
SUBSTITUTE HOUSE BILL 1760

State of Washington

65th Legislature

2017 Regular Session

By House Agriculture & Natural Resources (originally sponsored by Representatives Blake, Orcutt, Chapman, and Buys)

READ FIRST TIME 02/17/17.

1 AN ACT Relating to off-site mitigation for projects permitted
2 under chapter 77.55 RCW; and amending RCW 77.55.241, 77.55.231, and
3 77.55.251.

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

5 **Sec. 1.** RCW 77.55.241 and 2010 c 210 s 30 are each amended to
6 read as follows:

7 (1) The legislature finds that the construction of certain
8 hydraulic projects may require mitigation for the protection of fish
9 life, and that the mitigation may be most cost-effective and provide
10 the most benefit to the fish resource if the mitigation is allowed to
11 be applied in locations that are off-site of the hydraulic project
12 location. The department may approve off-site mitigation plans that
13 are submitted by permit applicants consistent with RCW 77.55.231 and
14 77.55.251.

15 (2) If a permit applicant proposes off-site mitigation and the
16 department does not approve the permit or conditions the permit in
17 such a manner as to render off-site mitigation unpracticable, the
18 project proponent may appeal the decision as provided in RCW
19 77.55.021(~~(+4)~~) (8).

1 **Sec. 2.** RCW 77.55.231 and 2012 1st sp.s. c 1 s 106 are each
2 amended to read as follows:

3 (1)(a) Conditions imposed upon a permit, including on or off-site
4 mitigation, must be reasonably related to the project. The permit
5 conditions must ensure that the project provides proper protection
6 for fish life, but the department may not impose conditions that
7 attempt to optimize conditions for fish life that are out of
8 proportion to the impact of the proposed project.

9 (b) For the purposes of maintenance, repair, and preservation of
10 existing publicly owned bridges and culverts that, at the time of
11 application under RCW 77.55.021, do not create new impacts to fish
12 life, any off-site mitigation other than as described in RCW
13 77.55.251 is considered, for the purposes of this chapter, to not be
14 reasonably related to the maintenance, repair, or preservation
15 activities. The only conditions that are reasonably related to the
16 maintenance, repair, and preservation of existing publicly owned
17 bridges and culverts are on-site conditions relating to the timing of
18 the repair, maintenance, or preservation or other conditions directly
19 relating to specific repair, maintenance, or preservation
20 techniques. This subsection (1)(b) does not apply to projects that
21 function as replacement projects or create a long-term impact to fish
22 life.

23 (c) A mitigation plan that proposes to utilize RCW 90.74.040 and
24 fund projects related to the riparian open space program or family
25 forest fish passage program, as those terms are defined in RCW
26 90.74.010, or to remove a fish passage barrier that is part of the
27 public infrastructure, in order to satisfy any off-site mitigation
28 conditions, is presumed to be reasonably related to the project and
29 is to be given preferred treatment by the department if the proposed
30 off-site mitigation is located in the same watershed as the project.
31 This subsection (1)(c) does not apply to mitigation for hydraulic
32 projects located in marine environments.

33 (2) The permit must contain provisions allowing for minor
34 modifications to the plans and specifications without requiring
35 reissuance of the permit.

36 (3) The permit must contain provisions that allow for minor
37 modifications to the required work timing without requiring the
38 reissuance of the permit. "Minor modifications to the required work
39 timing" means a minor deviation from the timing window set forth in

1 the permit when there are no spawning or incubating fish present
2 within the vicinity of the project.

3 **Sec. 3.** RCW 77.55.251 and 2005 c 146 s 603 are each amended to
4 read as follows:

5 When reviewing a mitigation plan under RCW 77.55.021, the
6 department shall, at the request of the project proponent, follow the
7 guidance contained in chapter 90.74 RCW ((~~90.74.005 through~~
8 ~~90.74.030~~)).

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