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**SUBSTITUTE SENATE BILL 5381**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senate Transportation (originally sponsored by Senators Hobbs, Fortunato, King, and Warnick)

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 fish  
34 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) Fish habitat enhancement projects that conform to the  
8 provisions of RCW 77.55.181 are determined to be consistent with  
9 local shoreline master programs.

10 (3) Public projects for the primary purpose of fish passage  
11 improvement or fish barrier removal shall be exempt from the  
12 substantial development permit requirements of this chapter.

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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