation is a
17 separate and distinct civil offense. The penalty provided must be
18 imposed by notice in writing by the department describing the
19 violation. The civil penalty notice must specify the:

20 (i) Basis for the penalty and the amount levied; and

21 (ii) Right of the person to an appeal.

22 (b) Within thirty days from the date of receipt of a civil penalty
23 order issued under this section, a person may file a written request
24 appealing the order to the board.

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

32 (d) The penalty imposed becomes due and payable thirty days after
33 receipt of a notice imposing the penalty unless an appeal is filed.
34 Whenever an appeal of any penalty incurred under this chapter is filed,
35 the penalty becomes due and payable only upon completion of all
36 administrative and judicial review proceedings and the issuance of a
37 final decision confirming the penalty in whole or in part. When the

1 penalty becomes past due, it is also subject to interest at the rate
2 allowed by RCW 43.17.240 for debts owed to the state.

3 (e) If the amount of any penalty is not paid within thirty days
4 after it becomes due and payable, the attorney general, upon the
5 request of the director, shall bring an action in the name of the state
6 of Washington in the superior court of Thurston county or of any county
7 in which the violator may do business, to recover the penalty. In all
8 such actions, the procedure and rules of evidence are the same as an
9 ordinary civil action. All penalties received or recovered by state
10 agency action for violations as prescribed in subsection (1) of this
11 section must be deposited in the hydraulic project approval account as
12 described in section 12 of this act. The department is also entitled
13 to recover reasonable attorneys' fees and costs incurred in connection
14 with the penalty.

15 (f) The department shall establish by rule a penalty schedule. The
16 schedule must be developed in consideration of the following:

- 17 (i) Previous violation history;
- 18 (ii) Severity of the impact on fish and fish habitat;
- 19 (iii) Whether the violation of this chapter or its rules was
20 intentional;
- 21 (iv) Cooperation with the department;
- 22 (v) Reparability of the adverse effect from the violation; and
- 23 (vi) The extent to which a penalty to be imposed on a person for a
24 violation committed by another should be reduced if the person was
25 unaware of the violation and has not received a substantial economic
26 benefit from the violation.

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

31 (a) Department personnel need to inspect the project site to ensure
32 that a person:

- 33 (i) Possesses a hydraulic project approval required under this
34 chapter for the construction of any form of hydraulic project or
35 performance of other work on a hydraulic project;
- 36 (ii) Complies with any requirements or conditions of the hydraulic
37 project approval for the construction or other activities;

1 (iii) Complies with any notice to comply or stop work order issued
2 under subsection (1) of this section; or

3 (iv) Complies with any department rule that identifies the
4 conditions under which a hydraulic project is approved.

5 (b) Department personnel have reasonable cause to believe that a
6 person:

7 (i) Is constructing or has constructed any form of hydraulic
8 project or performs other work on a hydraulic project and fails to have
9 a hydraulic project approval required under this chapter for the
10 construction or work;

11 (ii) Is violating or has violated any requirements or conditions of
12 the hydraulic project approval for the construction or other
13 activities;

14 (iii) Is violating or has violated any notice to comply or stop
15 work order issued under subsection (1) of this section; or

16 (iv) Is violating or has violated any department rule that
17 identifies the conditions under which a hydraulic project is approved.

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

20 (1) The department shall review all submitted forest practices
21 applications potentially affecting the salt or freshwaters of the
22 state, conduct a review of any associated hydraulic projects, and
23 submit written comments to the department of natural resources within
24 thirty days of the date the application is accepted as complete by the
25 department of natural resources. The department's review may include
26 a site visit.

27 (2) The department is responsible for effectiveness monitoring for
28 hydraulic projects related to forest practices permitted under chapter
29 76.09 RCW.

30 (3) Nothing in this section provides for the department to assume
31 the authority over final approval or disapproval of forest practices
32 applications submitted under chapter 76.09 RCW. Final approval
33 authority of these applications remains with the department of natural
34 resources under chapter 76.09 RCW.

35 **Sec. 16.** RCW 77.55.231 and 2005 c 146 s 601 are each amended to
36 read as follows:

1 (1) Conditions imposed upon a permit must be reasonably related to
2 the project. The permit conditions must ensure that the project
3 provides proper protection for fish life, but the department may not
4 impose conditions that attempt to optimize conditions for fish life
5 that are out of proportion to the impact of the proposed project.

6 (2) The permit must contain provisions allowing for minor
7 modifications to the plans and specifications without requiring
8 reissuance of the permit.

9 (3) The permit must contain provisions that allow for minor
10 modifications to the required work timing without requiring the
11 reissuance of the permit. Minor modifications to the required work
12 timing means a minor deviation from the timing window set forth in the
13 permit when there are no spawning or incubating fish present within the
14 vicinity of the project.

