
HOUSE BILL 2879

State of Washington

55th Legislature

1998 Regular Session

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

Read first time 01/21/98. Referred to Committee on Natural Resources.

1 AN ACT Relating to facilitating the review and approval of fish
2 enhancement projects; amending RCW 35.63.230, 35A.63.250, 36.70.992,
3 36.70A.460, 43.21C.0382, 89.08.470, and 90.58.515; adding a new section
4 to chapter 75.20 RCW; creating new sections; and declaring an
5 emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature finds that fish enhancement
8 projects play a key role in the state's salmon and steelhead recovery
9 efforts. The legislature further finds that, despite repeated attempts
10 to minimize the expense and delays of various permitting processes,
11 more improvements are necessary in order to allow fish enhancement
12 projects to be put into place quickly and easily. The purpose of this
13 act is to take immediate action to facilitate the review and approval
14 of fish enhancement projects today and to encourage efforts that will
15 continue to improve the process in the future.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 75.20 RCW
17 to read as follows:

1 (1) In order to receive the permit review and approval process
2 created in this section, a fish enhancement project must meet the
3 criteria under (a) and (b) of this subsection:

4 (a) The fish enhancement project must be a project to accomplish
5 one or more of the following tasks:

6 (i) Culvert replacement;

7 (ii) Removal of fish passage barriers;

8 (iii) Bank stabilization and erosion control, including the
9 planting of trees or other vegetation;

10 (iv) Creation or enhancement of overwintering ponds;

11 (v) Weir placement, placement of woody debris, or other instream
12 enhancement work; or

13 (vi) Other types of fish enhancement projects identified by the
14 department.

15 The department may develop size or scale threshold tests to
16 determine if projects accomplishing any of these tasks should be
17 evaluated under the process created in this section or under the
18 standard permit review procedure. A project proposal shall not be
19 reviewed under the process created in this section if the department
20 determines that the scale of the project raises concerns regarding
21 public health and safety; and

22 (b) The fish enhancement project must be approved in one of the
23 following ways:

24 (i) By the department pursuant to chapter 75.50 or 75.52 RCW;

25 (ii) By the sponsor of a watershed restoration plan as provided in
26 chapter 89.08 RCW; or

27 (iii) By the department under any other review and approval process
28 the department creates.

29 (2) For the purposes of chapter 43.21C RCW, the department shall be
30 the lead agency. Because fish enhancement projects are expected to
31 result in beneficial impacts to the environment, there is a presumption
32 that no probable significant adverse environmental impacts result from
33 a fish enhancement project that meets the criteria of subsection (1) of
34 this section. The department shall issue a determination to that
35 effect within thirty days of receiving an application for hydraulic
36 project approval of the proposal unless the department receives within
37 that time period information that the department believes justifies a
38 different determination. If the department determines that a mitigated
39 determination of nonsignificance is the appropriate determination, the

1 department shall make this determination and identify the needed
2 mitigation measures within the thirty-day time period. If the
3 department receives information indicating that the project is likely
4 to have significant adverse environmental impacts, the project shall
5 not continue to be evaluated under the process created in this section.
6 The location of a proposed fish enhancement project in a critical area
7 as established under chapter 36.70A RCW or any other similar designated
8 sensitive area shall not in and of itself be evidence that the project
9 is likely to have significant adverse environmental impacts. The
10 department shall work with local governments so that local governments
11 are aware of projects proposed in their jurisdictions.

12 (3) No local government may require additional permits or charge
13 additional fees for fish enhancement projects that meet the criteria of
14 subsection (1) of this section.

15 (4) Prior to applying for hydraulic project approval for a fish
16 enhancement project under the provisions of this section, the applicant
17 shall review the relevant local shoreline master plans created pursuant
18 to chapter 90.58 RCW to see if the project proposal is consistent with
19 the master plan. Applicants shall not propose projects that are
20 inconsistent with the relevant shoreline master plan. The department
21 shall assist project proponents with this review. A fish enhancement
22 project proposal shall not be considered inconsistent with the
23 shoreline master plan if that plan generally precludes all work in
24 streams without due consideration that work in streams may have
25 beneficial environmental impacts.

26 (5) The department shall initiate its review for hydraulic project
27 approval concurrently with the process identified in subsection (2) of
28 this section. If that process results in a mitigated determination of
29 nonsignificance, the hydraulic project approval shall be conditioned on
30 meeting the identified mitigation requirements even if those
31 requirements do not directly involve protection of fish life.

32 **Sec. 3.** RCW 35.63.230 and 1995 c 378 s 8 are each amended to read
33 as follows:

34 A permit required under this chapter for a watershed restoration
35 project as defined in RCW 89.08.460 shall be processed in compliance
36 with RCW 89.08.450 through 89.08.510. A fish enhancement project
37 meeting the criteria of section 2(1) of this act shall be reviewed
38 according to the provisions of section 2 of this act.

