

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE HOUSE BILL 2879

Chapter 249, Laws of 1998

55th Legislature
1998 Regular Session

FISH HABITAT ENHANCEMENT PROJECTS--REVIEW AND APPROVAL

EFFECTIVE DATE: 4/1/98

Passed by the House March 12, 1998
Yeas 98 Nays 0

CLYDE BALLARD
**Speaker of the
House of Representatives**

Passed by the Senate March 12, 1998
Yeas 48 Nays 0

BRAD OWEN
President of the Senate

Approved April 1, 1998

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 2879** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

April 1, 1998 - 2:48 p.m.

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 2879

AS AMENDED BY THE SENATE

Passed Legislature - 1998 Regular Session

State of Washington 55th Legislature 1998 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Buck, Butler, Chandler, DeBolt, Sehlin, Hatfield, McCune, Doumit, Kessler, Morris, Kenney, Constantine, Ogden, Regala, Tokuda, Anderson, Thompson and Conway)

Read first time 02/07/98. Referred to Committee on .

1 AN ACT Relating to facilitating the review and approval of fish
2 habitat enhancement projects; amending RCW 90.58.147, 35.63.230,
3 35A.63.250, 36.70.992, 36.70A.460, 43.21C.0382, and 89.08.470; adding
4 a new section to chapter 75.20 RCW; adding a new section to chapter
5 36.70 RCW; adding a new section to chapter 35.21 RCW; adding a new
6 section to chapter 35A.21 RCW; adding a new section to chapter 19.27
7 RCW; adding a new section to chapter 75.50 RCW; creating new sections;
8 and declaring an emergency.

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

10 NEW SECTION. **Sec. 1.** The legislature finds that fish habitat
11 enhancement projects play a key role in the state's salmon and
12 steelhead recovery efforts. The legislature finds that there are over
13 two thousand barriers to fish passage at road crossings throughout the
14 state, blocking fish access to as much as three thousand miles of
15 freshwater spawning and rearing habitat. The legislature further finds
16 that removal of these barriers and completion of other fish habitat
17 enhancement projects should be done in a cost-effective manner, which
18 includes providing technical assistance and training to people who will
19 undertake projects such as removal of barriers to salmon passage and

1 minimizing the expense and delays of various permitting processes. The
2 purpose of this act is to take immediate action to facilitate the
3 review and approval of fish habitat enhancement projects, to encourage
4 efforts that will continue to improve the process in the future, to
5 address known fish passage barriers immediately, and to develop over
6 time a comprehensive system to inventory and prioritize barriers on a
7 state-wide basis.

8 NEW SECTION. **Sec. 2.** The department of ecology permit assistant
9 center shall immediately modify the joint aquatic resource permit
10 application form to incorporate the permit process established in
11 section 3 of this act.

12 NEW SECTION. **Sec. 3.** A new section is added to chapter 75.20 RCW
13 to read as follows:

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

17 (a) A fish habitat enhancement project must be a project to
18 accomplish one or more of the following tasks:

19 (i) Elimination of human-made fish passage barriers, including
20 culvert repair and replacement;

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

26 (iii) Placement of woody debris or other instream structures that
27 benefit naturally reproducing fish stocks.

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

35 (b) A fish habitat enhancement project must be approved in one of
36 the following ways:

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

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

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

5 (iv) Through the review and approval process for the jobs for the
6 environment program;

7 (v) Through the review and approval process for conservation
8 district-sponsored projects, where the project complies with design
9 standards established by the conservation commission through
10 interagency agreement with the United States fish and wildlife service
11 and the natural resource conservation service;

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

14 (vii) Through other formal review and approval processes
15 established by the legislature.

16 (2) Fish habitat enhancement projects meeting the criteria of
17 subsection (1) of this section are expected to result in beneficial
18 impacts to the environment. Decisions pertaining to fish habitat
19 enhancement projects meeting the criteria of subsection (1) of this
20 section and being reviewed and approved according to the provisions of
21 this section are not subject to the requirements of RCW
22 43.21C.030(2)(c).

