

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE HOUSE BILL 1579

Chapter 290, Laws of 2019
(partial veto)

66th Legislature
2019 Regular Session

CHINOOK SALMON ABUNDANCE--VARIOUS PROVISIONS

EFFECTIVE DATE: July 28, 2019

Passed by the House April 18, 2019
Yeas 57 Nays 37

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 10, 2019
Yeas 26 Nays 20

CYRUS HABIB

President of the Senate

Approved May 8, 2019 2:52 PM with the
exception of sections 13 and 8(1)(a),
which are vetoed.

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the
House of Representatives of the
State of Washington, do hereby
certify that the attached is **SECOND
SUBSTITUTE HOUSE BILL 1579** as
passed by the House of
Representatives and the Senate on
the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

May 13, 2019

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 1579

AS AMENDED BY THE SENATE

Passed Legislature - 2019 Regular Session

State of Washington 66th Legislature 2019 Regular Session

By House Appropriations (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)

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; adding a new section to chapter 43.23 RCW; creating a new
6 section; repealing RCW 77.55.141 and 77.55.291; prescribing
7 penalties; and providing an expiration date.

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

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

13 (2) The governor convened the southern resident killer whale task
14 force after the 2018 legislative session to study and identify
15 actions that could be taken to help sustain and recover this
16 important species. In the course of its work, the task force found
17 that chinook salmon compose the largest portion of the whales' diet,
18 and are therefore critical to the recovery of the species. Further,
19 several runs of chinook salmon in Washington state are listed under
20 the federal endangered species act, making chinook recovery all the
21 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 severe violation of this chapter or of the rules
18 implementing this chapter or there is a deviation from the hydraulic
19 project approval that may cause significant harm to fish life; and

20 (b) 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) A description of the condition that is not in compliance and
24 the text of the specific section or subsection of this chapter or the
25 rules that implement this chapter;

26 (ii) A statement of what is required to achieve compliance;

27 (iii) The date by which the department requires compliance;

28 (iv) Notice of the means to contact any technical assistance
29 services provided by the department or others;

30 (v) Notice of when, where, and to whom the request to extend the
31 time to achieve compliance for good cause may be filed with the
32 department; and

33 (vi) The right to an appeal.

34 (b) A stop work order may require that any project proponent stop
35 all work connected with the violation until corrective action is
36 taken. A stop work order may also require that any project proponent
37 take corrective action to prevent, correct, or compensate for adverse
38 impacts to fish life and fish habitat.

1 (c) A stop work order must be authorized by senior or executive
2 department personnel. The department shall initiate rule making to
3 identify the appropriate level of senior and executive level staff
4 approval for these actions based on the level of financial effect on
5 the violator and the scope and scale of the impact to fish life and
6 habitat.

7 (3) Within five business days of issuing the stop work order, the
8 department shall mail a copy of the stop work order to the last known
9 address of any project proponent, to the last known address of the
10 owner of the land on which the hydraulic project is located, and to
11 the local jurisdiction in which the hydraulic project is located. The
12 department must take all measures reasonably calculated to ensure
13 that the project proponent actually receives notice of the stop work
14 order.

15 (4) Issuance of a stop work order may be informally appealed by a
16 project proponent who was served with the stop work order or who
17 received a copy of the stop work order from the department, or by the
18 owner of the land on which the hydraulic project is located, to the
19 department within thirty days from the date of receipt of the stop
20 work order. Requests for informal appeal must be filed in the form
21 and manner prescribed by the department by rule. A stop work order
22 that has been informally appealed to the department is appealable to
23 the board within thirty days from the date of receipt of the
24 department's decision on the informal appeal.

25 (5) The project proponent who was served with the stop work order
26 or who received a copy of the stop work order from the department, or
27 the owner of the land on which the hydraulic project is located, may
28 commence an appeal to the board within thirty days from the date of
29 receipt of the stop work order. If such an appeal is commenced, the
30 proceeding is an adjudicative proceeding under the administrative
31 procedure act, chapter 34.05 RCW. The recipient of the stop work
32 order must comply with the order of the department immediately upon
33 being served, but the board may stay, modify, or discontinue the
34 order, upon motion, under such conditions as the board may impose.