1 **Sec. 4.** RCW 35A.63.250 and 1995 c 378 s 9 are each amended to read
2 as follows:

3 A permit required under this chapter for a watershed restoration
4 project as defined in RCW 89.08.460 shall be processed in compliance
5 with RCW 89.08.450 through 89.08.510. A fish enhancement project
6 meeting the criteria of section 2(1) of this act shall be reviewed
7 according to the provisions of section 2 of this act.

8 **Sec. 5.** RCW 36.70.992 and 1995 c 378 s 10 are each amended to read
9 as follows:

10 A permit required under this chapter for a watershed restoration
11 project as defined in RCW 89.08.460 shall be processed in compliance
12 with RCW 89.08.450 through 89.08.510. A fish enhancement project
13 meeting the criteria of section 2(1) of this act shall be reviewed
14 according to the provisions of section 2 of this act.

15 **Sec. 6.** RCW 36.70A.460 and 1995 c 378 s 11 are each amended to
16 read as follows:

17 A permit required under this chapter for a watershed restoration
18 project as defined in RCW 89.08.460 shall be processed in compliance
19 with RCW 89.08.450 through 89.08.510. A fish enhancement project
20 meeting the criteria of section 2(1) of this act shall be reviewed
21 according to the provisions of section 2 of this act.

22 **Sec. 7.** RCW 43.21C.0382 and 1995 c 378 s 12 are each amended to
23 read as follows:

24 Decisions pertaining to watershed restoration projects as defined
25 in RCW 89.08.460 are not subject to the requirements of RCW
26 43.21C.030(2)(c). A fish enhancement project meeting the criteria of
27 section 2(1) of this act shall be reviewed according to the provisions
28 of section 2 of this act.

29 **Sec. 8.** RCW 89.08.470 and 1995 c 378 s 3 are each amended to read
30 as follows:

31 By January 1, 1996, the Washington conservation commission shall
32 develop, in consultation with other state agencies, tribes, and local
33 governments, a consolidated application process for permits for a
34 watershed restoration project developed by an agency or sponsored by an
35 agency on behalf of a volunteer organization. The consolidated process

1 shall include a single permit application form for use by all
2 responsible state and local agencies. The commission shall encourage
3 use of the consolidated permit application process by any federal
4 agency responsible for issuance of related permits. The permit
5 application forms to be consolidated shall include, at a minimum,
6 applications for: (1) Approvals related to water quality standards
7 under chapter 90.48 RCW; (2) hydraulic project approvals under chapter
8 75.20 RCW; and (3) section 401 water quality certifications under 33
9 U.S.C. Sec. 1341 and chapter 90.48 RCW. If a watershed restoration
10 project is a fish enhancement project that meets the criteria of
11 section 2(1) of this act, the project sponsor shall instead follow the
12 permit review and approval process established in section 2 of this act
13 with regard to state and local government permitting requirements. The
14 sponsor shall so notify state and local permitting authorities.

15 **Sec. 9.** RCW 90.58.515 and 1995 c 378 s 16 are each amended to read
16 as follows:

17 Watershed restoration projects as defined in RCW 89.08.460 are
18 exempt from the requirement to obtain a substantial development permit.
19 Local government shall review the projects for consistency with the
20 locally adopted shoreline master program in an expeditious manner and
21 shall issue its decision along with any conditions within forty-five
22 days of receiving a complete consolidated application form from the
23 applicant. No fee may be charged for accepting and processing
24 applications for watershed restoration projects as used in this
25 section. A fish enhancement project meeting the criteria of section
26 2(1) of this act shall be reviewed according to the provisions of
27 section 2 of this act.

28 NEW SECTION. **Sec. 10.** The legislature finds that, while the
29 process created in this act can improve the speed with which fish
30 enhancement projects are put into place, additional efforts can improve
31 the review and approval process for the future. The legislature
32 directs the department of fish and wildlife, the conservation
33 commission, local governments, fish enhancement project applicants, and
34 other interested parties to work together to continue to improve the
35 permitting review and approval process. Specific efforts shall include
36 the following:

1 (1) Development of common acceptable design standards and best
2 management practices for each type of fish enhancement project;

3 (2) An evaluation of the potential for using technical evaluation
4 teams in evaluating specific project proposals or stream reaches;

5 (3) A review of local government shoreline master plans to identify
6 and correct instances where the local plan does not acknowledge
7 potentially beneficial instream work;

8 (4) An evaluation of the potential for local governments to
9 incorporate fish enhancement projects into their comprehensive planning
10 process; and

11 (5) Continued work with the federal government agencies on federal
12 permitting for fish enhancement projects.

13 The department of fish and wildlife shall coordinate this joint
14 effort and shall report back to the legislature on the group's progress
15 by December 1, 1998.

16 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
17 preservation of the public peace, health, or safety, or support of the
18 state government and its existing public institutions, and takes effect
19 immediately.

--- END ---