
SENATE BILL 6170

State of Washington

62nd Legislature

2012 Regular Session

By Senators Ranker, Hargrove, King, Hatfield, Harper, Shin, and Conway

Read first time 01/13/12. Referred to Committee on Energy, Natural Resources & Marine Waters.

1 AN ACT Relating to the working waterfront redevelopment jobs act;
2 amending RCW 77.55.021, 90.58.147, and 90.58.355; reenacting and
3 amending RCW 43.21B.110 and 43.21B.110; adding a new section to chapter
4 77.55 RCW; adding a new section to chapter 79.105 RCW; creating new
5 sections; providing an effective date; and providing an expiration
6 date.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that the state's
9 marine shorelines are a cornerstone of the state's wealth in both
10 environmental and economic values. The state's extensive coastal and
11 Puget Sound shorelines were the reason that the state has a rich
12 tradition of marine-related occupations and many communities today
13 still depend upon marine-related commerce and jobs for their economic
14 vitality.

15 The legislature further finds that shoreline ecological functions
16 have been degraded on many lands on which industrial and commercial
17 facilities have been operated, and that there exists many opportunities
18 for new or expanded commercial or industrial activities that offer both

1 new, economically beneficial reuse of the property, while also
2 restoring some of the lost ecological functions.

3 Therefore, it is the purpose of this act to provide a voluntary
4 alternative procedure for satisfying some of the state and local
5 regulatory approvals for job-creating projects involving redevelopment
6 on lands zoned for commercial and industrial uses and incorporating
7 within the project design elements that will provide a net benefit for
8 ecological functions on those lands.

9 NEW SECTION. **Sec. 2.** A new section is added to chapter 77.55 RCW
10 to read as follows:

11 (1) To be eligible for the permit review and approval process
12 created in this section, a marine areas redevelopment and restoration
13 project must:

14 (a) Be located on a site adjacent to or including marine shorelands
15 in which commercial and industrial uses are allowable uses under the
16 applicable city or county shoreline master program;

17 (b) Require at least fifty construction-related jobs and when
18 completed will generate at least ten jobs on an ongoing basis;

19 (c) Involve the redevelopment and reuse of lands on which previous
20 uses have substantially degraded shoreline ecological functions;

21 (d) Include elements that, when fully implemented, will lead to a
22 net contribution to shoreline ecological functions on a substantial
23 portion of the project site;

24 (e) Provide for protection of fish life;

25 (f) Be consistent with and further the goals and objectives of the
26 local government shoreline master program; and

27 (g) Be determined appropriate for review under this section under
28 the criteria adopted under subsection (6) of this section.

29 (2) No local government may require a substantial development
30 permit under chapter 90.58 RCW or impose fees or other conditions upon
31 the project under chapter 36.70A RCW for projects that meet the
32 criteria of subsection (1) of this section and that are reviewed and
33 approved according to the provisions of this section.

34 (3) An applicant seeking review and approval under this section
35 shall file with the department an application using the joint aquatic
36 resource permit application form, together with additional information
37 as the department may require to determine the project's eligibility

1 for review under this section and to determine whether a permit should
2 be issued. On the same day, the applicant shall provide copies of the
3 completed application form to the department of natural resources, the
4 department of ecology, and to the appropriate city or county
5 administering the applicable shoreline master program covering the
6 project site.

7 (4) The department shall provide a twenty-one day period in which
8 public comments are solicited, as well as comments from the department
9 of ecology, the city or county, and appropriate tribes. The department
10 may grant an extension of not more than an additional twenty-one days
11 for the receipt of comments, but may not thereafter delay review of the
12 application under subsection (5) of this section.

13 (5)(a) The department shall approve the application, approve the
14 application with mitigation conditions, deny approval of the
15 application, or determine that the review and approval process created
16 by this section is not appropriate for the proposed project, within
17 forty-five days from the end of the comment period as determined by the
18 department under subsection (4) of this section.

19 (b) The department shall approve the application when it determines
20 that the project meets the criteria provided under subsection (1) of
21 this section.

22 (6) The department shall determine that the review and approval
23 process created by this section is not appropriate for the proposed
24 project if the department, upon consideration of the comments
25 submitted, identifies public health and safety concerns or
26 environmental impacts that cannot be mitigated through conditions
27 placed upon the approval.

28 (7) If the department determines that the review and approval
29 process created by this section is not appropriate for the proposed
30 project, the department shall notify the applicant.

31 (8) The department's denial of a permit application or
32 determination that the application is not appropriate for review under
33 this section does not prevent the applicant from seeking approval of
34 the permits that would otherwise have not been required if the project
35 had been permitted under this section.

