
SENATE BILL 5207

State of Washington

67th Legislature

2021 Regular Session

By Senator Wilson, J.

Read first time 01/14/21. Referred to Committee on Agriculture, Water, Natural Resources & Parks.

1 AN ACT Relating to environmental permit streamlining; and
2 amending RCW 77.55.181, 90.58.147, and 47.85.020.

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

4 **Sec. 1.** RCW 77.55.181 and 2020 c 166 s 1 are each amended to
5 read as follows:

6 (1)(a) In order to receive the permit review and approval process
7 created in this section, a fish habitat enhancement project must meet
8 the criteria under this section and must be a project to accomplish
9 one or more of the following tasks:

10 (i) Elimination of human-made or caused fish passage barriers,
11 including:

12 (A) Culvert repair and replacement; and

13 (B) Fish passage barrier removal projects that comply with the
14 forest practices rules, as the term "forest practices rules" is
15 defined in RCW 76.09.020;

16 (ii) Restoration of an eroded or unstable stream bank employing
17 the principle of bioengineering, including limited use of rock as a
18 stabilization only at the toe of the bank, and with primary emphasis
19 on using native vegetation to control the erosive forces of flowing
20 water;

1 (iii) Placement of woody debris or other instream structures that
2 benefit naturally reproducing fish stocks; or

3 (iv) Restoration of native kelp and eelgrass beds and restoring
4 native oysters.

5 (b) The department shall develop size or scale threshold tests to
6 determine if projects accomplishing any of these tasks should be
7 evaluated under the process created in this section or under other
8 project review and approval processes. A project proposal shall not
9 be reviewed under the process created in this section if the
10 department determines that the scale of the project raises concerns
11 regarding public health and safety.

12 (c) A fish habitat enhancement project must be approved in one of
13 the following ways in order to receive the permit review and approval
14 process created in this section:

15 (i) By the department pursuant to chapter 77.95 or 77.100 RCW;

16 (ii) By the sponsor of a watershed restoration plan as provided
17 in chapter 89.08 RCW;

18 (iii) By the department as a department-sponsored fish habitat
19 enhancement or restoration project;

20 (iv) Through the review and approval process for the jobs for the
21 environment program;

22 (v) By conservation districts as conservation district-sponsored
23 fish habitat enhancement or restoration projects;

24 (vi) Through a formal grant program established by the
25 legislature or the department for fish habitat enhancement or
26 restoration;

27 (vii) Through the department of transportation's environmental
28 retrofit program as a stand-alone fish passage barrier correction
29 project or as a fish passage barrier correction done as part of a
30 larger transportation project;

31 (viii) Through a local, state, or federally approved fish barrier
32 removal grant program designed to assist local governments in
33 implementing stand-alone fish passage barrier corrections;

34 (ix) By a city or county for a stand-alone fish passage barrier
35 correction project funded by the city or county;

36 (x) Through the approval process established for forest practices
37 hydraulic projects in chapter 76.09 RCW; or

38 (xi) Through other formal review and approval processes
39 established by the legislature.

1 (2) Fish habitat enhancement projects meeting the criteria of
2 subsection (1) of this section are expected to result in beneficial
3 impacts to the environment. Decisions pertaining to fish habitat
4 enhancement projects meeting the criteria of subsection (1) of this
5 section and being reviewed and approved according to the provisions
6 of this section are not subject to the requirements of RCW
7 43.21C.030(2)(c).

8 (3)(a) A permit is required for projects that meet the criteria
9 of subsection (1) of this section and are being reviewed and approved
10 under this section. An applicant shall use a joint aquatic resource
11 permit application form developed by the office of regulatory
12 assistance to apply for approval under this chapter. On the same day,
13 the applicant shall provide copies of the completed application form
14 to the department and to each appropriate local government.
15 Applicants for a forest practices hydraulic project that are not
16 otherwise required to submit a joint aquatic resource permit
17 application must submit a copy of their forest practices application
18 to the appropriate local government on the same day that they submit
19 the forest practices application to the department of natural
20 resources.

21 (b) Local governments shall accept the application identified in
22 this section as notice of the proposed project. A local government
23 shall be provided with a (~~fifteen-day~~) 15-day comment period during
24 which it may transmit comments regarding environmental impacts to the
25 department or, for forest practices hydraulic projects, to the
26 department of natural resources.

27 (c) (i) Except for forest practices hydraulic projects, the
28 department shall either issue a permit, with or without conditions,
29 deny approval, or make a determination that the review and approval
30 process created by this section is not appropriate for the proposed
31 project within (~~forty-five~~) 45 days. The department shall base this
32 determination on identification during the comment period of adverse
33 impacts that cannot be mitigated by the conditioning of a permit.
34 Permitting decisions over forest practices hydraulic approvals must
35 be made consistent with chapter 76.09 RCW.

