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SUBSTITUTE HOUSE BILL 1275

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State of Washington

65th Legislature

2017 Regular Session

**By** House Agriculture & Natural Resources (originally sponsored by Representatives Blake, Wilcox, Chapman, MacEwen, J. Walsh, Orcutt, Buys, Pettigrew, Fitzgibbon, Haler, Condotta, and Muri)

READ FIRST TIME 02/17/17.

1 AN ACT Relating to including fish passage barrier removal  
2 projects that comply with the forest practices rules in the  
3 streamlined permit process provided in RCW 77.55.181; and amending  
4 RCW 77.55.181.

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

6 **Sec. 1.** RCW 77.55.181 and 2014 c 120 s 1 are each amended to  
7 read as follows:

8 (1)(a) In order to receive the permit review and approval process  
9 created in this section, a fish habitat enhancement project must meet  
10 the criteria under this section and must be a project to accomplish  
11 one or more of the following tasks:

12 (i) Elimination of human-made or caused fish passage barriers,  
13 including:

14 (A) Culvert repair and replacement; and

15 (B) Fish passage barrier removal projects that comply with the  
16 forest practices rules, as the term "forest practices rules" is  
17 defined in RCW 76.09.020;

18 (ii) Restoration of an eroded or unstable stream bank employing  
19 the principle of bioengineering, including limited use of rock as a  
20 stabilization only at the toe of the bank, and with primary emphasis

1 on using native vegetation to control the erosive forces of flowing  
2 water; or

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

5 (b) The department shall develop size or scale threshold tests to  
6 determine if projects accomplishing any of these tasks should be  
7 evaluated under the process created in this section or under other  
8 project review and approval processes. A project proposal shall not  
9 be reviewed under the process created in this section if the  
10 department determines that the scale of the project raises concerns  
11 regarding public health and safety.

12 (c) A fish habitat enhancement project must be approved in one of  
13 the following ways in order to receive the permit review and approval  
14 process created in this section:

15 (i) By the department pursuant to chapter 77.95 or 77.100 RCW;

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

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

20 (iv) Through the review and approval process for the jobs for the  
21 environment program;

22 (v) Through the review and approval process for conservation  
23 district-sponsored projects, where the project complies with design  
24 standards established by the conservation commission through  
25 interagency agreement with the United States fish and wildlife  
26 service and the natural resource conservation service;

27 (vi) Through a formal grant program established by the  
28 legislature or the department for fish habitat enhancement or  
29 restoration;

30 (vii) Through the department of transportation's environmental  
31 retrofit program as a stand-alone fish passage barrier correction  
32 project;

33 (viii) Through a local, state, or federally approved fish barrier  
34 removal grant program designed to assist local governments in  
35 implementing stand-alone fish passage barrier corrections;

36 (ix) By a city or county for a stand-alone fish passage barrier  
37 correction project funded by the city or county; (~~and~~)

38 (x) Through the approval process established for forest practices  
39 hydraulic projects in chapter 76.09 RCW; or

1        (xi) Through other formal review and approval processes  
2 established by the legislature.

3        (2) Fish habitat enhancement projects meeting the criteria of  
4 subsection (1) of this section are expected to result in beneficial  
5 impacts to the environment. Decisions pertaining to fish habitat  
6 enhancement projects meeting the criteria of subsection (1) of this  
7 section and being reviewed and approved according to the provisions  
8 of this section are not subject to the requirements of RCW  
9 43.21C.030(2)(c).

10        (3)(a) A permit is required for projects that meet the criteria  
11 of subsection (1) of this section and are being reviewed and approved  
12 under this section. An applicant shall use a joint aquatic resource  
13 permit application form developed by the office of regulatory  
14 assistance to apply for approval under this chapter. On the same day,  
15 the applicant shall provide copies of the completed application form  
16 to the department and to each appropriate local government.  
17 Applicants for a forest practices hydraulic project that are not  
18 otherwise required to submit a joint aquatic resource permit  
19 application must submit a copy of their forest practices application  
20 to the appropriate local government.

21        (b) Local governments shall accept the application identified in  
22 this section as notice of the proposed project. (~~The department~~) A  
23 local government shall (~~provide~~) be provided with a fifteen-day  
24 comment period during which it (~~will receive~~) may transmit comments  
25 regarding environmental impacts to the department or, for forest  
26 practices hydraulic projects, to the department of natural resources.

27        (c) (~~Within forty-five days~~) Except for forest practices  
28 hydraulic projects, the department shall either issue a permit, with  
29 or without conditions, deny approval, or make a determination that  
30 the review and approval process created by this section is not  
31 appropriate for the proposed project within forty-five days. The  
32 department shall base this determination on identification during the  
33 comment period of adverse impacts that cannot be mitigated by the  
34 conditioning of a permit. Permitting decisions over forest practices  
35 hydraulic approvals must be made consistent with chapter 76.09 RCW.

36        (d) If the department determines that the review and approval  
37 process created by this section is not appropriate for the proposed  
38 project, the department shall notify the applicant and the  
39 appropriate local governments of its determination. The applicant may

1 reapply for approval of the project under other review and approval  
2 processes.

3 (e) Any person aggrieved by the approval, denial, conditioning,  
4 or modification of a permit other than a forest practices hydraulic  
5 project under this section may appeal the decision as provided in RCW  
6 77.55.021(8). Appeals of a forest practices hydraulic project may be  
7 made as provided in chapter 76.09 RCW.

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

12 (5) No civil liability may be imposed by any court on the state  
13 or its officers and employees for any adverse impacts resulting from  
14 a fish enhancement project permitted by the department or the  
15 department of natural resources under the criteria of this section  
16 except upon proof of gross negligence or willful or wanton  
17 misconduct.

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