36 (9) Any person aggrieved by the approval, approval with conditions,
37 denial, or the modification of a permit under this section may appeal
38 the decision as provided in RCW 43.21B.110.

1 (10) For the purposes of this section, "marine permit" or "permit"
2 means the permit authorized to be issued to qualifying marine areas
3 redevelopment and restoration projects under this section.

4 **Sec. 3.** RCW 77.55.021 and 2010 c 210 s 27 are each amended to read
5 as follows:

6 (1) Except as provided in RCW 77.55.031, 77.55.051, section 2 of
7 this act, and RCW 77.55.041, in the event that any person or government
8 agency desires to undertake a hydraulic project, the person or
9 government agency shall, before commencing work thereon, secure the
10 approval of the department in the form of a permit as to the adequacy
11 of the means proposed for the protection of fish life.

12 (2) A complete written application for a permit may be submitted in
13 person or by registered mail and must contain the following:

14 (a) General plans for the overall project;

15 (b) Complete plans and specifications of the proposed construction
16 or work within the mean higher high water line in saltwater or within
17 the ordinary high water line in freshwater;

18 (c) Complete plans and specifications for the proper protection of
19 fish life; and

20 (d) Notice of compliance with any applicable requirements of the
21 state environmental policy act, unless otherwise provided for in this
22 chapter.

23 (3)(a) Protection of fish life is the only ground upon which
24 approval of a permit may be denied or conditioned. Approval of a
25 permit may not be unreasonably withheld or unreasonably conditioned.
26 Except as provided in this subsection and subsections (8), (10), and
27 (12) of this section, the department has forty-five calendar days upon
28 receipt of a complete application to grant or deny approval of a
29 permit. The forty-five day requirement is suspended if:

30 (i) After ten working days of receipt of the application, the
31 applicant remains unavailable or unable to arrange for a timely field
32 evaluation of the proposed project;

33 (ii) The site is physically inaccessible for inspection;

34 (iii) The applicant requests a delay; or

35 (iv) The department is issuing a permit for a storm water discharge
36 and is complying with the requirements of RCW 77.55.161(3)(b).

1 (b) Immediately upon determination that the forty-five day period
2 is suspended, the department shall notify the applicant in writing of
3 the reasons for the delay.

4 (c) The period of forty-five calendar days may be extended if the
5 permit is part of a multiagency permit streamlining effort and all
6 participating permitting agencies and the permit applicant agree to an
7 extended timeline longer than forty-five calendar days.

8 (4) If the department denies approval of a permit, the department
9 shall provide the applicant a written statement of the specific reasons
10 why and how the proposed project would adversely affect fish life.

11 (a) Except as provided in (b) of this subsection, issuance, denial,
12 conditioning, or modification of a permit shall be appealable to the
13 board within thirty days from the date of receipt of the decision as
14 provided in RCW 43.21B.230.

15 (b) Issuance, denial, conditioning, or modification of a permit may
16 be informally appealed to the department within thirty days from the
17 date of receipt of the decision. Requests for informal appeals must be
18 filed in the form and manner prescribed by the department by rule. A
19 permit decision that has been informally appealed to the department is
20 appealable to the board within thirty days from the date of receipt of
21 the department's decision on the informal appeal.

22 (5)(a) The permittee must demonstrate substantial progress on
23 construction of that portion of the project relating to the permit
24 within two years of the date of issuance.

25 (b) Approval of a permit is valid for a period of up to five years
26 from the date of issuance, except as provided in (c) of this subsection
27 and in RCW 77.55.151.

28 (c) A permit remains in effect without need for periodic renewal
29 for hydraulic projects that divert water for agricultural irrigation or
30 stock watering purposes and that involve seasonal construction or other
31 work. A permit for streambank stabilization projects to protect farm
32 and agricultural land as defined in RCW 84.34.020 remains in effect
33 without need for periodic renewal if the problem causing the need for
34 the streambank stabilization occurs on an annual or more frequent
35 basis. The permittee must notify the appropriate agency before
36 commencing the construction or other work within the area covered by
37 the permit.

1 (6) The department may, after consultation with the permittee,
2 modify a permit due to changed conditions. The modification is
3 appealable as provided in subsection (4) of this section. For
4 hydraulic projects that divert water for agricultural irrigation or
5 stock watering purposes, or when the hydraulic project or other work is
6 associated with streambank stabilization to protect farm and
7 agricultural land as defined in RCW 84.34.020, the burden is on the
8 department to show that changed conditions warrant the modification in
9 order to protect fish life.

