

HOUSE BILL REPORT

HB 2879

As Reported By House Committee On:

Natural Resources

Title: An act relating to facilitating the review and approval of fish enhancement projects.

Brief Description: Facilitating the review and approval of fish enhancement projects.

Sponsors: Representatives Buck, Butler, Chandler, DeBolt, Sehlin, Hatfield, McCune, Doumit, Kessler, Morris, Kenney, Constantine, Ogden, Regala, Tokuda, Anderson, Thompson and Conway.

Brief History:

Committee Activity:

Natural Resources: 1/27/98, 2/4/98 [DPS].

HOUSE COMMITTEE ON NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Buck, Chairman; Sump, Vice Chairman; Thompson, Vice Chairman; Regala, Ranking Minority Member; Butler, Assistant Ranking Minority Member; Alexander; Anderson; Chandler; Eickmeyer; Hatfield and Pennington.

Staff: Carole Richmond (786-7114).

Background: A variety of in-water projects are carried out to enhance salmon and steelhead habitat. Such projects include, among others, improving fish passage, bank stabilization to prevent erosion and siltation, placement of large woody debris, and the creation of overwintering ponds. Under current law, these projects are subjected to a review and approval process that includes the following steps:

- hydraulic projects approval;
- possible State Environmental Policy Act (SEPA) review; and
- differing local requirements.

A report to the Legislature from the Regional Fisheries Enhancement Group Program Citizens Advisory Board found that local permitting requirements can differ widely. Some counties waive local permits and fees in order to encourage community projects.

Other counties often charge substantial fees for SEPA reviews and grading and filling permits. These processes and fees can frustrate local volunteer efforts and impede efforts to fit within the work window—intended to ensure that in-water projects do not harm critical life stages for salmonids.

The Legislature addressed a similar issue pertaining to review and approval of watershed restoration projects. In 1995, the Legislature required (ESSB 5616) the Conservation Commission to develop, in consultation with other state agencies, tribes, and local governments, a consolidated application process for permits for a watershed restoration project developed by an agency, or sponsored by an agency on behalf of a volunteer organization. All agencies of the state and local governments are required to accept the single application developed by the Conservation Commission, to process the application without charge, and to issue permit decisions within 45 days. Watershed restoration projects are exempted from substantial development permits under the Shoreline Management Act.

Summary of Substitute Bill: The review and approval of fish habitat enhancement projects is facilitated by identifying projects that are eligible for expedited review. The Department of Ecology is directed to modify the joint aquatic resource permit application (JARPA) form to incorporate the process established for expedited review of certain fish habitat enhancement projects.

Fish habitat enhancement projects eligible for expedited review are limited to those that:

- eliminate fish passage barriers, including culvert repair and replacement;
- restore eroded or unstable stream banks using the principle of bioengineering, including limited use of rock as stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; and
- provide woody debris or other instream structures that benefit naturally reproducing fish stocks.

The Department of Fish and Wildlife may develop size and scale thresholds to determine whether eligible projects should be reviewed under an expedited process or the standard process.

Local governments are prohibited from requiring permits or charging fees for the review and approval of eligible projects.

Projects are approved in one of the following ways:

- by the department pursuant to the salmon enhancement program (Chapter 75.50 RCW) or to the Volunteer Cooperative Fish and Wildlife Enhancement Program (Chapter 75.52 RCW);

- by the sponsor of a watershed restoration plan as provided in Chapter 89.08 RCW;
- by the department as a department-sponsored fish habitat enhancement or restoration project;
- through the review and approval process for the Jobs for the Environment Program;
- through the review and approval process for Conservation District-sponsored projects;
- through a formal grant program established by the Legislature or the department for fish habitat enhancement or restoration; and
- through other formal review and approval processes established by the Legislature.

Fish habitat enhancement projects eligible for expedited review are expected to result in beneficial impacts to the environment and are exempt from SEPA review. Hydraulic project approval is required for eligible projects, and must be applied for with a JARPA form. Projects sponsors must provide a completed JARPA form to both the Department of Fish and Wildlife and to each appropriate local government. The form provides local government with notice of the proposed projects. A 15-day comment period is provided by the department so that comments can be made on the environmental impacts associated with the proposed project.