23 (3) Hydraulic project approval is required for projects that meet
24 the criteria of subsection (1) of this section and are being reviewed
25 and approved under this section. An applicant shall use a joint
26 aquatic resource permit application form developed by the department of
27 ecology permit assistance center to apply for approval under this
28 chapter. On the same day, the applicant shall provide copies of the
29 completed application form to the department and to each appropriate
30 local government. Local governments shall accept the application as
31 notice of the proposed project. The department shall provide a
32 fifteen-day comment period during which it will receive comments
33 regarding environmental impacts. In no more than forty-five days, the
34 department shall either issue hydraulic project approval, with or
35 without conditions, deny approval, or make a determination that the
36 review and approval process created by this section is not appropriate
37 for the proposed project. The department shall base this determination
38 on identification during the comment period of adverse impacts that
39 cannot be mitigated by hydraulic project approval. If the department

1 determines that the review and approval process created by this section
2 is not appropriate for the proposed project, the department shall
3 notify the applicant and the appropriate local governments of its
4 determination. The applicant may reapply for approval of the project
5 under other review and approval processes.

6 Any person aggrieved by the approval, denial, conditioning, or
7 modification of hydraulic project approval under this section may
8 formally appeal the decision to the hydraulic appeals board pursuant to
9 the provisions of this chapter.

10 (4) No local government may require permits or charge fees for fish
11 habitat enhancement projects that meet the criteria of subsection (1)
12 of this section and that are reviewed and approved according to the
13 provisions of this section.

14 **Sec. 4.** RCW 90.58.147 and 1995 c 333 s 1 are each amended to read
15 as follows:

16 (1) A public or private project that is designed to improve fish or
17 wildlife habitat or fish passage shall be exempt from the substantial
18 development permit requirements of this chapter when all of the
19 following apply:

20 ~~((1))~~ (a) The project has been approved by the department of fish
21 and wildlife;

22 ~~((2))~~ (b) The project has received hydraulic project approval by
23 the department of fish and wildlife pursuant to chapter 75.20 RCW; and

24 ~~((3))~~ (c) The local government has determined that the project is
25 substantially consistent with the local shoreline master program. The
26 local government shall make such determination in a timely manner and
27 provide it by letter to the project proponent.

28 (2) Fish habitat enhancement projects that conform to the
29 provisions of section 3 of this act are determined to be consistent
30 with local shoreline master programs.

31 **Sec. 5.** RCW 35.63.230 and 1995 c 378 s 8 are each amended to read
32 as follows:

33 A permit required under this chapter for a watershed restoration
34 project as defined in RCW 89.08.460 shall be processed in compliance
35 with RCW 89.08.450 through 89.08.510. A fish habitat enhancement
36 project meeting the criteria of section 3(1) of this act shall be

1 reviewed and approved according to the provisions of section 3 of this
2 act.

3 **Sec. 6.** RCW 35A.63.250 and 1995 c 378 s 9 are each amended to read
4 as follows:

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

11 **Sec. 7.** RCW 36.70.992 and 1995 c 378 s 10 are each amended to read
12 as follows:

13 A permit required under this chapter for a watershed restoration
14 project as defined in RCW 89.08.460 shall be processed in compliance
15 with RCW 89.08.450 through 89.08.510. A fish habitat enhancement
16 project meeting the criteria of section 3(1) of this act shall be
17 reviewed and approved according to the provisions of section 3 of this
18 act.

19 NEW SECTION. **Sec. 8.** A new section is added to chapter 36.70 RCW
20 to read as follows:

21 A county is not liable for adverse impacts resulting from a fish
22 enhancement project that meets the criteria of section 3 of this act
23 and has been permitted by the department of fish and wildlife.

24 NEW SECTION. **Sec. 9.** A new section is added to chapter 35.21 RCW
25 to read as follows:

26 A city or town is not liable for adverse impacts resulting from a
27 fish enhancement project that meets the criteria of section 3 of this
28 act and has been permitted by the department of fish and wildlife.

29 NEW SECTION. **Sec. 10.** A new section is added to chapter 35A.21
30 RCW to read as follows:

31 A code city is not liable for adverse impacts resulting from a fish
32 enhancement project that meets the criteria of section 3 of this act
33 and has been permitted by the department of fish and wildlife.

1 **Sec. 11.** RCW 36.70A.460 and 1995 c 378 s 11 are each amended to
2 read 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 habitat enhancement
6 project meeting the criteria of section 3(1) of this act shall be
7 reviewed and approved according to the provisions of section 3 of this
8 act.

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

11 Decisions pertaining to watershed restoration projects as defined
12 in RCW 89.08.460 are not subject to the requirements of RCW
13 43.21C.030(2)(c). Decisions pertaining to fish habitat enhancement
14 projects meeting the criteria of section 3(1) of this act and being
15 reviewed and approved according to the provisions of section 3 of this
16 act are not subject to the requirements of RCW 43.21C.030(2)(c).