10 (7) A permittee may request modification of a permit due to changed
11 conditions. The request must be processed within forty-five calendar
12 days of receipt of the written request. A decision by the department
13 is appealable as provided in subsection (4) of this section. For
14 hydraulic projects that divert water for agricultural irrigation or
15 stock watering purposes, or when the hydraulic project or other work is
16 associated with streambank stabilization to protect farm and
17 agricultural land as defined in RCW 84.34.020, the burden is on the
18 permittee to show that changed conditions warrant the requested
19 modification and that such a modification will not impair fish life.

20 (8)(a) The department, the county legislative authority, or the
21 governor may declare and continue an emergency. If the county
22 legislative authority declares an emergency under this subsection, it
23 shall immediately notify the department. A declared state of emergency
24 by the governor under RCW 43.06.010 shall constitute a declaration
25 under this subsection.

26 (b) The department, through its authorized representatives, shall
27 issue immediately, upon request, oral approval for a stream crossing,
28 or work to remove any obstructions, repair existing structures, restore
29 streambanks, protect fish life, or protect property threatened by the
30 stream or a change in the stream flow without the necessity of
31 obtaining a written permit prior to commencing work. Conditions of the
32 emergency oral permit must be established by the department and reduced
33 to writing within thirty days and complied with as provided for in this
34 chapter.

35 (c) The department may not require the provisions of the state
36 environmental policy act, chapter 43.21C RCW, to be met as a condition
37 of issuing a permit under this subsection.

1 (9) All state and local agencies with authority under this chapter
2 to issue permits or other authorizations in connection with emergency
3 water withdrawals and facilities authorized under RCW 43.83B.410 shall
4 expedite the processing of such permits or authorizations in keeping
5 with the emergency nature of such requests and shall provide a decision
6 to the applicant within fifteen calendar days of the date of
7 application.

8 (10) The department or the county legislative authority may
9 determine an imminent danger exists. The county legislative authority
10 shall notify the department, in writing, if it determines that an
11 imminent danger exists. In cases of imminent danger, the department
12 shall issue an expedited written permit, upon request, for work to
13 remove any obstructions, repair existing structures, restore banks,
14 protect fish resources, or protect property. Expedited permit requests
15 require a complete written application as provided in subsection (2) of
16 this section and must be issued within fifteen calendar days of the
17 receipt of a complete written application. Approval of an expedited
18 permit is valid for up to sixty days from the date of issuance. The
19 department may not require the provisions of the state environmental
20 policy act, chapter 43.21C RCW, to be met as a condition of issuing a
21 permit under this subsection.

22 (11)(a) For any property, except for property located on a marine
23 shoreline, that has experienced at least two consecutive years of
24 flooding or erosion that has damaged or has threatened to damage a
25 major structure, water supply system, septic system, or access to any
26 road or highway, the county legislative authority may determine that a
27 chronic danger exists. The county legislative authority shall notify
28 the department, in writing, when it determines that a chronic danger
29 exists. In cases of chronic danger, the department shall issue a
30 permit, upon request, for work necessary to abate the chronic danger by
31 removing any obstructions, repairing existing structures, restoring
32 banks, restoring road or highway access, protecting fish resources, or
33 protecting property. Permit requests must be made and processed in
34 accordance with subsections (2) and (3) of this section.

35 (b) Any projects proposed to address a chronic danger identified
36 under (a) of this subsection that satisfies the project description
37 identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions

1 of the state environmental policy act, chapter 43.21C RCW. However,
2 the project is subject to the review process established in RCW
3 77.55.181(3) as if it were a fish habitat improvement project.

4 (12) The department may issue an expedited written permit in those
5 instances where normal permit processing would result in significant
6 hardship for the applicant or unacceptable damage to the environment.
7 Expedited permit requests require a complete written application as
8 provided in subsection (2) of this section and must be issued within
9 fifteen calendar days of the receipt of a complete written application.
10 Approval of an expedited permit is valid for up to sixty days from the
11 date of issuance. The department may not require the provisions of the
12 state environmental policy act, chapter 43.21C RCW, to be met as a
13 condition of issuing a permit under this subsection.

14 (13) A marine areas project issued a marine permit under section 2
15 of this act is exempt from the permit required by this section.

16 **Sec. 4.** RCW 90.58.147 and 2003 c 39 s 49 are each amended to read
17 as follows:

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

22 (a) The project has been approved by the department of fish and
23 wildlife;

24 (b) The project has received hydraulic project approval by the
25 department of fish and wildlife pursuant to chapter 77.55 RCW; and

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

30 (2) Fish habitat enhancement projects that conform to the
31 provisions of RCW (~~77.55.290~~) 77.55.181 are determined to be
32 consistent with local shoreline master programs.

