
ENGROSSED SUBSTITUTE SENATE BILL 5393

State of Washington

65th Legislature

2017 Regular Session

By Senate Natural Resources & Parks (originally sponsored by Senators Warnick, Lillas, Takko, and Pearson)

READ FIRST TIME 02/09/17.

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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