

SENATE BILL REPORT

E2SHB 1382

As Reported by Senate Committee On:
Agriculture, Water, Natural Resources & Parks, March 18, 2021
Ways & Means, April 2, 2021

Title: An act relating to streamlining the environmental permitting process for salmon recovery projects.

Brief Description: Streamlining the environmental permitting process for salmon recovery projects.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Tharinger, Dolan, Fitzgibbon, Wylie, Hackney and Callan).

Brief History: Passed House: 3/2/21, 95-2.

Committee Activity: Agriculture, Water, Natural Resources & Parks: 3/16/21, 3/18/21 [DP-WM].

Ways & Means: 4/01/21, 4/02/21 [DP].

Brief Summary of Bill

- Creates the Habitat Recovery Pilot Program (pilot program) for habitat restoration projects that meet certain criteria.
- Exempts qualifying projects from certain permitting processes.
- Establishes a consultation and review process for pilot program projects.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Van De Wege, Chair; Salomon, Vice Chair; Warnick, Ranking Member; Honeyford, Rolfes, Short and Stanford.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Karen Epps (786-7424)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Schoesler, Assistant Ranking Member, Capital; Braun, Carlyle, Conway, Darneille, Dhingra, Gildon, Hasegawa, Hunt, Keiser, Liias, Mullet, Muzzall, Pedersen, Rivers, Van De Wege, Wagoner, Warnick and Wellman.

Staff: Jed Herman (786-7346)

Background: Hydraulic Project Approval. A person must obtain a hydraulic project approval (HPA) prior to commencing any construction project that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. The Department of Fish and Wildlife (WDFW) issues HPAs to ensure the proper protection of fish life. A person may file a hydraulic project pre-application with WDFW to determine whether a project requires a complete application for a hydraulic project permit. WDFW must provide tribes and local governments a seven-calendar-day review and comment period for pre-applications. If WDFW determines a complete application is required, the applicant must submit a complete application and WDFW would process the permitting decision.

Fish Habitat Enhancement Projects. Fish habitat enhancement projects meeting a certain set of criteria may qualify for a streamlined administrative review and approval process. These are projects expected to result in beneficial impacts to the environment, and are of the size and scale, as determined by WDFW, to accomplish one or more of the following:

- elimination of human-made or human-caused fish passage barriers;
- restoration of an eroded or unstable streambank employing the principle of bioengineering; or
- placement of woody debris or other instream structures that benefit naturally reproducing fish stocks.

To qualify for streamlined review, a project must be approved by certain sponsoring entities, including WDFW, a conservation district, the Washington State Department of Transportation, a city or county, or another formal review and approval process.

Floodplain Management. The Department of Ecology (Ecology) is the lead state agency for floodplain management, which includes flood risk reduction and protection of floodplain environmental functions. Ecology provides assistance to local governments responsible for implementing local floodplain management plans as well as managing development in floodplains under the National Flood Insurance Program (NFIP). The NFIP, managed by

the Federal Emergency Management Agency, makes federally backed flood insurance available in those states and communities that agree to adopt and enforce floodplain management ordinances that help mitigate flooding effects. Homes and businesses in high-risk flood areas with mortgages from government-backed lenders are required to have flood insurance.

Department of Archeology and Historic Preservation. The Department of Archeology and Historic Preservation (DAHP) maintains a complete inventory of archeological resource sites and collections within the state. Archeological resources include historic and prehistoric objects, structures, artifacts, implements, and locations pertaining, but not limited to, American Indian or aboriginal sites. The disturbance of an archeological resource or site on public or private lands requires a written permit issued by DAHP. DAHP must notify an affected tribe when potential Indian skeletal remains are discovered within the tribe's usual and accustomed areas. DAHP is responsible for sharing the information in its archeological resource inventory with state, federal, and private construction agencies regarding the possible impact construction activities may have on archeological resources.

Summary of Bill: Habitat Recovery Pilot Program. The Habitat Recovery Pilot Program (pilot program) is created. To qualify to be included in the pilot program, an environmental restoration project must directly benefit freshwater, estuarine, or marine fish, or the habitat they rely on. The project must be included on a list of projects reviewed, approved, or funded by one of the following restoration programs:

- the Bonneville Power Administration Restoration Program;
- the Brian Abbott Fish Passage Barrier Removal Board;
- the Estuary and Salmon Restoration Program;
- the Floodplains by Design Program;
- the Office of Chehalis Basin Aquatic Species Restoration Program;
- the Office of Columbia River habitat recovery projects;
- the Puget Sound Acquisition and Restoration Fund;
- the Puget Sound National Estuary Program;
- the Salmon Recovery Funding Board;
- the Washington Coast Restoration and Resiliency Initiative;
- the Yakima Tributary Access and Habitat Program;
- fish recovery projects sponsored by a federally recognized tribe; and
- fish acclimation projects sponsored or operated by a federally recognized tribe.

A project reviewed under the pilot program must document consistency with local, state, and federal flood risk reduction requirements. A project may not be reviewed if the local government in which the project will be located determines the project does not meet applicable flood risk reduction requirements, or otherwise determines the project raises concerns regarding public health and safety, and the local government provides timely notice of its determination to WDFW. The pilot program expires on June 30, 2025.

Cultural Resources. A project applicant or funding agency must review the proposed project with DAHP and complete any required site surveys before the project applicant files an application under the pilot program. A project applicant must document consistency in the application with applicable cultural resource protection requirements. A project applicant must provide a copy of its application to DAHP, and to affected federally recognized tribes, no fewer than 60 days before the application may be filed with WDFW.