33 (3) A marine areas project issued a marine permit under section 2
34 of this act is exempt from obtaining any permits and other approvals
35 required by this chapter or the local shoreline master program.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 79.105 RCW
2 to read as follows:

3 The department shall provide a priority in processing requests for
4 the use or lease of state-owned aquatic lands for projects permitted or
5 under review pursuant to section 2 of this act. Upon receipt of an
6 application for an aquatic use authorization or a lease, the department
7 shall process the request within sixty days, unless the department
8 notifies the applicant of the reasons for which additional time will be
9 required to process the application.

10 **Sec. 6.** RCW 43.21B.110 and 2010 c 210 s 7 and 2010 c 84 s 2 are
11 each reenacted and amended to read as follows:

12 (1) The hearings board shall only have jurisdiction to hear and
13 decide appeals from the following decisions of the department, the
14 director, local conservation districts, the air pollution control
15 boards or authorities as established pursuant to chapter 70.94 RCW,
16 local health departments, the department of natural resources, the
17 department of fish and wildlife, and the parks and recreation
18 commission:

19 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
20 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090,
21 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

22 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
23 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
24 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

25 (c) A final decision by the department or director made under
26 chapter 183, Laws of 2009.

27 (d) Except as provided in RCW 90.03.210(2), the issuance,
28 modification, or termination of any permit, certificate, or license by
29 the department or any air authority in the exercise of its
30 jurisdiction, including the issuance or termination of a waste disposal
31 permit, the denial of an application for a waste disposal permit, the
32 modification of the conditions or the terms of a waste disposal permit,
33 or a decision to approve or deny an application for a solid waste
34 permit exemption under RCW 70.95.300.

35 (e) Decisions of local health departments regarding the grant or
36 denial of solid waste permits pursuant to chapter 70.95 RCW.

1 (f) Decisions of local health departments regarding the issuance
2 and enforcement of permits to use or dispose of biosolids under RCW
3 70.95J.080.

4 (g) Decisions of the department regarding waste-derived fertilizer
5 or micronutrient fertilizer under RCW 15.54.820, and decisions of the
6 department regarding waste-derived soil amendments under RCW 70.95.205.

7 (h) Decisions of local conservation districts related to the denial
8 of approval or denial of certification of a dairy nutrient management
9 plan; conditions contained in a plan; application of any dairy nutrient
10 management practices, standards, methods, and technologies to a
11 particular dairy farm; and failure to adhere to the plan review and
12 approval timelines in RCW 90.64.026.

13 (i) Any other decision by the department or an air authority which
14 pursuant to law must be decided as an adjudicative proceeding under
15 chapter 34.05 RCW.

16 (j) Decisions of the department of natural resources, the
17 department of fish and wildlife, and the department that are reviewable
18 under chapter 76.09 RCW, and the department of natural resources'
19 appeals of county, city, or town objections under RCW 76.09.050(7).

20 (k) Forest health hazard orders issued by the commissioner of
21 public lands under RCW 76.06.180.

22 (l) Decisions of the department of fish and wildlife to issue,
23 deny, condition, or modify a hydraulic project approval permit under
24 chapter 77.55 RCW.

25 (m) Decisions of the department of fish and wildlife to issue,
26 deny, condition, or modify a marine permit under section 2 of this act.

27 (n) Decisions of the department of natural resources that are
28 reviewable under RCW 78.44.270.

29 ((+n)) (o) Decisions of a state agency that is an authorized
30 public entity under RCW 79.100.010 to take temporary possession or
31 custody of a vessel or to contest the amount of reimbursement owed that
32 are reviewable under RCW 79.100.120.

33 (2) The following hearings shall not be conducted by the hearings
34 board:

35 (a) Hearings required by law to be conducted by the shorelines
36 hearings board pursuant to chapter 90.58 RCW.

37 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
38 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

1 (c) Appeals of decisions by the department under RCW 90.03.110 and
2 90.44.220.

3 (d) Hearings conducted by the department to adopt, modify, or
4 repeal rules.

5 ~~((e) Appeals of decisions by the department as provided in chapter
6 43.21B RCW.))~~

7 (3) Review of rules and regulations adopted by the hearings board
8 shall be subject to review in accordance with the provisions of the
9 administrative procedure act, chapter 34.05 RCW.

