
SECOND SUBSTITUTE HOUSE BILL 1382

State of Washington

67th Legislature

2021 Regular Session

By House Appropriations (originally sponsored by Representatives Tharinger, Dolan, Fitzgibbon, Wylie, Hackney, and Callan)

READ FIRST TIME 02/22/21.

1 AN ACT Relating to streamlining the environmental permitting
2 process for salmon recovery projects; adding a new section to chapter
3 77.55 RCW; adding a new section go chapter 43.21C RCW; creating new
4 sections; and providing expiration dates.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that, particularly
7 in times of economic hardship, it is in the interest of the citizens
8 and natural resources of the state to promote and implement habitat
9 restoration projects that have been determined to contribute to the
10 recovery of watersheds throughout the state. The legislature further
11 finds that habitat recovery projects that contribute to the recovery
12 of orca, salmon, steelhead, bull trout, rock fish, and other fish
13 species and habitat they rely on are particularly valuable. It is the
14 legislature's intent that these projects advance to construction as
15 quickly and efficiently as possible, thereby creating jobs and
16 further bolstering the natural resources and natural resource economy
17 of Washington.

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

20 (1) The habitat recovery pilot program is created.

1 (2) (a) In order to be included in this statewide pilot program
2 and qualify for the permit review and approval process created in
3 this section, an environmental restoration project must directly
4 benefit freshwater, estuarine, or marine fish, or the habitat they
5 rely on, and must be included on a list of projects reviewed,
6 approved, or funded by one of the following restoration programs:

- 7 (i) The Bonneville power administration restoration program;
- 8 (ii) The Brian Abbott fish barrier removal board;
- 9 (iii) The estuary and salmon restoration program;
- 10 (iv) The floodplains by design program;
- 11 (v) The office of Chehalis basin aquatic species restoration
12 program;
- 13 (vi) The office of Columbia river habitat recovery projects;
- 14 (vii) The Puget Sound acquisition and restoration fund;
- 15 (viii) The Puget Sound national estuary program;
- 16 (ix) The salmon recovery funding board;
- 17 (x) The Washington coast restoration and resiliency initiative;
- 18 (xi) The Yakima tributary access and habitat program;
- 19 (xii) Fish recovery projects sponsored by an Indian tribe; and
- 20 (xiii) Fish acclimation facility projects sponsored or operated
21 by an Indian tribe.

22 (b) A project application reviewed under this section must
23 document consistency with local, state, and federal flood risk
24 reduction requirements. A project may not be reviewed under the
25 process created in this section if the local government within whose
26 geographical jurisdiction the project will be located determines that
27 the project does not meet applicable flood risk reduction
28 requirements, or otherwise determines that the project raises
29 concerns regarding public health and safety, and the local government
30 provides timely notice of its determination to the department.

31 (c) (i) With regard to cultural resources, a project applicant or
32 funding agency must review the project with the department of
33 archaeology and historic preservation and complete any required site
34 surveys before the project applicant files an application under this
35 section. A project applicant must document consistency in the
36 application with applicable cultural resource protection
37 requirements.

38 (ii) A project applicant must provide a copy of its application
39 to the department of archaeology and historic preservation, and to

1 affected Indian tribes, no fewer than 60 days before the application
2 may be filed with the department.

3 (iii) The department may not review a project under the expedited
4 process created in this section if a cultural resource site is
5 identified at the project site or if an affected Indian tribe
6 withholds its consent that the project should be expedited according
7 to the process set forth in this section. Such consent may be
8 withheld upon a determination that the project may adversely impact
9 cultural resources. Notice of such a determination must be provided
10 to the department by the affected Indian tribe in a timely manner.

11 (iv) In the event of an inadvertent discovery of cultural
12 resources or human remains, the project applicant shall immediately
13 notify the department, the department of archaeology and historic
14 preservation, and affected Indian tribes. In the event of an
15 inadvertent discovery of cultural resources or human remains,
16 existing requirements applicable to inadvertent discoveries of
17 cultural resources and human remains, including those set forth in
18 chapters 27.53, 27.44, and 68.60 RCW, apply.

19 (d) For those projects that require a lease or other land use
20 authorization from the department of natural resources, the project
21 applicant must include in its application for a permit under this
22 section a signed joint aquatic resources permit application,
23 attachment E. The project applicant must provide a copy of a
24 completed application to the department of natural resources no fewer
25 than 30 days before the application may be filed with the department.
26 The department of natural resources must make a final decision on
27 applications for projects under this section within 30 days of the
28 issuance of a permit under this section.

29 (3) Fish recovery and fish habitat restoration projects meeting
30 the criteria of subsection (2) of this section are expected to result
31 in beneficial impacts to the aquatic environment. Projects approved
32 for inclusion in this pilot program and that are reviewed and
33 approved according to the provisions of this section are not subject
34 to the requirements of RCW 43.21C.030(2) and are not required to
35 obtain local or state permits or approvals other than the permit
36 issued under this section, except permits minimally necessary as a
37 requirement of participation in a federal program.