17 **Sec. 13.** RCW 89.08.470 and 1995 c 378 s 3 are each amended to read
18 as follows:

19 (1) By January 1, 1996, the Washington conservation commission
20 shall develop, in consultation with other state agencies, tribes, and
21 local governments, a consolidated application process for permits for
22 a watershed restoration project developed by an agency or sponsored by
23 an agency on behalf of a volunteer organization. The consolidated
24 process shall include a single permit application form for use by all
25 responsible state and local agencies. The commission shall encourage
26 use of the consolidated permit application process by any federal
27 agency responsible for issuance of related permits. The permit
28 application forms to be consolidated shall include, at a minimum,
29 applications for: ~~((+1))~~ (a) Approvals related to water quality
30 standards under chapter 90.48 RCW; ~~((+2))~~ (b) hydraulic project
31 approvals under chapter 75.20 RCW; and ~~((+3))~~ (c) section 401 water
32 quality certifications under 33 U.S.C. Sec. 1341 and chapter 90.48 RCW.

33 (2) If a watershed restoration project is also a fish habitat
34 enhancement project that meets the criteria of section 3(1) of this
35 act, the project sponsor shall instead follow the permit review and
36 approval process established in section 3 of this act with regard to

1 state and local government permitting requirements. The sponsor shall
2 so notify state and local permitting authorities.

3 NEW SECTION. Sec. 14. A new section is added to chapter 19.27 RCW
4 to read as follows:

5 A fish habitat enhancement project meeting the criteria of section
6 3(1) of this act is not subject to grading permits, inspections, or
7 fees and shall be reviewed according to the provisions of section 3 of
8 this act.

9 NEW SECTION. Sec. 15. The legislature finds that, while the
10 process created in this act can improve the speed with which fish
11 habitat enhancement projects are put into place, additional efforts can
12 improve the review and approval process for the future. The
13 legislature directs the department of fish and wildlife, the
14 conservation commission, local governments, fish habitat enhancement
15 project applicants, and other interested parties to work together to
16 continue to improve the permitting review and approval process.
17 Specific efforts shall include the following:

18 (1) Development of common acceptable design standards, best
19 management practices, and standardized hydraulic project approval
20 conditions for each type of fish habitat enhancement project;

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

23 (3) An evaluation of techniques appropriate for restoration and
24 enhancement of pasture and crop land adjacent to riparian areas;

25 (4) A review of local government shoreline master plans to identify
26 and correct instances where the local plan does not acknowledge
27 potentially beneficial instream work;

28 (5) An evaluation of the potential for local governments to
29 incorporate fish habitat enhancement projects into their comprehensive
30 planning process; and

31 (6) Continued work with the federal government agencies on federal
32 permitting for fish habitat enhancement projects.

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

1 NEW SECTION. **Sec. 16.** A new section is added to chapter 75.50 RCW
2 to read as follows:

3 (1) The department of transportation is authorized to administer a
4 grant program to assist state agencies, local governments, private
5 landowners, tribes, and volunteer groups in identifying and removing
6 impediments to anadromous fish passage. The program shall be
7 administered consistent with the following:

8 (a) Eligible projects include corrective projects, inventory,
9 assessment, and prioritization efforts;

10 (b) Projects shall be subject to a competitive application process;

11 (c) Priority shall be given to projects that immediately increase
12 access to available and improved spawning and rearing habitat for
13 depressed, threatened, and endangered stocks. Priority shall also be
14 given to project applications that are coordinated with other efforts
15 within a watershed;

16 (d) All projects shall be reviewed and approved by the fish passage
17 barrier removal task force; and

18 (e) A match of at least twenty-five percent per project shall be
19 required. For local, private, and volunteer projects, in-kind
20 contributions may be counted toward the match requirement.

21 (2) The department of transportation shall proceed expeditiously in
22 implementing the grant program during the 1998 summer construction
23 season.

24 NEW SECTION. **Sec. 17.** By January 1, 1999, the fish passage
25 barrier removal task force as specified in RCW 75.50.160 shall report
26 to the legislature on its progress in implementing the provisions in
27 sections 16 and 19 of this act. The report shall also include
28 recommendations on future governance and administrative structures to
29 coordinate local, state, and private fish passage correction projects
30 and to administer state fish passage grants.

31 NEW SECTION. **Sec. 18.** This act is necessary for the immediate
32 preservation of the public peace, health, or safety, or support of the
33 state government and its existing public institutions, and takes effect
34 immediately.

 Passed the House March 12, 1998.

 Passed the Senate March 12, 1998.

 Approved by the Governor April 1, 1998.

 Filed in Office of Secretary of State April 1, 1998.