15 NEW SECTION. Sec. 17. A new section is added to chapter 77.55 RCW
16 to read as follows:

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

20 NEW SECTION. Sec. 18. A new section is added to chapter 77.55 RCW
21 to read as follows:

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

23 NEW SECTION. Sec. 19. The fee provisions contained in section 6
24 of this act are prospective only. The department of fish and wildlife
25 may not charge fees for hydraulic project permits issued under Title 77
26 RCW prior to the effective date of this section. However, if a person
27 requests modification of a hydraulic project permit that was issued by
28 the department of fish and wildlife prior to the effective date of this
29 section, the department of fish and wildlife shall charge all
30 applicable fees as provided in section 6 of this act.

31 **Sec. 20.** RCW 76.09.040 and 2010 c 188 s 4 are each amended to read
32 as follows:

33 (1)(a) Where necessary to accomplish the purposes and policies
34 stated in RCW 76.09.010, and to implement the provisions of this

1 chapter, the board shall adopt forest practices rules pursuant to
2 chapter 34.05 RCW and in accordance with the procedures enumerated in
3 this section that:

4 (i) Establish minimum standards for forest practices;

5 (ii) Provide procedures for the voluntary development of resource
6 management plans which may be adopted as an alternative to the minimum
7 standards in (a)(i) of this subsection if the plan is consistent with
8 the purposes and policies stated in RCW 76.09.010 and the plan meets or
9 exceeds the objectives of the minimum standards;

10 (iii) Set forth necessary administrative provisions;

11 (iv) Establish procedures for the collection and administration of
12 forest practice fees as set forth by this chapter; and

13 (v) Allow for the development of watershed analyses.

14 (b) Forest practices rules pertaining to water quality protection
15 shall be adopted by the board after reaching agreement with the
16 director of the department of ecology or the director's designee on the
17 board with respect ~~((thereto))~~ to these rules. All other forest
18 practices rules shall be adopted by the board.

19 (c) Forest practices rules shall be administered and enforced by
20 either the department or the local governmental entity as provided in
21 this chapter. Such rules shall be adopted and administered so as to
22 give consideration to all purposes and policies set forth in RCW
23 76.09.010.

24 (2)(a) The board shall prepare proposed forest practices rules
25 consistent with this section and chapter 34.05 RCW. In addition to any
26 forest practices rules relating to water quality protection proposed by
27 the board, the department of ecology may submit to the board proposed
28 forest practices rules relating to water quality protection.

29 (b)(i) Prior to initiating the rule-making process, the proposed
30 rules shall be submitted for review and comments to the department of
31 fish and wildlife and to the counties of the state. After receipt of
32 the proposed forest practices rules, the department of fish and
33 wildlife and the counties of the state shall have thirty days in which
34 to review and submit comments to the board, and to the department of
35 ecology with respect to its proposed rules relating to water quality
36 protection.

37 (ii) After the expiration of the thirty day period, the board, and
38 the department of ecology with respect to proposed rules relating to

1 water quality protection, shall jointly hold one or more hearings on
2 the proposed rules pursuant to chapter 34.05 RCW. Any county
3 representative may propose specific forest practices rules relating to
4 problems existing within the county at the hearings.

5 (iii) The board may adopt and the department of ecology may approve
6 such proposals if they find the proposals are consistent with the
7 purposes and policies of this chapter.

8 (3)(a) The board shall incorporate by reference into the forest
9 practices rules those portions of chapter 220-110 WAC that are
10 consistent with this chapter for activities regulated under the forest
11 practices rules. These rule changes are not subject to the forest
12 practices adaptive management program.

13 (b) Upon notification by the department of fish and wildlife of
14 changes to those portions of chapter 220-110 WAC that are consistent
15 with this chapter for activities regulated under the forest practices
16 rules, the board shall incorporate those changes by reference into the
17 forest practices rules. These rule changes are not subject to the
18 forest practices adaptive management program.

19 (4)(a) The board shall establish by rule a program for the
20 acquisition of riparian open space and critical habitat for threatened
21 or endangered species as designated by the board. Acquisition must be
22 a conservation easement. Lands eligible for acquisition are forest
23 lands within unconfined channel migration zones or forest lands
24 containing critical habitat for threatened or endangered species as
25 designated by the board. Once acquired, these lands may be held and
26 managed by the department, transferred to another state agency,
27 transferred to an appropriate local government agency, or transferred
28 to a private nonprofit nature conservancy corporation, as defined in
29 RCW 64.04.130, in fee or transfer of management obligation. The board
30 shall adopt rules governing the acquisition by the state or donation to
31 the state of such interest in lands including the right of refusal if
32 the lands are subject to unacceptable liabilities. The rules shall
33 include definitions of qualifying lands, priorities for acquisition,
34 and provide for the opportunity to transfer such lands with limited
35 warranties and with a description of boundaries that does not require
36 full surveys where the cost of securing the surveys would be
37 unreasonable in relation to the value of the lands conveyed. The rules