Within 45 days, the department will:

- issue the hydraulic project approval, with or without conditions; or
- deny approval; or
- make a determination that the expedited review process is not appropriate for the proposed project. This determination will be based on comments received during the comment period related to adverse impacts that cannot be mitigated. The project sponsor or applicant may then reapply for approval under another process.

A person aggrieved by any determination made by the department under this section may formally appeal the determination to the Hydraulic Appeals Board.

The State Environmental Policy Act is amended to exempt those fish habitat enhancement projects eligible for expedited review from environmental review decisions. In addition, projects eligible for expedited review are presumed consistent with local shoreline master programs.

Requirements pertaining to planning commissions, planning and zoning in code cities, the Planning Enabling Act, growth management, the Shoreline Management Act, and the state building code are each amended to require that eligible fish habitat enhancement projects be reviewed according to the expedited permit review and approval process established for such projects. If an eligible fish habitat enhancement project is also a watershed restoration project as defined in Chapter 89.08, the project sponsor must follow the expedited process.

The Department of Fish and Wildlife is required to lead an effort, also involving the Conservation Commission, local governments, fish habitat enhancement project applicants, and other interested parties, to continue improving the permitting and approval process for fish habitat enhancement projects, and to report to the Legislature on the group's progress by December 1, 1998.

This measure takes effect immediately upon passage.

Substitute Bill Compared to Original Bill: Projects eligible for expedited review include: culvert replacement, removal of fish passage barriers, bank stabilization and erosion control, creation or enhancement of overwintering ponds, weir placement, placement of woody debris or other instream enhancement work, or other types of fish habitat enhancement projects identified by the Department of Fish and Wildlife.

A fish habitat enhancement project must be approved in one of three ways: (1) by the department pursuant to the salmon enhancement program (Chapter 75.50 RCW) or to the Volunteer Cooperative Fish and Wildlife Enhancement Program (Chapter 75.52 RCW); (2) by the sponsor of a watershed restoration plan as provided in Chapter 89.08 RCW; or (3) by the department under any other review and approval process the department creates.

The Department of Fish and Wildlife is the lead agency under SEPA for fish habitat enhancement projects. For eligible categories of projects, the department must issue a determination of non-significance (DNS) within 30 days of receiving a permit application, unless the department determines instead that a mitigated DNS is the appropriate solution. In this case, the department must identify the mitigation measures needed within the 30-day period following receipt of an application. The department must begin its expedited SEPA review concurrently with the review for Hydraulics Project Approval.

Project applicants must determine whether their projects are consistent with the local Shoreline Master Program and may not propose projects that are inconsistent with the Program. A project shall not be considered inconsistent with a Shoreline Management Plan if that plan categorically excludes all work in streams without due consideration that work in streams may have beneficial environmental impacts.

Appropriation: None.

Fiscal Note: Requested on February 5, 1998.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: These projects are beneficial for the environment and should be moved through the review and permitting process as quickly as possible so that volunteers can

take advantage of the relatively few opportunities there are to perform work in the streams without disturbing salmon. The quickest way to authorize these projects is to declare categorical exemptions or to make findings of consistency with certain existing law for certain kinds of projects. The list of projects eligible for expedited review is very narrow and opportunities exist to take these projects through the standard review process: (1) the Department of Fish and Wildlife develops size and scale thresholds to guide the review process for a given proposal, and (2) local government has an opportunity to comment on proposals.

Testimony Against: If projects could have a significant impact, local government should have an opportunity to review and apply conditions, if necessary, to these projects. Projects could go beyond habitat enhancement into other areas of local government concern.

Testified: Representative Jim Buck, prime sponsor; Don Krupp, Thurston County Planning and Development; Terry Wright, Northwest Indian Fisheries Commission; Tom Mark, Department of Ecology; Ron Shultz, National Audubon Society (all in favor); Josh Baldi, Washington Environmental Council (in favor with concerns); Dick Dorsett, Pierce County (against with concerns); and Karen Terwilliger, Department of Fish and Wildlife.