

# HOUSE BILL REPORT

## SSB 5381

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### As Passed House - Amended:

April 6, 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:

Environment & Energy: 3/19/21, 3/25/21 [DPA].

#### Floor Activity:

Passed House: 4/6/21, 98-0.

### Brief Summary of Substitute Bill (As Amended By House)

- Adds fish habitat enhancement projects and restoration projects sponsored by federally recognized Indian tribes to the list of projects eligible to receive expedited permit processing as fish habitat enhancement projects.
- Provides that fish barrier correction portions of broader Washington State Department of Transportation (WSDOT) projects are eligible to receive expedited permit processing as fish habitat enhancement 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 whose primary purpose is fish passage improvement or fish passage barrier removal from the substantial

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*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.*

development permit requirements of the Shoreline Management Act (SMA).

- Clarifies that forest practices hydraulic projects designed to improve fish or wildlife habitat or fish passage are exempt from the substantial development permit requirements of the SMA when the project has been approved by the Department of Natural Resources and local government notification requirements have been met.
- Requires the WSDOT to work with the Department of Ecology, the Department of Fish and Wildlife, and federal environmental permitting agencies to streamline the federal permitting process for fish passage barrier correction projects.

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## HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

**Majority Report:** Do pass as amended. Signed by 13 members: Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Abbarno, Berry, Boehnke, Fey, Goehner, Harris-Talley, Ramel, Shewmake and Slatter.

**Staff:** Robert Hatfield (786-7117).

### **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 (FHEP) and is approved by certain entities, it is eligible for a streamlined review and approval process. Fish passage barrier removal projects are classified as FHEPs. Stand-alone fish passage barrier correction projects approved through the Washington State Department of Transportation's (WSDOT) environmental retrofit program are eligible to be permitted through the FHEP process. Local governments have a 15-day comment period on applications, and the WDFW must make a decision on the permit within 45 days. Local governments may not charge fees or require other permits for FHEPs that qualify for and receive streamlined HPA review.

#### Floodplain Management.

The National Flood Insurance Program (NFIP), managed by the Federal Emergency Management Agency, 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. Projects that are approved under the FHEP process are exempt from the requirement to obtain a substantial development permit under the SMA.

#### Federal Permitting.

Depending on site location and conditions, 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. The 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 Amended Bill:**

The class of Washington State Department of Transportation (WSDOT) projects eligible for expedited hydraulic project approval permitting as fish habitat enhancement projects (FHEPs) is expanded, to include both the fish passage barrier correction portion of larger transportation projects, as well as stand-alone fish passage barrier correction projects.

Fish habitat enhancement projects and restoration projects sponsored by federally recognized Indian tribes are added to the list of projects eligible to receive expedited permit processing as FHEPs.

The WSDOT is required, when applying for approval for a FHEP, to use the Department of Fish and Wildlife's (WDFW) online permit application system or a Joint Aquatic Resource Permit Application form.

For WSDOT fish passage barrier correction projects approved under the FHEP process, the WDFW must, within 30 days, either issue a permit, with or without conditions, deny approval, or make a determination that the FHEP review and approval process is not appropriate for the proposed project.

Local governments may impose requirements, or charge fees, or both, in connection with a project approved under the FHEP process, only as necessary in order for the local government to administer the National Flood Insurance Program regulation requirements.

Forest practices hydraulic projects designed to improve fish or wildlife habitat or fish passage are exempt from the substantial development permit requirements of the Shoreline Management Act (SMA) when the project has been approved by the Department of Natural Resources and local government notification requirements have been met.

Public projects for the primary purpose of fish passage improvement or fish barrier removal are exempt from the substantial development permit requirements of the SMA.

The WSDOT must implement a multiagency effort, in coordination with the Department of Ecology and the 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.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The bill helps the permitting process for fish passage barrier removal projects. There is a deadline for the Department of Transportation (WSDOT) to correct fish passage barriers, and everything the Legislature can do to make the process faster helps the state meet that deadline.

The clarification regarding participation in the National Flood Insurance Program (NFIP) is helpful. The NFIP language keeps the process streamlined. The Federal Emergency Management Agency (FEMA) requires certain actions to take place when projects happen in floodplains. The NFIP language allows local governments to do their needed NFIP steps, and still lets the Department of Fish and Wildlife (WDFW) issue a streamlined permit. Without this change, the WDFW may be forced to reject projects from the fish habitat enhancement project (FHEP) process, which would then slow those projects down. The existing FHEP process applies to both private and public projects.

It is always good to look at ways to speed up fish passage barrier removal projects.

Programmatic Endangered Species Act consultation is one example of that. It is good to have the multiagency effort to look at additional permitting efficiencies.

(Opposed) None.

**Persons Testifying:** Senator Hobbs, prime sponsor; Chris Conklin, Department of Fish and Wildlife; Tim Gates, Department of Ecology; and Kim Mueller, Department of Transportation.

**Persons Signed In To Testify But Not Testifying:** None.