
SENATE BILL 5381

State of Washington

67th Legislature

2021 Regular Session

By Senator Hobbs

1 AN ACT Relating to fish passage project 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 fish passage barrier correction portions of larger
30 transportation projects;

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. The department
13 of transportation shall use the department's online permit
14 application system or a joint aquatic resource permit application
15 form developed by the office of regulatory assistance to apply for
16 approval under this chapter. On the same day, the applicant shall
17 provide copies of the completed application form to the department
18 and to each appropriate local government. Applicants for a forest
19 practices hydraulic project that are not otherwise required to submit
20 a joint aquatic resource permit application must submit a copy of
21 their forest practices application to the appropriate local
22 government on the same day that they submit the forest practices
23 application to the department of natural resources.

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

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

39 (ii) For department of transportation fish passage barrier
40 correction projects, the department of fish and wildlife shall,

1 within 30 days, either issue a permit, with or without conditions,
2 deny approval, or make a determination that the review and approval
3 process created by this section is not appropriate for the proposed
4 project.

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

11 (e) Any person aggrieved by the approval, denial, conditioning,
12 or modification of a permit other than a forest practices hydraulic
13 project under this section may appeal the decision as provided in RCW
14 77.55.021(8). Appeals of a forest practices hydraulic project may be
15 made as provided in chapter 76.09 RCW.

16 (4) No local government may require permits or charge fees for
17 fish habitat enhancement projects that meet the criteria of
18 subsection (1) of this section and that are reviewed and approved
19 according to the provisions of this section, except that pursuant to
20 chapter 86.16 RCW, local governments may impose requirements and/or
21 charge fees for specific projects reviewed and approved according to
22 this section only as necessary in order to comply with any applicable
23 prerequisites for participation in the national flood insurance act,
24 codified as amended at 42 U.S.C. Sec. 4001, et seq.

25 (5) No civil liability may be imposed by any court on the state
26 or its officers and employees for any adverse impacts resulting from
27 a fish enhancement project permitted by the department or the
28 department of natural resources under the criteria of this section
29 except upon proof of gross negligence or willful or wanton
30 misconduct.

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

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

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

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

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

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

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

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

15 The department must streamline the permitting process by
16 developing and maintaining positive relationships with the regulatory
17 agencies and the Indian tribes. The department can reduce the time it
18 takes to obtain permits by incorporating impact avoidance and
19 minimization measures into project design and by developing complete
20 permit applications. To streamline the permitting process, the
21 department must:

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

25 (a) The multiagency permit program must provide early project
26 coordination, expedited project review, project status updates,
27 technical and regulatory guidance, and construction support to ensure
28 compliance.

29 (b) The multiagency permit program staff must assist department
30 project teams with developing complete biological assessments and
31 permit applications, provide suggestions for how the project can
32 avoid and minimize impacts, and provide input regarding mitigation
33 for unavoidable impacts;

34 (2) Establish, implement, and maintain programmatic agreements
35 and permits with federal and state agencies to expedite the process
36 of ensuring compliance with the endangered species act, section 106
37 of the national historic preservation act, hydraulic project
38 approvals, the clean water act, and other federal acts as
39 appropriate;

1 (3) Collaborate with permitting staff from the United States army
2 corps of engineers, Seattle district, department of ecology, and
3 department of fish and wildlife to develop, implement, and maintain
4 complete permit application guidance. The guidance must identify the
5 information that is required for agencies to consider a permit
6 application complete; ((and))

7 (4) Perform internal quality assurance and quality control to
8 ensure that permit applications are complete before submitting them
9 to the regulatory agencies; and

10 (5) Implement a multiagency effort, in coordination with the
11 department of ecology and the department of fish and wildlife, and
12 work with the relevant federal environmental permitting agencies to
13 streamline the acquisition of commonly needed environmental permits
14 and approvals for department of transportation fish passage barrier
15 correction projects. Expected results include developing programmatic
16 permit options that simplify the application process, reduce
17 paperwork, and reduce the amount of time and cost it takes to acquire
18 these permits and approvals.

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