WDFW may not review a project under the pilot program if a cultural resource site is identified at the project site or if an affected federally recognized tribe withholds its consent the project should be expedited according to the process set forth in this section. Consent may be withheld upon a determination the project may adversely impact cultural resources. Notice of determination must be provided to WDFW by the affected federally recognized tribe in a timely manner.

In the event of an inadvertent discovery of cultural resources or human remains, the project applicant must immediately notify WDFW, DAHP, and the affected federally recognized tribes. Existing requirements applicable to inadvertent discoveries of cultural resources and human remains apply.

Aquatic Lands. For projects that require a lease or other land use authorization from the Department of Natural Resources (DNR), the project applicant must include in its application for a permit under the pilot program a signed Joint Aquatic Resources Permit Application, Attachment E. The project applicant must provide a copy of a completed application to DNR no fewer than 30 days before the application may be filed with WDFW. DNR must make a final decision on applications for projects under the pilot program within 30 days of the issuance of a permit under the pilot program.

Permitting. A permit under the pilot program is required for any project that meets the criteria for inclusion and would otherwise be required to obtain a HPA. An applicant for a permit under the pilot program must submit an application through WDFW's online application system, and must at the same time provide a copy of the application to the appropriate local government, to the pilot program's multiagency permitting team, and to potentially affected federally recognized tribes.

Projects approved for inclusion in the pilot program and are reviewed and approved according to the provisions of the pilot program are not required to prepare an environmental impact statement under the State Environmental Policy Act. Projects are also not required to obtain local or state permits or approvals other than the permit issued under the pilot program, except permits minimally necessary as a requirement for participation in a federal program.

When WDFW concludes a complete application has been submitted and copies of the application have been provided as required by the pilot program, WDFW must provide notice to the local government within whose geographical jurisdiction the project will be

located, to potentially affected federally recognized tribes, and to the members of the multiagency permitting team of receipt of a complete permit application. WDFW must, in a timely manner, provide a copy of any application seeking review under the pilot program and shall thereafter coordinate with affected federally recognized tribes as it implements the pilot program.

WDFW must evaluate and make a decision on the application not sooner than 25 days, and not later than 45 days, after receipt of a complete permit application unless the multiagency permitting team process has been invoked. Within 25 days of receiving a copy of the complete project application, the local government within whose geographical jurisdiction the project would be located, any member of the multiagency permitting team, or a potentially affected federally recognized tribe may request that WDFW place the application on hold and immediately convene a meeting with the requesting entity and the multiagency permitting team to review and evaluate the project.

All parties involved in the consultation process must work in good faith to expedite permitting. Any party with concerns must provide the basis for its concerns and potential pathways to address those concerns. Any party objecting to expedited permitting must provide a written basis for its objections to WDFW or the multiagency permitting team.

Multiagency Permitting Team. The multiagency permitting team is made up of representatives of the local government in whose geographical jurisdiction the project would be located, WDFW, the Department of Ecology, the Recreation and Conservation Office, the Governor's Salmon Recovery Office, DNR, and, when the project in question is located in the Puget Sound basin, the Puget Sound Partnership. If the multiagency permitting team determines the review and approval process under the pilot program is appropriate, the hold on the application must be lifted and WDFW must make a decision within the time that remains of the original 45-day decision deadline. WDFW and the multiagency permitting team must exclude from the pilot program any project if WDFW or the multiagency permitting team concludes the project may adversely impact human health, public safety, or the environment.

Appeals. If WDFW and the multiagency permitting team determines the review and approval process under the pilot program is not appropriate for the proposed project, WDFW must notify the applicant, the appropriate local government, and potentially affected federally recognized tribes. The applicant may reapply for approval of the project under generally applicable review and approval processes. Any person aggrieved by the approval, denial, conditioning, or modification of a permit under the pilot program may appeal the decision pursuant to the hydraulic code.

No civil liability may be imposed by any court on the state or its officers and employees for any adverse impacts resulting from a fish recovery pilot project permitted by WDFW or DNR under the criteria of the pilot program, except upon proof of gross negligence or willful or wanton misconduct.

Appropriation: The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony (Agriculture, Water, Natural Resources & Parks): PRO: Washington has a strong commitment to salmon recovery, orca recovery, and other environmental health goals. This bill gives projects that will help achieve those benefits a straightforward pathway through the permitting process. The restoration programs eligible for this pilot program result in hundreds of stakeholder-vetted publicly funded projects that improves resiliency and create jobs. The state's existing streamlined pathway for permitting restoration projects is not currently being successfully applied to these projects. Projects that cannot use the streamlined process end up using capital dollars to secure permits, which sometimes leads to delays or difficulty in securing match funding. This pilot program will help get more public dollars and economic benefit into communities faster. The bill builds in criteria for applications, including a cultural resource process, and a number of clear offramps, including the use of a multiagency review team which has been successful in other streamlined permitting processes. This bill will get state-funded projects to be shovel-ready for stimulus funding or when federal dollars are made available for infrastructure projects.

Persons Testifying (Agriculture, Water, Natural Resources & Parks): PRO: Margen Carlson, Washington Department of Fish and Wildlife; Justin Allegro, The Nature Conservancy.

Persons Signed In To Testify But Not Testifying (Agriculture, Water, Natural Resources & Parks): No one.

Staff Summary of Public Testimony (Ways & Means): PRO: We strongly support the policy. It will bring about quicker results for salmon recovery and maximizes the state's contributions toward protecting habitat. Existing salmon restoration projects cannot access existing streamlining processes, therefore we need this policy.

Persons Testifying (Ways & Means): PRO: Margen Carlson, Washington Department of Fish and Wildlife; Justin Allegro, The Nature Conservancy.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.