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

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

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

3 (1)(a) If a violation of this chapter or of the rules
4 implementing this chapter, a deviation from the hydraulic project
5 approval, damage to fish life or fish habitat, or potential damage to
6 fish life or fish habitat, has occurred and the department determines
7 that a stop work order is unnecessary, the department may issue and
8 serve upon a project proponent a notice to comply, which must clearly
9 set forth:

10 (i) A description of the condition that is not in compliance and
11 the text of the specific section or subsection of this chapter or the
12 rules that implement this chapter;

13 (ii) A statement of what is required to achieve compliance;

14 (iii) The date by which the department requires compliance to be
15 achieved;

16 (iv) Notice of the means to contact any technical assistance
17 services provided by the department or others;

18 (v) Notice of when, where, and to whom a request to extend the
19 time to achieve compliance for good cause may be filed with the
20 department; and

21 (vi) The right to an appeal.

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

25 (2) Within five business days of issuing the notice to comply,
26 the department shall mail a copy of the notice to comply to the last
27 known address of any project proponent, to the last known address of
28 the owner of the land on which the hydraulic project is located, and
29 to the local jurisdiction in which the hydraulic project is located.
30 The department must take all measures reasonably calculated to ensure
31 that the project proponent actually receives notice of the notice to
32 comply.

33 (3) Issuance of a notice to comply may be informally appealed by
34 a project proponent who was served with the notice to comply or who
35 received a copy of the notice to comply from the department, or by
36 the owner of the land on which the hydraulic project is located, to
37 the department within thirty days from the date of receipt of the
38 notice to comply. Requests for informal appeal must be filed in the
39 form and manner prescribed by the department by rule. A notice to
40 comply that has been informally appealed to the department is

1 appealable to the board within thirty days from the date of receipt
2 of the department's decision on the informal appeal.

3 (4) The project proponent who was served with the notice to
4 comply, the project proponent who received a copy of the notice to
5 comply from the department, or the owner of the land on which the
6 hydraulic project is located may commence an appeal to the board
7 within thirty days from the date of receipt of the notice to comply.
8 If such an appeal is commenced, the proceeding is an adjudicative
9 proceeding under the administrative procedure act, chapter 34.05 RCW.
10 The recipient of the notice to comply must comply with the notice to
11 comply immediately upon being served, but the board may stay, modify,
12 or discontinue the notice to comply, upon motion, under such
13 conditions as the board may impose.

14 (5) This section does not apply to a project, or to that portion
15 of a project, that has received a forest practices hydraulic project
16 permit from the department of natural resources pursuant to chapter
17 76.09 RCW.

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

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

22 ***(1) (a) If section 13 of this act is enacted into law by June 30,***
23 ***2019, the department may levy civil penalties of up to ten thousand***
24 ***dollars for every violation of this chapter or of the rules that***
25 ***implement this chapter. If section 13 of this act is not enacted into***
26 ***law by June 30, 2019, the department may levy civil penalties of up***
27 ***to one hundred dollars for every violation of this chapter or of the***
28 ***rules that implement this chapter. Each and every violation is a***
29 ***separate and distinct civil offense.***

30 (b) Penalties must be authorized by senior or executive
31 department personnel. The department shall initiate rule making to
32 identify the appropriate level of senior and executive level staff
33 approval for these actions based on the level of financial effect on
34 the violator and the scope and scale of the impact to fish life and
35 habitat.

36 (2) The penalty provided must be imposed by notice in writing by
37 the department, provided either by certified mail or by personal
38 service, to the person incurring the penalty and to the local
39 jurisdiction in which the hydraulic project is located, describing

1 the violation. The department must take all measures reasonably
2 calculated to ensure that the project proponent actually receives
3 notice of the notice of penalty. The civil penalty notice must set
4 forth:

5 (a) The basis for the penalty;

6 (b) The amount of the penalty; and

7 (c) The right of the person incurring the penalty to appeal the
8 civil penalty.

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

14 (b) Issuance of a civil penalty may be informally appealed by the
15 person incurring the penalty to the department within thirty days
16 from the date of receipt of the notice of civil penalty. Requests for
17 informal appeal must be filed in the form and manner prescribed by
18 the department by rule. A civil penalty that has been informally
19 appealed to the department is appealable to the board within thirty
20 days from the date of receipt of the department's decision on the
21 informal appeal.