38 (4) (a) A permit under this chapter is required for projects that
39 meet the criteria of subsection (2) of this section and must be
40 reviewed and, if appropriate, approved under this section. An

1 applicant shall use the department's online permitting system to
2 apply for approval under this section and shall at the same time
3 provide a copy of the application to the local government within
4 whose geographical jurisdiction the project will be located, to the
5 members of the multiagency permitting team created in this section,
6 and to potentially affected Indian tribes.

7 (b) When the department concludes that a complete application has
8 been submitted under this section and copies of the application have
9 been provided as required in this section, the department shall
10 provide notice to the local government within whose geographical
11 jurisdiction the project will be located, to potentially affected
12 Indian tribes, and to the members of the multiagency permitting team
13 of receipt of a complete permit application.

14 (i) Unless the multiagency permitting team process described in
15 this section is invoked, the department shall evaluate and make a
16 decision on the application not sooner than 25 days, and not later
17 than 45 days, after receipt of a complete permit application.

18 (ii) Within 25 days of receiving a copy of the complete project
19 application, the local government within whose geographical
20 jurisdiction the project would be located, any member of the
21 multiagency permitting team, or a potentially affected Indian tribe
22 may request that the department place the application on hold and
23 immediately convene a meeting with the requesting entity and the
24 multiagency permitting team to review and evaluate the project.

25 (iii) All parties involved in this review process shall work in
26 good faith to expedite permitting and any party with concerns shall
27 provide the basis for its concerns and potential pathways to address
28 those concerns. Any party objecting to expedited permitting shall
29 provide a written basis for its objections to the department or the
30 multiagency permitting team.

31 (iv) The multiagency review process may not exceed 45 days from
32 the request for review.

33 (c) The multiagency permitting team consists of representatives
34 of the local government in whose geographical jurisdiction the
35 project would be located, the department, the department of ecology,
36 the recreation and conservation office, the governor's salmon
37 recovery office, the department of natural resources, and, when the
38 project in question is located in the Puget Sound basin, the Puget
39 Sound partnership. For projects located in the Puget Sound basin,
40 meetings of the multiagency permitting team must be facilitated by

1 the Puget Sound partnership. All other meetings of the multiagency
2 permitting team must be facilitated by the recreation and
3 conservation office.

4 (d) The department or, where applicable, the multiagency
5 permitting team, shall exclude any project from the review and
6 approval process created by this section if it concludes that the
7 project may adversely impact human health, public safety, or the
8 environment, or that the project's scope or complexity renders it
9 inappropriate for expedited review.

10 (e) If the department or the multiagency permitting team
11 determines that the review and approval process created by this
12 section is not appropriate for the proposed project, the department
13 shall notify the applicant, the appropriate local government, and
14 potentially affected Indian tribes of its determination. The
15 applicant may reapply for approval of the project under generally
16 applicable review and approval processes. If the multiagency
17 permitting team determines that the review and approval process
18 created by this section is appropriate for the proposed project, the
19 hold on the application must be lifted and the department shall make
20 a decision within the time that remains of the original 45-day
21 decision deadline.

22 (f) Any person aggrieved by the approval, denial, conditioning,
23 or modification of a permit under this section may appeal the
24 decision as provided in RCW 77.55.021(8).

25 (g) The department shall, in a timely manner, provide a copy of
26 any application seeking review under this section and shall
27 thereafter coordinate with affected Indian tribes as it implements
28 this section.

29 (5) No local or state government may require permits or charge
30 fees other than the permit issued under this section, except permits
31 minimally necessary as a requirement of participation in a federal
32 program, for fish recovery pilot projects that meet the criteria of
33 subsection (2) of this section and that are reviewed and approved
34 according to the provisions of this section.

35 (6) No civil liability may be imposed by any court on the state
36 or its officers and employees for any adverse impacts resulting from
37 a fish recovery stimulus pilot project permitted by the department
38 under the criteria of this section except upon proof of gross
39 negligence or willful or wanton misconduct.

1 (7) For the purposes of this section, "Indian tribe" has the same
2 meaning as defined in RCW 43.376.010.

3 (8) This section expires June 30, 2025.

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.21C
5 RCW to read as follows:

6 (1) A project that receives a permit pursuant to section 2 of
7 this act is not subject to the requirements of RCW 43.21C.030(2).

8 (2) This section expires June 30, 2025.

9 NEW SECTION. **Sec. 4.** If specific funding for the purposes of
10 this act, referencing this act by bill or chapter number, is not
11 provided by June 30, 2021, in the omnibus appropriations act, this
12 act is null and void.

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