1 shall provide for the management of the lands for ecological protection
2 or fisheries enhancement. For the purposes of conservation easements
3 entered into under this section, the following apply:

4 (i) For conveyances of a conservation easement in which the
5 landowner conveys an interest in the trees only, the compensation must
6 include the timber value component, as determined by the cruised volume
7 of any timber located within the channel migration zone or critical
8 habitat for threatened or endangered species as designated by the
9 board, multiplied by the appropriate quality code stumpage value for
10 timber of the same species shown on the appropriate table used for
11 timber harvest excise tax purposes under RCW 84.33.091;

12 (ii) For conveyances of a conservation easement in which the
13 landowner conveys interests in both land and trees, the compensation
14 must include the timber value component in (a)(i) of this subsection
15 plus such portion of the land value component as determined just and
16 equitable by the department. The land value component must be the
17 acreage of qualifying channel migration zone or critical habitat for
18 threatened or endangered species as determined by the board, to be
19 conveyed, multiplied by the average per acre value of all commercial
20 forest land in western Washington or the average for eastern
21 Washington, whichever average is applicable to the qualifying lands.
22 The department must determine the western and eastern Washington
23 averages based on the land value tables established by RCW 84.33.140
24 and revised annually by the department of revenue.

25 (b) Subject to appropriations sufficient to cover the cost of such
26 an acquisition program and the related costs of administering the
27 program, the department must establish a conservation easement in land
28 that an owner tenders for purchase; provided that such lands have been
29 taxed as forest lands and are located within an unconfined channel
30 migration zone or contain critical habitat for threatened or endangered
31 species as designated by the board. Lands acquired under this section
32 shall become riparian or habitat open space. These acquisitions shall
33 not be deemed to trigger the compensating tax of chapters 84.33 and
34 84.34 RCW.

35 (c) Instead of offering to sell interests in qualifying lands,
36 owners may elect to donate the interests to the state.

37 (d) Any acquired interest in qualifying lands by the state under

1 this section shall be managed as riparian open space or critical
2 habitat.

3 **Sec. 21.** RCW 76.09.050 and 2010 c 210 s 20 are each amended to
4 read as follows:

5 (1) The board shall establish by rule which forest practices shall
6 be included within each of the following classes:

7 Class I: Minimal or specific forest practices that have no direct
8 potential for damaging a public resource and that may be conducted
9 without submitting an application or a notification except that when
10 the regulating authority is transferred to a local governmental entity,
11 those Class I forest practices that involve timber harvesting or road
12 construction within "urban growth areas," designated pursuant to
13 chapter 36.70A RCW, are processed as Class IV forest practices, but are
14 not subject to environmental review under chapter 43.21C RCW;

15 Class II: Forest practices which have a less than ordinary
16 potential for damaging a public resource that may be conducted without
17 submitting an application and may begin five calendar days, or such
18 lesser time as the department may determine, after written notification
19 by the operator, in the manner, content, and form as prescribed by the
20 department, is received by the department. However, the work may not
21 begin until all forest practice fees required under RCW 76.09.065 have
22 been received by the department. Class II shall not include forest
23 practices:

24 (a) On lands platted after January 1, 1960, as provided in chapter
25 58.17 RCW or on lands that have or are being converted to another use;

26 (b) Which require (~~(approvals under)~~) adherence to the provisions
27 of the hydraulics act, RCW 77.55.021 and rules under chapter 220-110
28 WAC;

29 (c) Within "shorelines of the state" as defined in RCW 90.58.030;

30 (d) Excluded from Class II by the board; or

31 (e) Including timber harvesting or road construction within "urban
32 growth areas," designated pursuant to chapter 36.70A RCW, which are
33 Class IV;

34 Class III: Forest practices other than those contained in Class I,
35 II, or IV. A Class III application must be approved or disapproved by
36 the department within (~~(thirty)~~) forty-five calendar days from the date

1 the department receives the application. However, the applicant may
2 not begin work on that forest practice until all forest practice fees
3 required under RCW 76.09.065 have been received by the department;