22 (4) The penalty imposed becomes due and payable thirty days after
23 receipt of a notice imposing the penalty unless an appeal is filed.
24 Whenever an appeal of any penalty incurred under this chapter is
25 filed, the penalty becomes due and payable only upon completion of
26 all review proceedings and the issuance of a final order confirming
27 the penalty in whole or in part. When the penalty becomes past due,
28 it is also subject to interest at the rate allowed by RCW 43.17.240
29 for debts owed to the state.

30 (5) If the amount of any penalty is not paid within thirty days
31 after it becomes due and payable, the attorney general, upon the
32 request of the director, shall bring an action in the name of the
33 state of Washington in the superior court of Thurston county or of
34 the county in which such a violation occurred, to recover the
35 penalty. In all such actions, the rules of civil procedures and the
36 rules of evidence are the same as in an ordinary civil action. The
37 department is also entitled to recover reasonable attorneys' fees and
38 costs incurred in connection with the penalty recovered under this
39 section. All civil penalties received or recovered by state agency
40 action for violations as prescribed in subsection (1) of this section

1 must be deposited into the state's general fund. The department is
2 authorized to retain any attorneys' fees and costs it may be awarded
3 in connection with an action brought to recover a civil penalty
4 issued pursuant to this section.

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

8 (a) Previous violation history;

9 (b) Severity of the impact on fish life and fish habitat;

10 (c) Whether the violation of this chapter or of its rules was
11 intentional;

12 (d) Cooperation with the department;

13 (e) Reparability of any adverse effects resulting from the
14 violation; and

15 (f) The extent to which a penalty to be imposed on a person for a
16 violation committed by another should be reduced if the person was
17 unaware of the violation and has not received a substantial economic
18 benefit from the violation.

19 (7) This section does not apply to a project, or to that portion
20 of a project, that has received a forest practices hydraulic project
21 permit from the department of natural resources pursuant to chapter
22 76.09 RCW.

****Sec. 8 was partially vetoed. See message at end of chapter.***

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

25 (1) The department may apply for an administrative inspection
26 warrant in either Thurston county superior court or the superior
27 court in the county in which the hydraulic project is located. The
28 court may issue an administrative inspection warrant where:

29 (a) Department personnel need to inspect the hydraulic project
30 site to ensure compliance with this chapter or with rules adopted to
31 implement this chapter; or

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

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

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

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

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

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

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

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

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

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

28 (1) The hearings board shall only have jurisdiction to hear and
29 decide appeals from the following decisions of the department, the
30 director, local conservation districts, the air pollution control
31 boards or authorities as established pursuant to chapter 70.94 RCW,
32 local health departments, the department of natural resources, the
33 department of fish and wildlife, the parks and recreation commission,
34 and authorized public entities described in chapter 79.100 RCW:

35 (a) Civil penalties imposed pursuant to RCW 18.104.155,
36 70.94.431, 70.105.080, 70.107.050, 76.09.170, (~~77.55.291~~) section 8
37 of this act, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
38 90.56.310, 90.56.330, and 90.64.102.

1 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
2 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
3 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

4 (c) Except as provided in RCW 90.03.210(2), the issuance,
5 modification, or termination of any permit, certificate, or license
6 by the department or any air authority in the exercise of its
7 jurisdiction, including the issuance or termination of a waste
8 disposal permit, the denial of an application for a waste disposal
9 permit, the modification of the conditions or the terms of a waste
10 disposal permit, or a decision to approve or deny an application for
11 a solid waste permit exemption under RCW 70.95.300.

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

14 (e) Decisions of local health departments regarding the issuance
15 and enforcement of permits to use or dispose of biosolids under RCW
16 70.95J.080.

17 (f) Decisions of the department regarding waste-derived
18 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
19 decisions of the department regarding waste-derived soil amendments
20 under RCW 70.95.205.

21 (g) Decisions of local conservation districts related to the
22 denial of approval or denial of certification of a dairy nutrient
23 management plan; conditions contained in a plan; application of any
24 dairy nutrient management practices, standards, methods, and
25 technologies to a particular dairy farm; and failure to adhere to the
26 plan review and approval timelines in RCW 90.64.026.