10 **Sec. 7.** RCW 43.21B.110 and 2010 c 210 s 8 and 2010 c 84 s 3 are
11 each reenacted and amended to read as follows:

12 (1) The hearings board shall only have jurisdiction to hear and
13 decide appeals from the following decisions of the department, the
14 director, local conservation districts, the air pollution control
15 boards or authorities as established pursuant to chapter 70.94 RCW,
16 local health departments, the department of natural resources, the
17 department of fish and wildlife, and the parks and recreation
18 commission:

19 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
20 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090,
21 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

22 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
23 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
24 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

25 (c) Except as provided in RCW 90.03.210(2), the issuance,
26 modification, or termination of any permit, certificate, or license by
27 the department or any air authority in the exercise of its
28 jurisdiction, including the issuance or termination of a waste disposal
29 permit, the denial of an application for a waste disposal permit, the
30 modification of the conditions or the terms of a waste disposal permit,
31 or a decision to approve or deny an application for a solid waste
32 permit exemption under RCW 70.95.300.

33 (d) Decisions of local health departments regarding the grant or
34 denial of solid waste permits pursuant to chapter 70.95 RCW.

35 (e) Decisions of local health departments regarding the issuance
36 and enforcement of permits to use or dispose of biosolids under RCW
37 70.95J.080.

1 (f) Decisions of the department regarding waste-derived fertilizer
2 or micronutrient fertilizer under RCW 15.54.820, and decisions of the
3 department regarding waste-derived soil amendments under RCW 70.95.205.

4 (g) Decisions of local conservation districts related to the denial
5 of approval or denial of certification of a dairy nutrient management
6 plan; conditions contained in a plan; application of any dairy nutrient
7 management practices, standards, methods, and technologies to a
8 particular dairy farm; and failure to adhere to the plan review and
9 approval timelines in RCW 90.64.026.

10 (h) Any other decision by the department or an air authority which
11 pursuant to law must be decided as an adjudicative proceeding under
12 chapter 34.05 RCW.

13 (i) Decisions of the department of natural resources, the
14 department of fish and wildlife, and the department that are reviewable
15 under chapter 76.09 RCW, and the department of natural resources'
16 appeals of county, city, or town objections under RCW 76.09.050(7).

17 (j) Forest health hazard orders issued by the commissioner of
18 public lands under RCW 76.06.180.

19 (k) Decisions of the department of fish and wildlife to issue,
20 deny, condition, or modify a hydraulic project approval permit under
21 chapter 77.55 RCW.

22 (l) Decisions of the department of fish and wildlife to issue,
23 deny, condition, or modify a marine permit under section 2 of this act.

24 (m) Decisions of the department of natural resources that are
25 reviewable under RCW 78.44.270.

26 ((~~m~~)) (n) Decisions of a state agency that is an authorized
27 public entity under RCW 79.100.010 to take temporary possession or
28 custody of a vessel or to contest the amount of reimbursement owed that
29 are reviewable under RCW 79.100.120.

30 (2) The following hearings shall not be conducted by the hearings
31 board:

32 (a) Hearings required by law to be conducted by the shorelines
33 hearings board pursuant to chapter 90.58 RCW.

34 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
35 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

36 (c) Appeals of decisions by the department under RCW 90.03.110 and
37 90.44.220.

1 (d) Hearings conducted by the department to adopt, modify, or
2 repeal rules.

3 ~~((e) Appeals of decisions by the department as provided in chapter
4 43.211 RCW.))~~

5 (3) Review of rules and regulations adopted by the hearings board
6 shall be subject to review in accordance with the provisions of the
7 administrative procedure act, chapter 34.05 RCW.

8 **Sec. 8.** RCW 90.58.355 and 1994 c 257 s 20 are each amended to read
9 as follows:

10 The procedural requirements of this chapter shall not apply to any
11 person:

12 (1) Conducting a remedial action at a facility pursuant to a
13 consent decree, order, or agreed order issued pursuant to chapter
14 70.105D RCW, or to the department of ecology when it conducts a
15 remedial action under chapter 70.105D RCW. The department of ecology
16 shall ensure compliance with the substantive requirements of this
17 chapter through the consent decree, order, or agreed order issued
18 pursuant to chapter 70.105D RCW, or during the department-conducted
19 remedial action, through the procedures developed by the department
20 pursuant to RCW 70.105D.090; or

21 (2) Implementing best management practices in accordance with a
22 storm water pollution prevention plan for an existing facility to meet
23 requirements of a national pollutant discharge elimination system storm
24 water general permit. The local government and department of ecology
25 shall ensure compliance with the substantive requirements of this
26 chapter.

27 NEW SECTION. **Sec. 9.** Section 6 of this act expires June 30, 2019.

28 NEW SECTION. **Sec. 10.** Section 7 of this act takes effect June 30,
29 2019.

30 NEW SECTION. **Sec. 11.** This act shall be known and may be cited as
31 the "working waterfront redevelopment jobs act."

--- END ---