4 Class IV: Forest practices other than those contained in Class I
5 or II: (a) On lands platted after January 1, 1960, as provided in
6 chapter 58.17 RCW, (b) on lands that have or are being converted to
7 another use, (c) on lands which, pursuant to RCW 76.09.070 as now or
8 hereafter amended, are not to be reforested because of the likelihood
9 of future conversion to urban development, (d) involving timber
10 harvesting or road construction on lands that are contained within
11 "urban growth areas," designated pursuant to chapter 36.70A RCW, except
12 where the forest landowner provides: (i) A written statement of intent
13 signed by the forest landowner not to convert to a use other than
14 commercial forest product operations for ten years, accompanied by
15 either a written forest management plan acceptable to the department or
16 documentation that the land is enrolled under the provisions of chapter
17 84.33 RCW; or (ii) a conversion option harvest plan approved by the
18 local governmental entity and submitted to the department as part of
19 the application, and/or (e) which have a potential for a substantial
20 impact on the environment and therefore require an evaluation by the
21 department as to whether or not a detailed statement must be prepared
22 pursuant to the state environmental policy act, chapter 43.21C RCW.
23 Such evaluation shall be made within ten days from the date the
24 department receives the application: PROVIDED, That nothing herein
25 shall be construed to prevent any local or regional governmental entity
26 from determining that a detailed statement must be prepared for an
27 action pursuant to a Class IV forest practice taken by that
28 governmental entity concerning the land on which forest practices will
29 be conducted. A Class IV application must be approved or disapproved
30 by the department within (~~thirty~~) forty-five calendar days from the
31 date the department receives the application, unless the department
32 determines that a detailed statement must be made, in which case the
33 application must be approved or disapproved by the department within
34 sixty calendar days from the date the department receives the
35 application, unless the commissioner of public lands, through the
36 promulgation of a formal order, determines that the process cannot be
37 completed within such period. However, the applicant may not begin

1 work on that forest practice until all forest practice fees required
2 under RCW 76.09.065 have been received by the department.

3 Forest practices under Classes I, II, and III are exempt from the
4 requirements for preparation of a detailed statement under the state
5 environmental policy act.

6 (2) Except for those forest practices being regulated by local
7 governmental entities as provided elsewhere in this chapter, no Class
8 II, Class III, or Class IV forest practice shall be commenced or
9 continued after January 1, 1975, unless the department has received a
10 notification with regard to a Class II forest practice or approved an
11 application with regard to a Class III or Class IV forest practice
12 containing all information required by RCW 76.09.060 as now or
13 hereafter amended. However, in the event forest practices regulations
14 necessary for the scheduled implementation of this chapter and RCW
15 90.48.420 have not been adopted in time to meet such schedules, the
16 department shall have the authority to regulate forest practices and
17 approve applications on such terms and conditions consistent with this
18 chapter and RCW 90.48.420 and the purposes and policies of RCW
19 76.09.010 until applicable forest practices regulations are in effect.

20 (3) Except for those forest practices being regulated by local
21 governmental entities as provided elsewhere in this chapter, if a
22 notification or application is delivered in person to the department by
23 the operator or the operator's agent, the department shall immediately
24 provide a dated receipt thereof. In all other cases, the department
25 shall immediately mail a dated receipt to the operator.

26 (4) Except for those forest practices being regulated by local
27 governmental entities as provided elsewhere in this chapter, forest
28 practices shall be conducted in accordance with the forest practices
29 regulations, orders and directives as authorized by this chapter or the
30 forest practices regulations, and the terms and conditions of any
31 approved applications.

32 (5) Except for those forest practices being regulated by local
33 governmental entities as provided elsewhere in this chapter, the
34 department of natural resources shall notify the applicant in writing
35 of either its approval of the application or its disapproval of the
36 application and the specific manner in which the application fails to
37 comply with the provisions of this section or with the forest practices
38 regulations. Except as provided otherwise in this section, if the

1 department fails to either approve or disapprove an application or any
2 portion thereof within the applicable time limit, the application shall
3 be deemed approved and the operation may be commenced: PROVIDED, That
4 this provision shall not apply to applications which are neither
5 approved nor disapproved pursuant to the provisions of subsection (7)
6 of this section: PROVIDED, FURTHER, That if seasonal field conditions
7 prevent the department from being able to properly evaluate the
8 application, the department may issue an approval conditional upon
9 further review within sixty days(~~(:—PROVIDED, FURTHER, That the~~
10 ~~department shall have until April 1, 1975, to approve or disapprove an~~
11 ~~application involving forest practices allowed to continue to April 1,~~
12 ~~1975, under the provisions of subsection (2) of this section)). Upon~~
13 receipt of any notification or any satisfactorily completed application
14 the department shall in any event no later than two business days after
15 such receipt transmit a copy to the departments of ecology and fish and
16 wildlife, and to the county, city, or town in whose jurisdiction the
17 forest practice is to be commenced. Any comments by such agencies
18 shall be directed to the department of natural resources.

19 (6) For those forest practices regulated by the board and the
20 department, if the county, city, or town believes that an application
21 is inconsistent with this chapter, the forest practices regulations, or
22 any local authority consistent with RCW 76.09.240 as now or hereafter
23 amended, it may so notify the department and the applicant, specifying
24 its objections.

