
SUBSTITUTE HOUSE BILL 1579

State of Washington

66th Legislature

2019 Regular Session

By House Rural Development, Agriculture, & Natural Resources (originally sponsored by Representatives Fitzgibbon, Peterson, Lekanoff, Doglio, Macri, Stonier, Tharinger, Stanford, Jinkins, Robinson, Pollet, Valdez, Cody, Kloba, Slatter, Frame, and Davis; by request of Office of the Governor)

READ FIRST TIME 02/08/19.

1 AN ACT Relating to implementing recommendations of the southern
2 resident killer whale task force related to increasing chinook
3 abundance; amending RCW 77.32.010 and 43.21B.110; adding a new
4 section to chapter 77.08 RCW; adding new sections to chapter 77.55
5 RCW; creating a new section; repealing RCW 77.55.141 and 77.55.291;
6 and prescribing penalties.

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

8 NEW SECTION. **Sec. 1.** (1) The legislature finds that the
9 population of southern resident killer whales has declined in recent
10 years and currently stands at a thirty-year low of seventy-four
11 animals.

12 (2) The governor convened the southern resident killer whale task
13 force after the 2018 legislative session to study and identify
14 actions that could be taken to help sustain and recover this
15 important species. In the course of its work, the task force found
16 that chinook salmon compose the largest portion of the whales' diet,
17 and are therefore critical to the recovery of the species. Further,
18 several runs of chinook salmon in Washington state are listed under
19 the federal endangered species act, making chinook recovery all the
20 more urgent.

1 (3) The task force identified four overarching southern resident
2 killer whale recovery goals and adopted several recommendations for
3 specific actions under each goal. Goal one identified by the task
4 force is to increase chinook abundance, and actions under that goal
5 relate to habitat protection, protection of chinook prey, such as
6 forage fish, and reducing impacts of nonnative chinook predators.

7 (4) To address the need identified by the task force to increase
8 chinook abundance, the legislature intends to take initial, important
9 steps consistent with recommendations made by the governor's southern
10 resident killer whale task force.

11 NEW SECTION. **Sec. 2.** A new section is added to chapter 77.08
12 RCW to read as follows:

13 The commission shall adopt rules to liberalize bag limits for
14 bass, walleye, and channel catfish in all anadromous waters of the
15 state in order to reduce the predation risk to salmon smolts.

16 **Sec. 3.** RCW 77.32.010 and 2014 c 48 s 26 are each amended to
17 read as follows:

18 (1) Except as otherwise provided in this chapter or department
19 rule, a recreational license issued by the director is required to
20 hunt, fish, or take wildlife or seaweed. A recreational fishing or
21 shellfish license is not required for carp, freshwater smelt, and
22 crawfish, and a hunting license is not required for bullfrogs.

23 (2) A pass or permit issued under RCW 79A.80.020, 79A.80.030, or
24 79A.80.040 is required to park or operate a motor vehicle on a
25 recreation site or lands, as defined in RCW 79A.80.010.

26 (3) The commission may, by rule, indicate that a fishing permit
27 issued to a nontribal member by the Colville Tribes shall satisfy the
28 license requirements in subsection (1) of this section on the waters
29 of Lake Rufus Woods and on the north shore of Lake Rufus Woods, and
30 that a Colville Tribes tribal member identification card shall
31 satisfy the license requirements in subsection (1) of this section on
32 all waters of Lake Rufus Woods.

33 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.55
34 RCW to read as follows:

35 (1) A person proposing construction or other work landward of the
36 ordinary high water line that will use, divert, obstruct, or change
37 the natural flow or bed of state waters shall submit a permit

1 application to the department. However, if a person is unsure about
2 whether the work requires a permit, they may request a preapplication
3 determination from the department. The department must evaluate the
4 proposed work and determine if the work is a hydraulic project and,
5 if so, whether a permit from the department is required to ensure
6 adequate protection of fish life.

7 (2) The preapplication determination request must be submitted
8 through the department's online permitting system and must contain:

9 (a) A description of the proposed project;

10 (b) A map showing the location of the project site; and

11 (c) Preliminary plans and specifications of the proposed
12 construction or work, if available.

