

SENATE BILL REPORT

SSB 5381

As Passed Senate, March 8, 2021

Title: An act relating to fish passage project permit streamlining.

Brief Description: Addressing fish passage project permit streamlining.

Sponsors: Senate Committee on Transportation (originally sponsored by Senators Hobbs, Fortunato, King and Warnick).

Brief History:

Committee Activity: Transportation: 2/08/21, 2/18/21 [DPS].

Floor Activity: Passed Senate: 3/8/21, 49-0.

Brief Summary of First Substitute Bill

- Establishes that Department of Transportation (DOT) fish barrier correction portions of broader transportation projects may receive a streamlined project review for hydraulic permit approvals, and shortens the Department of Fish and Wildlife's timeline for reviewing DOT fish barrier correction projects.
- Clarifies that local governments are allowed to charge fees or impose requirements, or both, for fish habitat enhancement projects in order to comply with National Flood Insurance Program requirements.
- Exempts public projects for the primary purpose of fish passage improvement or fish barrier removal from the substantial development permit requirements of the Shoreline Management Act.
- Requires DOT to work with the Department of Ecology, Department of Fish and Wildlife, and federal environmental permitting agencies to streamline the federal permitting process for fish passage barrier correction projects.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: That Substitute Senate Bill No. 5381 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hobbs, Chair; Saldaña, Vice Chair; King, Ranking Member; Cleveland, Das, Fortunato, Hawkins, Lovelett, Nguyen, Nobles, Padden, Randall, Sheldon, Wilson, C. and Wilson, J.

Staff: Erica Bramlet (786-7321)

Background: Hydraulic Project Approval for Fish Habitat Enhancement Projects. A hydraulic project approval (HPA), issued by the Department of Fish and Wildlife (WDFW), is required for any project that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. If a project meets certain criteria qualifying it as a fish habitat enhancement project and is approved by certain entities, it is eligible for a streamlined review and approval process. Fish passage barrier removal projects are classified as fish habitat enhancement projects. Local governments have a 15-day comment period on applications, and WDFW must make a decision on the permit within 45 days. Local governments may not charge fees or require other permits for fish habitat enhancement projects that qualify for and receive streamlined HPA review.

Floodplain Management. The National Flood Insurance Program (NFIP), managed by the Federal Emergency Management Agency (FEMA), makes federally backed flood insurance available in those states and communities that agree to adopt and enforce floodplain management ordinances to reduce future flood damage. In Washington, the Department of Ecology (Ecology) is the lead state agency for floodplain management, while local governments are responsible for implementing local floodplain management plans as well as the NFIP.

Shoreline Management Act Permits. The Shoreline Management Act (SMA) of 1971 governs shoreline usage of the state. The SMA requires that most developments near state shorelines be consistent with shoreline master programs developed by local governments. Certain projects require a substantial development permit reviewed by the local government and filed with Ecology. Public or private projects, designed to improve fish or wildlife habitat or fish passage, receiving a streamlined HPA review are exempt from the SMA.

Federal Permitting. Depending on site location and conditions, Washington State Department of Transportation (WSDOT) fish passage barrier removal projects commonly need federal permits under the Clean Water Act, Rivers and Harbor Act, Endangered Species Act, and National Historic Preservation Act. Occasionally, federal permits are also needed through the Migratory Bird Treaty Act, Gold and Bald Eagle Protection Act, and Marine Mammal Protection Act. WSDOT has statutory guidance to implement a multiagency permit program and to establish programmatic agreements and permits with both state and federal agencies, as appropriate.

Summary of First Substitute Bill: Hydraulic Project Approval for Fish Habitat Enhancement Projects. WSDOT fish passage barrier correction portions of broader transportation projects are established as eligible for the existing streamlined review and approval process for fish habitat enhancement projects. WSDOT is directed to use an online permit application system or a joint aquatic resource permit application form to apply for permit approval, and for WSDOT projects WDFW must make a decision on the permit within 30 days.

Floodplain Management. Local governments are authorized to charge fees or impose requirements, or both, on the streamlined fish habitat enhancement projects to comply with National Flood Insurance Program requirements.

Shoreline Management Act Permits. Public projects for the primary purpose of fish passage improvement or fish barrier removal are exempted from the substantial development permit requirements of the SMA.

Federal Permitting. WSDOT must implement a multiagency effort, in coordination with Ecology and WDFW, and work with the relevant federal environmental permitting agencies to streamline the acquisition of commonly needed environmental permits and approvals for WSDOT fish passage barrier correction projects. Expected results include developing programmatic permit options that:

- simplify the application process;
- reduce paperwork; and
- reduce the amount of time and cost it takes to acquire these permits and approvals.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 16, 2021.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The attention to streamlining WSDOT fish passage projects and clarifying the flood plains issue for local governments is appreciated. The changes with the highest potential for time or cost savings to WSDOT are making barrier removals as part of other transportation projects eligible for the streamlined process, online application direction, and bringing more focus to fish passage projects within multi-agency permit streamlining workgroups. Replacing barriers is expensive but necessary, and this a responsible step to take toward complying with the federal injunction in a quicker and more cost-effective way. This bill would enhance the overall environment by making conditions better for fish. The bill could consider limiting the timeline change for the Hydraulic Project Approvals to solely DOT fish barrier removal projects within the

injunction case area, as other projects outside this area could benefit from more review time.

OTHER: The bill would mostly help with more efficient review of fish passage projects, but fish passage projects are already exempted from the Shoreline Management Act. The new exemption in section 2 of the bill is not defined, could be too broad, and rulemaking would be needed to help clarify it.

Persons Testifying: PRO: Senator Steve Hobbs, Prime Sponsor; Chris Conklin, Washington Department of Fish and Wildlife; Amber Carter, Identity Clark County; Kim Mueller, Washington State Department of Transportation.

OTHER: Tim Gates, Washington Department of Ecology.

Persons Signed In To Testify But Not Testifying: No one.