25 (7) For those forest practices regulated by the board and the
26 department, the department shall not approve portions of applications
27 to which a county, city, or town objects if:

28 (a) The department receives written notice from the county, city,
29 or town of such objections within fourteen business days from the time
30 of transmittal of the application to the county, city, or town, or one
31 day before the department acts on the application, whichever is later;
32 and

33 (b) The objections relate to lands either:

34 (i) Platted after January 1, 1960, as provided in chapter 58.17
35 RCW; or

36 (ii) On lands that have or are being converted to another use.

37 The department shall either disapprove those portions of such
38 application or appeal the county, city, or town objections to the

1 appeals board. If the objections related to subparagraphs (b)(i) and
2 (ii) of this subsection are based on local authority consistent with
3 RCW 76.09.240 as now or hereafter amended, the department shall
4 disapprove the application until such time as the county, city, or town
5 consents to its approval or such disapproval is reversed on appeal.
6 The applicant shall be a party to all department appeals of county,
7 city, or town objections. Unless the county, city, or town either
8 consents or has waived its rights under this subsection, the department
9 shall not approve portions of an application affecting such lands until
10 the minimum time for county, city, or town objections has expired.

11 (8) For those forest practices regulated by the board and the
12 department, in addition to any rights under the above paragraph, the
13 county, city, or town may appeal any department approval of an
14 application with respect to any lands within its jurisdiction. The
15 appeals board may suspend the department's approval in whole or in part
16 pending such appeal where there exists potential for immediate and
17 material damage to a public resource.

18 (9) For those forest practices regulated by the board and the
19 department, appeals under this section shall be made to the appeals
20 board in the manner and time provided in RCW 76.09.205. In such
21 appeals there shall be no presumption of correctness of either the
22 county, city, or town or the department position.

23 (10) For those forest practices regulated by the board and the
24 department, the department shall, within four business days notify the
25 county, city, or town of all notifications, approvals, and disapprovals
26 of an application affecting lands within the county, city, or town,
27 except to the extent the county, city, or town has waived its right to
28 such notice.

29 (11) For those forest practices regulated by the board and the
30 department, a county, city, or town may waive in whole or in part its
31 rights under this section, and may withdraw or modify any such waiver,
32 at any time by written notice to the department.

33 (12) Notwithstanding subsections (2) through (5) of this section,
34 forest practices applications or notifications are not required for
35 exotic insect and disease control operations conducted in accordance
36 with RCW 76.09.060(~~(+8)~~) (9) where eradication can reasonably be
37 expected.

1 **Sec. 22.** RCW 76.09.060 and 2007 c 480 s 11 and 2007 c 106 s 1 are
2 each reenacted and amended to read as follows:

3 (1) The department shall prescribe the form and contents of the
4 notification and application. The forest practices rules shall specify
5 by whom and under what conditions the notification and application
6 shall be signed or otherwise certified as acceptable. Activities
7 conducted by the department or a contractor under the direction of the
8 department under the provisions of RCW 76.04.660, shall be exempt from
9 the landowner signature requirement on any forest practice application
10 required to be filed. The application or notification shall be
11 delivered in person to the department, sent by first-class mail to the
12 department or electronically filed in a form defined by the department.
13 The form for electronic filing shall be readily convertible to a paper
14 copy, which shall be available to the public pursuant to chapter 42.56
15 RCW. The information required may include, but is not limited to:

16 (a) Name and address of the forest landowner, timber owner, and
17 operator;

18 (b) Description of the proposed forest practice or practices to be
19 conducted;

20 (c) Legal description and tax parcel identification numbers of the
21 land on which the forest practices are to be conducted;

22 (d) Planimetric and topographic maps showing location and size of
23 all lakes and streams and other public waters in and immediately
24 adjacent to the operating area and showing all existing and proposed
25 roads and major tractor roads;

26 (e) Description of the silvicultural, harvesting, or other forest
27 practice methods to be used, including the type of equipment to be used
28 and materials to be applied;

29 (f) If the application contains elements related to a hydraulic
30 project as specified under chapter 77.55 RCW, the following information
31 is required:

32 (i) Complete plans and specifications for the overall project; and

33 (ii) Proposed measures for the proper protection of fish life;

34 (g) Proposed plan for reforestation and for any revegetation
35 necessary to reduce erosion potential from roadsides and yarding roads,
36 as required by the forest practices rules;

37 ~~((g))~~ (h) Soil, geological, and hydrological data with respect to
38 forest practices;

1 ~~((h))~~ (i) The expected dates of commencement and completion of
2 all forest practices specified in the application;

3 ~~((i))~~ (j) Provisions for continuing maintenance of roads and
4 other construction or other measures necessary to afford protection to
5 public resources;

6 ~~((j))~~ (k) An affirmation that the statements contained in the
7 notification or application are true; and

8 ~~((k))~~ (l) All necessary application or notification fees.