13 (3) The department shall provide tribes and local governments a
14 seven calendar day review and comment period. The department shall
15 consider all applicable written comments received before issuing a
16 determination.

17 (4) The department shall issue a written determination, including
18 the rationale for the decision, within twenty-one calendar days of
19 receiving the request.

20 (5) Determinations made according to the provisions of this
21 section are not subject to the requirements of chapter 43.21C RCW.

22 NEW SECTION. **Sec. 5.** A new section is added to chapter 77.55
23 RCW to read as follows:

24 (1) When the department determines that a violation of this
25 chapter, or of any of the rules that implement this chapter, has
26 occurred or is about to occur, it shall first attempt to achieve
27 voluntary compliance. The department shall offer information and
28 technical assistance to the project proponent, identifying one or
29 more means to accomplish the project proponent's purposes within the
30 framework of the law. The department shall provide a reasonable
31 timeline to achieve voluntary compliance that takes into
32 consideration factors specific to the violation, such as the
33 complexity of the hydraulic project, the actual or potential harm to
34 fish life or fish habitat, and the environmental conditions at the
35 time.

36 (2) If a person violates this chapter, or any of the rules that
37 implement this chapter, or deviates from a permit, the department may
38 issue a notice of correction in accordance with chapter 43.05 RCW, a
39 notice of violation in accordance with chapter 43.05 RCW, a stop work

1 order, a notice to comply, or a notice of civil penalty as authorized
2 by law and subject to chapter 43.05 RCW and RCW 34.05.110.

3 (3) For purposes of this section, the term "project proponent"
4 means a person who has applied for a hydraulic project approval, a
5 person identified as an authorized agent on an application for a
6 hydraulic project approval, a person who has obtained a hydraulic
7 project approval, or a person who undertakes a hydraulic project
8 without a hydraulic project approval.

9 (4) This section does not apply to a project, or to that portion
10 of a project, that has received a forest practices hydraulic project
11 permit from the department of natural resources pursuant to chapter
12 76.09 RCW.

13 NEW SECTION. **Sec. 6.** A new section is added to chapter 77.55
14 RCW to read as follows:

15 (1) The department may serve upon a project proponent a stop work
16 order, which is a final order of the department, if:

17 (a) There is any violation of this chapter or of the rules
18 implementing this chapter;

19 (b) There is a deviation from the hydraulic project approval; or

20 (c) Immediate action is necessary to prevent continuation of or
21 to avoid more than minor harm to fish life or fish habitat.

22 (2) (a) The stop work order must set forth:

23 (i) The specific nature, extent, and time of the violation,
24 deviation, harm, or potential harm;

25 (ii) The specific course of action needed to correct or prevent a
26 continuing violation, deviation, harm, or potential harm; and

27 (iii) The right to an appeal.

28 (b) A stop work order may require that any project proponent stop
29 all work connected with the violation until corrective action is
30 taken.

31 (3) Within five business days of issuing the stop work order, the
32 department shall mail a copy of the stop work order to the last known
33 address of any project proponent, to the last known address of the
34 owner of the land on which the hydraulic project is located, and to
35 the local jurisdiction in which the hydraulic project is located.
36 Substantial compliance with these mailing requirements is deemed
37 satisfactory compliance with this subsection. For purposes of this
38 subsection, "substantial compliance" means mailing to the last known
39 address of the owner of the land on which the hydraulic project is

1 located, to the local jurisdiction in which the hydraulic project is
2 located, and to the last known address of any project proponent who
3 has applied for a hydraulic project approval, who is identified as an
4 authorized agent on an application for a hydraulic project approval,
5 or who has obtained a hydraulic project approval.

6 (4) Issuance of a stop work order may be informally appealed by a
7 project proponent who was served with the stop work order or who
8 received a copy of the stop work order from the department, or by the
9 owner of the land on which the hydraulic project is located, to the
10 department within thirty days from the date of receipt of the stop
11 work order. Requests for informal appeal must be filed in the form
12 and manner prescribed by the department by rule. A stop work order
13 that has been informally appealed to the department is appealable to
14 the board within thirty days from the date of receipt of the
15 department's decision on the informal appeal.

