

---

ENGROSSED 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 a federally recognized  
20 tribe; and
- 21 (xiii) Fish acclimation facility projects sponsored or operated  
22 by a federally recognized tribe.

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

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

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

1 affected federally recognized tribes, no fewer than 60 days before  
2 the application 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 federally recognized  
6 tribe withholds its consent that the project should be expedited  
7 according to the process set forth in this section. Such consent may  
8 be withheld upon a determination that the project may adversely  
9 impact cultural resources. Notice of such a determination must be  
10 provided to the department by the affected federally recognized tribe  
11 in a timely manner.

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

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

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

39 (4) (a) A permit under this chapter is required for projects that  
40 meet the criteria of subsection (2) of this section and must be

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

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

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

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

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

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

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

1 Sound partnership. For projects located in the Puget Sound basin,  
2 meetings of the multiagency permitting team must be facilitated by  
3 the Puget Sound partnership. All other meetings of the multiagency  
4 permitting team must be facilitated by the recreation and  
5 conservation office.

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

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

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

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

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

37 (6) No civil liability may be imposed by any court on the state  
38 or its officers and employees for any adverse impacts resulting from  
39 a fish recovery stimulus pilot project permitted by the department

1 under the criteria of this section except upon proof of gross  
2 negligence or willful or wanton misconduct.

3 (7) 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.

--- END ---