9 (2) Long range plans may be submitted to the department for review
10 and consultation.

11 (3) The application for a forest practice or the notification of a
12 forest practice is subject to the reforestation requirement of RCW
13 76.09.070.

14 (a) If the application states that any land will be or is intended
15 to be converted:

16 (i) The reforestation requirements of this chapter and of the
17 forest practices rules shall not apply if the land is in fact converted
18 unless applicable alternatives or limitations are provided in forest
19 practices rules issued under RCW 76.09.070;

20 (ii) Completion of such forest practice operations shall be deemed
21 conversion of the lands to another use for purposes of chapters 84.33
22 and 84.34 RCW unless the conversion is to a use permitted under a
23 current use tax agreement permitted under chapter 84.34 RCW;

24 (iii) The forest practices described in the application are subject
25 to applicable county, city, town, and regional governmental authority
26 permitted under RCW 76.09.240 as well as the forest practices rules.

27 (b) Except as provided elsewhere in this section, if the landowner
28 harvests without an approved application or notification or the
29 landowner does not state that any land covered by the application or
30 notification will be or is intended to be converted, and the department
31 or the county, city, town, or regional governmental entity becomes
32 aware of conversion activities to a use other than commercial timber
33 operations, as that term is defined in RCW 76.09.020, then the
34 department shall send to the department of ecology and the appropriate
35 county, city, town, and regional governmental entities the following
36 documents:

37 (i) A notice of a conversion to nonforestry use;

1 (ii) A copy of the applicable forest practices application or
2 notification, if any; and

3 (iii) Copies of any applicable outstanding final orders or
4 decisions issued by the department related to the forest practices
5 application or notification.

6 (c) Failure to comply with the reforestation requirements contained
7 in any final order or decision shall constitute a removal of
8 designation under the provisions of RCW 84.33.140, and a change of use
9 under the provisions of RCW 84.34.080, and, if applicable, shall
10 subject such lands to the payments and/or penalties resulting from such
11 removals or changes.

12 (d) Conversion to a use other than commercial forest product
13 operations within six years after approval of the forest practices
14 application or notification without the consent of the county, city, or
15 town shall constitute a violation of each of the county, municipal
16 city, town, and regional authorities to which the forest practice
17 operations would have been subject if the application had stated an
18 intent to convert.

19 (e) Land that is the subject of a notice of conversion to a
20 nonforestry use produced by the department and sent to the department
21 of ecology and a local government under this subsection is subject to
22 the development prohibition and conditions provided in RCW 76.09.460.

23 (f) Landowners who have not stated an intent to convert the land
24 covered by an application or notification and who decide to convert the
25 land to a nonforestry use within six years of receiving an approved
26 application or notification must do so in a manner consistent with RCW
27 76.09.470.

28 (g) The application or notification must include a statement
29 requiring an acknowledgment by the forest landowner of his or her
30 intent with respect to conversion and acknowledging that he or she is
31 familiar with the effects of this subsection.

32 (4) Whenever an approved application authorizes a forest practice
33 which, because of soil condition, proximity to a water course or other
34 unusual factor, has a potential for causing material damage to a public
35 resource, as determined by the department, the applicant shall, when
36 requested on the approved application, notify the department two days
37 before the commencement of actual operations.

1 (5) Before the operator commences any forest practice in a manner
2 or to an extent significantly different from that described in a
3 previously approved application or notification, there shall be
4 submitted to the department a new application or notification form in
5 the manner set forth in this section.

6 (6) Except as provided in RCW 76.09.350(4), the notification to or
7 the approval given by the department to an application to conduct a
8 forest practice shall be effective for a term of ~~((two))~~ four years
9 from the date of approval or notification ~~((and shall not be renewed
10 unless a new application is filed and approved or a new notification
11 has been filed))~~. A notification or application is eligible for
12 renewal if the forest practice has not been completed after the
13 permitted four-year period by the filing of a new application or
14 notification. Nothing in this section precludes the applicant from
15 applying for a new application or notification after the renewal period
16 has lapsed. At the option of the applicant, an application or
17 notification may be submitted to cover a single forest practice or a
18 number of forest practices within reasonable geographic or political
19 boundaries as specified by the department. An application or
20 notification that covers more than one forest practice may have an
21 effective term of more than ~~((two))~~ four years. The board shall adopt
22 rules that establish standards and procedures for approving an
23 application or notification that has an effective term of more than
24 ~~((two))~~ four years. Such rules shall include extended time periods for
25 application or notification approval or disapproval. On an approved
26 application with a term of more than ~~((two))~~ four years, the applicant
27 shall inform the department before commencing operations.