16 (5) The project proponent who was served with the stop work order
17 or who received a copy of the stop work order from the department, or
18 the owner of the land on which the hydraulic project is located, may
19 commence an appeal to the board within thirty days from the date of
20 receipt of the stop work order. If such an appeal is commenced, the
21 proceeding is an adjudicative proceeding under the administrative
22 procedure act, chapter 34.05 RCW. The recipient of the stop work
23 order must comply with the order of the department immediately upon
24 being served, but the board may stay, modify, or discontinue the
25 order, upon motion, under such conditions as the board may impose.

26 (6) This section does not apply to a project, or to that portion
27 of a project, that has received a forest practices hydraulic project
28 permit from the department of natural resources pursuant to chapter
29 76.09 RCW.

30 (7) For the purposes of this section, "project proponent" has the
31 same meaning as defined in section 5(3) of this act.

32 NEW SECTION. **Sec. 7.** A new section is added to chapter 77.55
33 RCW to read as follows:

34 (1)(a) If a violation of this chapter or of the rules
35 implementing this chapter, a deviation from the hydraulic project
36 approval, damage to fish life or fish habitat, or potential damage to
37 fish life or fish habitat, has occurred and the department determines
38 that a stop work order is unnecessary, the department may issue and

1 serve upon a project proponent a notice to comply, which must clearly
2 set forth:

- 3 (i) The nature, extent, date, and time of the violation;
- 4 (ii) Any necessary corrective action; and
- 5 (iii) The right to an appeal.

6 (b) The notice to comply may require that any project proponent
7 take corrective action to prevent, correct, or compensate for adverse
8 impacts to fish life or fish habitat.

9 (2) Within five business days of issuing the notice to comply,
10 the department shall mail a copy of the notice to comply to the last
11 known address of any project proponent, to the last known address of
12 the owner of the land on which the hydraulic project is located, and
13 to the local jurisdiction in which the hydraulic project is located.
14 Substantial compliance with these mailing requirements is deemed
15 satisfactory compliance with this subsection. For purposes of this
16 subsection, "substantial compliance" means mailing to the last known
17 address of the owner of the land on which the hydraulic project is
18 located, to the local jurisdiction in which the hydraulic project is
19 located, and to the last known address of any project proponent who
20 has applied for a hydraulic project approval, who is identified as an
21 authorized agent on an application for a hydraulic project approval,
22 or who has obtained a hydraulic project approval.

23 (3) Issuance of a notice to comply may be informally appealed by
24 a project proponent who was served with the notice to comply or who
25 received a copy of the notice to comply from the department, or by
26 the owner of the land on which the hydraulic project is located, to
27 the department within thirty days from the date of receipt of the
28 notice to comply. Requests for informal appeal must be filed in the
29 form and manner prescribed by the department by rule. A notice to
30 comply that has been informally appealed to the department is
31 appealable to the board within thirty days from the date of receipt
32 of the department's decision on the informal appeal.

33 (4) The project proponent who was served with the notice to
34 comply, the project proponent who received a copy of the notice to
35 comply from the department, or the owner of the land on which the
36 hydraulic project is located may commence an appeal to the board
37 within thirty days from the date of receipt of the notice to comply.
38 If such an appeal is commenced, the proceeding is an adjudicative
39 proceeding under the administrative procedure act, chapter 34.05 RCW.
40 The recipient of the notice to comply must comply with the notice to

1 comply immediately upon being served, but the board may stay, modify,
2 or discontinue the notice to comply, upon motion, under such
3 conditions as the board may impose.

4 (5) This section does not apply to a project, or to that portion
5 of a project, that has received a forest practices hydraulic project
6 permit from the department of natural resources pursuant to chapter
7 76.09 RCW.

8 (6) For the purposes of this section, "project proponent" has the
9 same meaning as defined in section 5(3) of this act.

10 NEW SECTION. **Sec. 8.** A new section is added to chapter 77.55
11 RCW to read as follows:

12 (1) The department may levy civil penalties of up to ten thousand
13 dollars for every violation of this chapter or of the rules that
14 implement this chapter. Each and every violation is a separate and
15 distinct civil offense.

