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**ENGROSSED HOUSE BILL 1187**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Representatives Dent, Blake, Chandler, Kretz, Schmick, and Bergquist

Read first time 01/16/19. Referred to Committee on Rural Development, Agriculture, & Natural Resources.

1 AN ACT Relating to revising hydraulic project eligibility  
2 standards under RCW 77.55.181 for conservation district-sponsored  
3 fish habitat enhancement projects; and amending RCW 77.55.181.

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

5 **Sec. 1.** RCW 77.55.181 and 2019 c 150 s 1 are each amended to  
6 read as follows:

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

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

13 (A) Culvert repair and replacement; and

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

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

1 (iii) Placement of woody debris or other instream structures that  
2 benefit naturally reproducing fish stocks; or

3 (iv) Restoration of native kelp and eelgrass beds and restoring  
4 native oysters.

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)) By  
27 conservation districts as conservation district-sponsored fish  
28 habitat enhancement or restoration projects;~~

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

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

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

38 (ix) By a city or county for a stand-alone fish passage barrier  
39 correction project funded by the city or county;

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

3 (xi) Through other formal review and approval processes  
4 established by the legislature.

5 (2) Fish habitat enhancement projects meeting the criteria of  
6 subsection (1) of this section are expected to result in beneficial  
7 impacts to the environment. Decisions pertaining to fish habitat  
8 enhancement projects meeting the criteria of subsection (1) of this  
9 section and being reviewed and approved according to the provisions  
10 of this section are not subject to the requirements of RCW  
11 43.21C.030(2)(c).

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

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

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

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

7 (e) Any person aggrieved by the approval, denial, conditioning,  
8 or modification of a permit other than a forest practices hydraulic  
9 project under this section may appeal the decision as provided in RCW  
10 77.55.021(8). Appeals of a forest practices hydraulic project may be  
11 made as provided in chapter 76.09 RCW.

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

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

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