28 (7) The department may review previously approved four year forest
29 practices applications and may specify further conditions on those
30 applications if the board makes changes to rules affecting
31 circumstances that require class IV special applications or the
32 protections required for threatened or endangered species.

33 (8) Notwithstanding any other provision of this section, no prior
34 application or notification shall be required for any emergency forest
35 practice necessitated by fire, flood, windstorm, earthquake, or other
36 emergency as defined by the board, but the operator shall submit an
37 application or notification, whichever is applicable, to the department

1 within forty-eight hours after commencement of such practice or as
2 required by local regulations.

3 ((+8)) (9) Forest practices applications or notifications are not
4 required for forest practices conducted to control exotic forest insect
5 or disease outbreaks, when conducted by or under the direction of the
6 department of agriculture in carrying out an order of the governor or
7 director of the department of agriculture to implement pest control
8 measures as authorized under chapter 17.24 RCW, and are not required
9 when conducted by or under the direction of the department in carrying
10 out emergency measures under a forest health emergency declaration by
11 the commissioner of public lands as provided in RCW 76.06.130.

12 (a) For the purposes of this subsection, exotic forest insect or
13 disease has the same meaning as defined in RCW 76.06.020.

14 (b) In order to minimize adverse impacts to public resources,
15 control measures must be based on integrated pest management, as
16 defined in RCW 17.15.010, and must follow forest practices rules
17 relating to road construction and maintenance, timber harvest, and
18 forest chemicals, to the extent possible without compromising control
19 objectives.

20 (c) Agencies conducting or directing control efforts must provide
21 advance notice to the appropriate regulatory staff of the department of
22 the operations that would be subject to exemption from forest practices
23 application or notification requirements.

24 (d) When the appropriate regulatory staff of the department are
25 notified under (c) of this subsection, they must consult with the
26 landowner, interested agencies, and affected tribes, and assist the
27 notifying agencies in the development of integrated pest management
28 plans that comply with forest practices rules as required under (b) of
29 this subsection.

30 (e) Nothing under this subsection relieves agencies conducting or
31 directing control efforts from requirements of the federal clean water
32 act as administered by the department of ecology under RCW 90.48.260.

33 (f) Forest lands where trees have been cut as part of an exotic
34 forest insect or disease control effort under this subsection are
35 subject to reforestation requirements under RCW 76.09.070.

36 (g) The exemption from obtaining approved forest practices
37 applications or notifications does not apply to forest practices
38 conducted after the governor, the director of the department of

1 agriculture, or the commissioner of public lands have declared that an
2 emergency no longer exists because control objectives have been met,
3 that there is no longer an imminent threat, or that there is no longer
4 a good likelihood of control.

5 **Sec. 23.** RCW 76.09.150 and 2000 c 11 s 7 are each amended to read
6 as follows:

7 (1) The department shall make inspections of forest lands, before,
8 during, and after the conducting of forest practices as necessary for
9 the purpose of ensuring compliance with this chapter (~~and~~), the
10 forest practices rules, those rules in chapter 220-110 WAC relevant to
11 forest practices activities, and to ensure that no material damage
12 occurs to the natural resources of this state as a result of (~~such~~)
13 forest practices.

14 (2) Any duly authorized representative of the department shall have
15 the right to enter upon forest land at any reasonable time to enforce
16 the provisions of this chapter and the forest practices rules.

17 (3) The department or the department of ecology may apply for an
18 administrative inspection warrant to either Thurston county superior
19 court, or the superior court in the county in which the property is
20 located. An administrative inspection warrant may be issued where:

21 (a) The department has attempted an inspection of forest lands
22 under this chapter to ensure compliance with this chapter and the
23 forest practices rules or to ensure that no potential or actual
24 material damage occurs to the natural resources of this state, and
25 access to all or part of the forest lands has been actually or
26 constructively denied; or

27 (b) The department has reasonable cause to believe that a violation
28 of this chapter or of rules adopted under this chapter is occurring or
29 has occurred.

30 (4) In connection with any watershed analysis, any review of a
31 pending application by an identification team appointed by the
32 department, any compliance studies, any effectiveness monitoring, or
33 other research that has been agreed to by a landowner, the department
34 may invite representatives of other agencies, tribes, and interest
35 groups to accompany a department representative and, at the landowner's
36 election, the landowner, on any such inspections. Reasonable efforts

1 shall be made by the department to notify the landowner of the persons
2 being invited onto the property and the purposes for which they are
3 being invited.

4 **Sec. 24.** RCW 76.09.065 and 2000 c 11 s 5 are each amended to read
5 as follows:

6 (1) Effective July 1, 1997, an applicant shall pay an application
7 fee (~~(and a recording fee, if applicable,)~~) at the time an application
8 or notification is submitted to the department or to the local
9 governmental entity as provided in this chapter.