16 (2) The penalty provided must be imposed by notice in writing by
17 the department, provided either by certified mail or by personal
18 service, to the person incurring the penalty and to the local
19 jurisdiction in which the hydraulic project is located, describing
20 the violation. The civil penalty notice must set forth:

21 (a) The basis for the penalty;

22 (b) The amount of the penalty; and

23 (c) The right of the person incurring the penalty to appeal the
24 civil penalty.

25 (3)(a) Except as provided in (b) of this subsection, any person
26 incurring any penalty under this chapter may appeal the penalty to
27 the board pursuant to chapter 34.05 RCW. Appeals must be filed within
28 thirty days from the date of receipt of the notice of civil penalty
29 in accordance with RCW 43.21B.230.

30 (b) Issuance of a civil penalty may be informally appealed by the
31 person incurring the penalty to the department within thirty days
32 from the date of receipt of the notice of civil penalty. Requests for
33 informal appeal must be filed in the form and manner prescribed by
34 the department by rule. A civil penalty that has been informally
35 appealed to the department is appealable to the board within thirty
36 days from the date of receipt of the department's decision on the
37 informal appeal.

38 (4) The penalty imposed becomes due and payable thirty days after
39 receipt of a notice imposing the penalty unless an appeal is filed.

1 Whenever an appeal of any penalty incurred under this chapter is
2 filed, the penalty becomes due and payable only upon completion of
3 all review proceedings and the issuance of a final order confirming
4 the penalty in whole or in part. When the penalty becomes past due,
5 it is also subject to interest at the rate allowed by RCW 43.17.240
6 for debts owed to the state.

7 (5) If the amount of any penalty is not paid within thirty days
8 after it becomes due and payable, the attorney general, upon the
9 request of the director, shall bring an action in the name of the
10 state of Washington in the superior court of Thurston county or of
11 the county in which such a violation occurred, to recover the
12 penalty. In all such actions, the rules of civil procedures and the
13 rules of evidence are the same as in an ordinary civil action. The
14 department is also entitled to recover reasonable attorneys' fees and
15 costs incurred in connection with the penalty recovered under this
16 section. All civil penalties received or recovered by state agency
17 action for violations as prescribed in subsection (1) of this section
18 must be deposited into the state's general fund. The department is
19 authorized to retain any attorneys' fees and costs it may be awarded
20 in connection with an action brought to recover a civil penalty
21 issued pursuant to this section.

22 (6) The department shall adopt by rule a penalty schedule to be
23 effective by January 1, 2020. The penalty schedule must be developed
24 in consideration of the following:

- 25 (a) Previous violation history;
- 26 (b) Severity of the impact on fish life and fish habitat;
- 27 (c) Whether the violation of this chapter or of its rules was
28 intentional;
- 29 (d) Cooperation with the department;
- 30 (e) Reparability of any adverse effects resulting from the
31 violation; and
- 32 (f) The extent to which a penalty to be imposed on a person for a
33 violation committed by another should be reduced if the person was
34 unaware of the violation and has not received a substantial economic
35 benefit from the violation.

36 (7) This section does not apply to a project, or to that portion
37 of a project, that has received a forest practices hydraulic project
38 permit from the department of natural resources pursuant to chapter
39 76.09 RCW.

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

3 (1) The department may apply for an administrative inspection
4 warrant in either Thurston county superior court or the superior
5 court in the county in which the hydraulic project is located. The
6 court may issue an administrative inspection warrant where:

7 (a) Department personnel need to inspect the hydraulic project
8 site to ensure compliance with this chapter or with rules adopted to
9 implement this chapter; or

10 (b) Department personnel have probable cause to believe that a
11 violation of this chapter or of the rules that implement this chapter
12 is occurring or has occurred.

13 (2) This section does not apply to a project, or to that portion
14 of a project, that has received a forest practices hydraulic project
15 permit from the department of natural resources pursuant to chapter
16 76.09 RCW.