36 (ii) For department of transportation fish passage barrier
37 correction projects, the department of fish and wildlife shall either
38 issue a permit, with or without conditions, deny approval, or make a
39 determination that the review and approval process created by this
40 section is not appropriate for the proposed project within 15 days.

1 (d) If the department determines that the review and approval
2 process created by this section is not appropriate for the proposed
3 project, the department shall notify the applicant and the
4 appropriate local governments of its determination. The applicant may
5 reapply for approval of the project under other review and approval
6 processes.

7 (e) Any person aggrieved by the approval, denial, conditioning,
8 or modification of a permit other than a forest practices hydraulic
9 project under this section may appeal the decision as provided in RCW
10 77.55.021(8). Appeals of a forest practices hydraulic project may be
11 made as provided in chapter 76.09 RCW.

12 (4) No local government may require permits or charge fees for
13 fish habitat enhancement projects that meet the criteria of
14 subsection (1) of this section and that are reviewed and approved
15 according to the provisions of this section.

16 (5) No civil liability may be imposed by any court on the state
17 or its officers and employees for any adverse impacts resulting from
18 a fish enhancement project permitted by the department or the
19 department of natural resources under the criteria of this section
20 except upon proof of gross negligence or willful or wanton
21 misconduct.

22 **Sec. 2.** RCW 90.58.147 and 2019 c 150 s 2 are each amended to
23 read as follows:

24 (1) A (~~public or~~) private project that is designed to improve
25 fish or wildlife habitat or fish passage shall be exempt from the
26 substantial development permit requirements of this chapter when all
27 of the following apply:

28 (a) The project has been approved by the department of fish and
29 wildlife;

30 (b) The project has received hydraulic project approval by the
31 department of fish and wildlife pursuant to chapter 77.55 RCW; and

32 (c) The local government has determined that the project is
33 substantially consistent with the local shoreline master program. The
34 local government shall make such determination in a timely manner and
35 provide it by letter to the project proponent.

36 (2) A public project that is designed to improve fish or wildlife
37 habitat or fish passage shall be exempt from the substantial
38 development permit requirements of this chapter.

1 (3) Fish habitat enhancement projects that conform to the
2 provisions of RCW 77.55.181 are determined to be consistent with
3 local shoreline master programs.

4 **Sec. 3.** RCW 47.85.020 and 2015 3rd sp.s. c 17 s 3 are each
5 amended to read as follows:

6 The department must streamline the permitting process by
7 developing and maintaining positive relationships with the regulatory
8 agencies and the Indian tribes. The department can reduce the time it
9 takes to obtain permits by incorporating impact avoidance and
10 minimization measures into project design and by developing complete
11 permit applications. To streamline the permitting process, the
12 department must:

13 (1) Implement a multiagency permit program, commensurate with
14 program funding levels, consisting of appropriate regulatory agency
15 staff with oversight and management from the department.

16 (a) The multiagency permit program must provide early project
17 coordination, expedited project review, project status updates,
18 technical and regulatory guidance, and construction support to ensure
19 compliance.

20 (b) The multiagency permit program staff must assist department
21 project teams with developing complete biological assessments and
22 permit applications, provide suggestions for how the project can
23 avoid and minimize impacts, and provide input regarding mitigation
24 for unavoidable impacts;

25 (2) Establish, implement, and maintain programmatic agreements
26 and permits with federal and state agencies to expedite the process
27 of ensuring compliance with the endangered species act, section 106
28 of the national historic preservation act, hydraulic project
29 approvals, the clean water act, and other federal acts as
30 appropriate;

31 (3) Collaborate with permitting staff from the United States army
32 corps of engineers, Seattle district, department of ecology, and
33 department of fish and wildlife to develop, implement, and maintain
34 complete permit application guidance. The guidance must identify the
35 information that is required for agencies to consider a permit
36 application complete; ~~((and))~~

37 (4) Perform internal quality assurance and quality control to
38 ensure that permit applications are complete before submitting them
39 to the regulatory agencies; and

1 (5) Implement a multiagency effort, in coordination with the
2 department of ecology and the department of fish and wildlife, and
3 work with the relevant federal environmental permitting agencies to
4 streamline the acquisition of commonly needed environmental permits
5 and approvals for department of transportation fish passage barrier
6 correction projects. Expected results include developing programmatic
7 permit options that simplify the application process, reduce
8 paperwork, and reduce the amount of time and cost it takes to acquire
9 these permits and approvals.

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