10 (2) For applications and notifications submitted to the department,
11 the application fee shall be one hundred fifty dollars for class II(~~(~~
12 ~~III, and IV forest practices applications or notifications relating to~~
13 ~~the commercial harvest of timber. However, the fee shall be five~~
14 ~~hundred)~~) applications and class III applications involving twenty
15 acres or less of commercial harvest of timber. The application fee
16 shall be two hundred fifty dollars for class III applications involving
17 more than twenty acres of commercial harvest of timber. The fee shall
18 be two thousand five hundred dollars for class IV forest practices that
19 have a potential for a substantial impact on the environment and
20 therefore require an evaluation by the department as to whether or not
21 a detailed statement must be prepared pursuant to the state
22 environmental policy act, chapter 43.21C RCW. The fee shall be five
23 thousand dollars for class IV forest practices applications on lands
24 being converted to other uses or on lands which are not to be
25 reforested because of the likelihood of future conversion to urban
26 development or on lands that are contained within "urban growth areas,"
27 designated pursuant to chapter 36.70A RCW, except the fee shall be two
28 hundred fifty dollars on those lands where the forest landowner
29 provides:

30 (a) A written statement of intent signed by the forest landowner
31 not to convert to a use other than commercial forest product operations
32 for ten years, accompanied by either a written forest management plan
33 acceptable to the department or documentation that the land is enrolled
34 under the provisions of chapter 84.33 RCW; or

35 (b) A conversion option harvest plan approved by the local
36 governmental entity and submitted to the department as part of the
37 forest practices application.

1 (3) The forest practices application account is created in the
2 state treasury. Moneys in the account may be spent only after
3 appropriation. All money collected from fees under ((this)) subsection
4 (2) of this section shall be deposited in the ((state general fund))
5 account for the purposes of implementing chapters 76.09 and 76.13 RCW
6 and Title 222 WAC.

7 ~~((3) For applications submitted to the local governmental entity,~~
8 ~~the fee shall be five hundred dollars for class IV forest practices on~~
9 ~~lands being converted to other uses or lands that are contained within~~
10 ~~"urban growth areas," designated pursuant to chapter 36.70A RCW, except~~
11 ~~as otherwise provided in this section, unless a different fee is~~
12 ~~otherwise provided by the local governmental entity.~~

13 ~~(4) Recording fees shall be as provided in chapter 36.18 RCW.~~

14 ~~(5) An application fee under subsection (2) of this section shall~~
15 ~~be refunded or credited to the applicant if either the application or~~
16 ~~notification is disapproved by the department or the application or~~
17 ~~notification is withdrawn by the applicant due to restrictions imposed~~
18 ~~by the department.))~~

19 **Sec. 25.** RCW 76.09.030 and 2008 c 46 s 1 are each amended to read
20 as follows:

21 (1) There is hereby created the forest practices board of the state
22 of Washington as an agency of state government consisting of members as
23 follows:

24 (a) The commissioner of public lands or the commissioner's
25 designee;

26 (b) The director of the department of ~~((community, trade, and~~
27 ~~economic development))~~ commerce or the director's designee;

28 (c) The director of the department of agriculture or the director's
29 designee;

30 (d) The director of the department of ecology or the director's
31 designee;

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

34 (f) An elected member of a county legislative authority appointed
35 by the governor(~~(:—PROVIDED, That such))~~). However, the county
36 member's service on the board shall be conditioned on the member's
37 continued service as an elected county official;

1 (g) One member representing a timber products union, appointed by
2 the governor from a list of three names submitted by a timber labor
3 coalition affiliated with a statewide labor organization that
4 represents a majority of the timber product unions in the state; and

5 (h) Six members of the general public appointed by the governor,
6 one of whom shall be a small forest landowner who actively manages his
7 or her land, and one of whom shall be an independent logging
8 contractor.

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

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

36 ~~((4))~~ (3) The board shall meet at such times and places as shall
37 be designated by the chair or upon the written request of the majority

1 of the board. The principal office of the board shall be at the state
2 capital.

3 ~~((+5))~~ (4) Members of the board, except public employees and
4 elected officials, shall be compensated in accordance with RCW
5 43.03.250. Each member shall be entitled to reimbursement for travel
6 expenses incurred in the performance of their duties as provided in RCW
7 43.03.050 and 43.03.060.

8 ~~((+6))~~ (5) The board may employ such clerical help and staff
9 pursuant to chapter 41.06 RCW as is necessary to carry out its duties.

10 NEW SECTION. **Sec. 26.** RCW 77.55.291 (Civil penalty) and 2010 c
11 210 s 31, 2005 c 146 s 701, 2000 c 107 s 19, 1993 sp.s. c 2 s 35, 1988
12 c 36 s 35, & 1986 c 173 s 6 are each repealed.

13 NEW SECTION. **Sec. 27.** If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected.

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