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

19 (1) The department may disapprove an application for hydraulic
20 project approval submitted by a person who has failed to comply with
21 a final order issued pursuant to section 6 or 7 of this act or who
22 has failed to pay civil penalties issued pursuant to section 8 of
23 this act. Applications may be disapproved for up to one year from the
24 issuance of a notice of intent to disapprove applications under this
25 section, or until all outstanding civil penalties are paid and all
26 outstanding notices to comply and stop work orders are complied with,
27 whichever is longer.

28 (2) The department shall provide written notice of its intent to
29 disapprove an application under this section to the applicant and to
30 any authorized agent or landowner identified in the application.

31 (3) The disapproval period runs from thirty days following the
32 date of actual notice of intent or when all administrative and
33 judicial appeals, if any, have been exhausted.

34 (4) Any person provided the notice may seek review from the board
35 by filing a request for review within thirty days of the date of the
36 notice of intent to disapprove applications.

37 NEW SECTION. **Sec. 11.** A new section is added to chapter 77.55
38 RCW to read as follows:

1 The remedies under this chapter are not exclusive and do not
2 limit or abrogate any other civil or criminal penalty, remedy, or
3 right available in law, equity, or statute.

4 **Sec. 12.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to
5 read as follows:

6 (1) The hearings board shall only have jurisdiction to hear and
7 decide appeals from the following decisions of the department, the
8 director, local conservation districts, the air pollution control
9 boards or authorities as established pursuant to chapter 70.94 RCW,
10 local health departments, the department of natural resources, the
11 department of fish and wildlife, the parks and recreation commission,
12 and authorized public entities described in chapter 79.100 RCW:

13 (a) Civil penalties imposed pursuant to RCW 18.104.155,
14 70.94.431, 70.105.080, 70.107.050, 76.09.170, (~~77.55.291~~) section 8
15 of this act, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
16 90.56.310, 90.56.330, and 90.64.102.

17 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
18 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
19 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

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

30 (e) Decisions of local health departments regarding the issuance
31 and enforcement of permits to use or dispose of biosolids under RCW
32 70.95J.080.

33 (f) Decisions of the department regarding waste-derived
34 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
35 decisions of the department regarding waste-derived soil amendments
36 under RCW 70.95.205.

37 (g) Decisions of local conservation districts related to the
38 denial of approval or denial of certification of a dairy nutrient
39 management plan; conditions contained in a plan; application of any

1 dairy nutrient management practices, standards, methods, and
2 technologies to a particular dairy farm; and failure to adhere to the
3 plan review and approval timelines in RCW 90.64.026.

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

7 (i) Decisions of the department of natural resources, the
8 department of fish and wildlife, and the department that are
9 reviewable under chapter 76.09 RCW, and the department of natural
10 resources' appeals of county, city, or town objections under RCW
11 76.09.050(7).

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

14 (k) Decisions of the department of fish and wildlife to issue,
15 deny, condition, or modify a hydraulic project approval permit under
16 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
17 comply, to issue a civil penalty, or to issue a notice of intent to
18 disapprove applications.

19 (l) Decisions of the department of natural resources that are
20 reviewable under RCW 78.44.270.

21 (m) Decisions of an authorized public entity under RCW 79.100.010
22 to take temporary possession or custody of a vessel or to contest the
23 amount of reimbursement owed that are reviewable by the hearings
24 board under RCW 79.100.120.

25 (2) The following hearings shall not be conducted by the hearings
26 board:

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

29 (b) Hearings conducted by the department pursuant to RCW
30 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
31 90.44.180.

32 (c) Appeals of decisions by the department under RCW 90.03.110
33 and 90.44.220.

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

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

1 NEW SECTION. **Sec. 13.** The following acts or parts of acts are
2 each repealed:

3 (1) RCW 77.55.141 (Marine beach front protective bulkheads or
4 rockwalls) and 2010 c 210 s 28, 2005 c 146 s 501, & 1991 c 279 s 1;
5 and

6 (2) RCW 77.55.291 (Civil penalty) and 2010 c 210 s 31, 2005 c 146
7 s 701, 2000 c 107 s 19, 1993 sp.s. c 2 s 35, 1988 c 36 s 35, & 1986 c
8 173 s 6.

--- **END** ---