

SSB 5381 - H COMM AMD

By Committee on Environment & Energy

ADOPTED 04/06/2021

1 Strike everything after the enacting clause and insert the
2 following:

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

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

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

11 (A) Culvert repair and replacement; and

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

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

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

22 (iv) Restoration of native kelp and eelgrass beds and restoring
23 native oysters.

24 (b) The department shall develop size or scale threshold tests to
25 determine if projects accomplishing any of these tasks should be
26 evaluated under the process created in this section or under other
27 project review and approval processes. A project proposal shall not
28 be reviewed under the process created in this section if the
29 department determines that the scale of the project raises concerns
30 regarding public health and safety.

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

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

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

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

9 (iv) Through the review and approval process for the jobs for the
10 environment program;

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

13 (vi) Through a formal grant program established by the
14 legislature or the department for fish habitat enhancement or
15 restoration;

16 (vii) By federally recognized tribes as tribally sponsored fish
17 habitat enhancement projects or restoration projects;

18 (viii) Through the department of transportation's environmental
19 retrofit program as a stand-alone fish passage barrier correction
20 project, or the fish passage barrier correction portion of a larger
21 transportation project;

22 ~~((viii))~~ (ix) Through a local, state, or federally approved
23 fish barrier removal grant program designed to assist local
24 governments in implementing stand-alone fish passage barrier
25 corrections;

26 ~~((ix))~~ (x) By a city or county for a stand-alone fish passage
27 barrier correction project funded by the city or county;

28 ~~((x))~~ (xi) Through the approval process established for forest
29 practices hydraulic projects in chapter 76.09 RCW; or

30 ~~((xi))~~ (xii) Through other formal review and approval processes
31 established by the legislature.

32 (2) Fish habitat enhancement projects meeting the criteria of
33 subsection (1) of this section are expected to result in beneficial
34 impacts to the environment. Decisions pertaining to fish habitat
35 enhancement projects meeting the criteria of subsection (1) of this
36 section and being reviewed and approved according to the provisions
37 of this section are not subject to the requirements of RCW
38 43.21C.030(2)(c).

39 (3)(a) A permit is required for projects that meet the criteria
40 of subsection (1) of this section and are being reviewed and approved

1 under this section. An applicant shall use a joint aquatic resource
2 permit application form developed by the office of regulatory
3 assistance to apply for approval under this chapter. The department
4 of transportation shall use the department's online permit
5 application system or a joint aquatic resource permit application
6 form developed by the office of regulatory assistance to apply for
7 approval under this chapter. On the same day, the applicant shall
8 provide copies of the completed application form to the department
9 and to each appropriate local government. Applicants for a forest
10 practices hydraulic project that are not otherwise required to submit
11 a joint aquatic resource permit application must submit a copy of
12 their forest practices application to the appropriate local
13 government on the same day that they submit the forest practices
14 application to the department of natural resources.

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

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

30 (ii) For department of transportation fish passage barrier
31 correction projects, the department of fish and wildlife shall,
32 within 30 days, either issue a permit, with or without conditions,
33 deny approval, or make a determination that the review and approval
34 process created by this section is not appropriate for the proposed
35 project.

36 (d) If the department determines that the review and approval
37 process created by this section is not appropriate for the proposed
38 project, the department shall notify the applicant and the
39 appropriate local governments of its determination. The applicant may

1 reapply for approval of the project under other review and approval
2 processes.

3 (e) Any person aggrieved by the approval, denial, conditioning,
4 or modification of a permit other than a forest practices hydraulic
5 project under this section may appeal the decision as provided in RCW
6 77.55.021(8). Appeals of a forest practices hydraulic project may be
7 made as provided in chapter 76.09 RCW.

8 (4) No local government may require permits or charge fees for
9 fish habitat enhancement projects that meet the criteria of
10 subsection (1) of this section and that are reviewed and approved
11 according to the provisions of this section, except that, pursuant to
12 chapter 86.16 RCW, a local government may impose such requirements,
13 or charge such fees, or both, only as may be necessary in order for
14 the local government to administer the national flood insurance
15 program regulation requirements.

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 fish
25 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 or, for forest practices hydraulic projects within the scope
30 of RCW 77.55.181, the department of natural resources if the local
31 government notification provisions of RCW 77.55.181 are satisfied;

32 (b) The project has received hydraulic project approval by the
33 department of fish and wildlife pursuant to chapter 77.55 RCW or
34 approval of a forest practices hydraulic project within the scope of
35 RCW 77.55.181 from the department of natural resources if the local
36 government notification provisions of RCW 77.55.181 are satisfied;
37 and

38 (c) The local government has determined that the project is
39 substantially consistent with the local shoreline master program. The

1 local government shall make such determination in a timely manner and
2 provide it by letter to the project proponent.

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

6 (3) Public projects for the primary purpose of fish passage
7 improvement or fish passage barrier removal are exempt from the
8 substantial development permit requirements of this chapter.

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

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

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

21 (a) The multiagency permit program must provide early project
22 coordination, expedited project review, project status updates,
23 technical and regulatory guidance, and construction support to ensure
24 compliance.

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

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

36 (3) Collaborate with permitting staff from the United States army
37 corps of engineers, Seattle district, department of ecology, and
38 department of fish and wildlife to develop, implement, and maintain
39 complete permit application guidance. The guidance must identify the

1 information that is required for agencies to consider a permit
2 application complete; ((and))

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

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

15 Correct the title.

EFFECT: Adds fish habitat enhancement projects and restoration projects sponsored by federally recognized Indian tribes to the list of projects eligible to receive expedited permit processing as fish habitat enhancement projects.

Provides that fish barrier correction portions of broader Washington State Department of Transportation (WSDOT) projects are eligible to receive expedited permit processing as fish habitat enhancement projects.

Clarifies that local governments are allowed to charge fees or impose requirements, or both, for fish habitat enhancement projects in order to comply with National Flood Insurance Program requirements.

Exempts public projects whose primary purpose is fish passage improvement or fish passage barrier removal from the substantial development permit requirements of the Shoreline Management Act.

Clarifies that forest practices hydraulic projects designed to improve fish or wildlife habitat or fish passage are exempt from the substantial development permit requirements of the Shoreline Management Act when the project has been approved by the Department of Natural Resources and local government notification requirements have been met.

Requires the WSDOT to work with the Department of Ecology, Department of Fish and Wildlife, and federal environmental permitting agencies to streamline the federal permitting process for fish passage barrier correction projects.

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