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

30 (i) Decisions of the department of natural resources, the
31 department of fish and wildlife, and the department that are
32 reviewable under chapter 76.09 RCW, and the department of natural
33 resources' appeals of county, city, or town objections under RCW
34 76.09.050(7).

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

37 (k) Decisions of the department of fish and wildlife to issue,
38 deny, condition, or modify a hydraulic project approval permit under
39 chapter 77.55 RCW, to issue a stop work order, to issue a notice to

1 comply, to issue a civil penalty, or to issue a notice of intent to
2 disapprove applications.

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

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

9 (2) The following hearings shall not be conducted by the hearings
10 board:

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

13 (b) Hearings conducted by the department pursuant to RCW
14 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
15 90.44.180.

16 (c) Appeals of decisions by the department under RCW 90.03.110
17 and 90.44.220.

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

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

23 ****NEW SECTION. Sec. 13. A new section is added to chapter 43.23***
24 ***RCW to read as follows:***

25 (1) ***The state conservation commission shall convene and***
26 ***facilitate the departments of ecology, agriculture, fish and***
27 ***wildlife, and natural resources, and the state conservation***
28 ***commission to work together cooperatively, efficiently, and***
29 ***productively on the expeditious construction of three demonstration***
30 ***projects. The legislature expects that the joint and contemporaneous***
31 ***participation of all these state agencies will expedite the***
32 ***permitting of these demonstration projects. The legislature further***
33 ***intends that the collaborative process that the stakeholder group***
34 ***creates, including local stakeholders among others, will be used as a***
35 ***model for river management throughout the state.***

36 (2) ***The floodplain management strategies developed in the process***
37 ***in this section must address multiple benefits including: Reducing***
38 ***flood hazard to public infrastructure and other land uses caused by***

1 sediment accumulation or for other causes; improving fish and
2 wildlife habitat; sustaining viable agriculture; and public access.

3 (3) The state conservation commission and the departments of
4 agriculture, natural resources, fish and wildlife, and ecology must
5 jointly identify and assess three demonstration projects that test
6 the effectiveness and costs of river management by using various
7 management strategies and techniques as applied to accomplish the
8 following goals:

9 (a) Protection of agricultural lands;

10 (b) Restoration or enhancement of fish runs; and

11 (c) Protection of public infrastructure and recreational access.

12 (4) (a) The state conservation commission must convene and
13 facilitate a stakeholder group consisting of the departments of
14 agriculture, natural resources, fish and wildlife, and ecology, and
15 the state conservation commission, local and statewide agricultural
16 organizations and conservation districts, land conservation
17 organizations, and local governments with interest and experience in
18 floodplain management techniques. The stakeholder group must develop
19 and assess three demonstration projects, one located in Whatcom
20 county, one located in Snohomish county, and one located in Grays
21 Harbor county. The departments must also seek the participation and
22 the views of the federally recognized tribes that may be affected by
23 each pilot project.

24 (b) The disposition of any gravel resources removed as a result
25 of these pilot projects that are owned by the state must be
26 consistent with chapter 79.140 RCW, otherwise they must be: (i) Used
27 at the departments' discretion in projects related to fish programs
28 in the local area of the project or by property owners adjacent to
29 the project; (ii) made available to a local tribe for its use; or
30 (iii) sold and the proceeds applied to funding the demonstration
31 projects.

32 (5) At a minimum, the pilot projects must examine the following
33 management strategies and techniques:

34 (a) Setting back levees and other measures to accommodate high
35 flow with reduced risk to property, while providing space for river
36 processes that are vital to the creation of fish habitat;

37 (b) Providing deeper, cooler holes for fish life;

38 (c) Removing excess sediment and gravel that causes diversion of
39 water and erosion of river banks and farmland;

1 (d) Providing off-channels for habitat as refuge during high
2 flows;

3 (e) Ensuring that any management activities leave sufficient
4 gravel and sediment for fish spawning and rearing;

5 (f) Providing stable river banks that will allow for long-term
6 growth of riparian enhancement efforts, such as planting shade trees
7 and hedgerows;

8 (g) Protecting existing mature treed riparian zones that cool the
9 waters;

10 (h) Restoring previously existing bank contours that protect the
11 land from erosion caused by more intense and more frequent flooding;
12 and

13 (i) Developing management practices that reduce the amount of
14 gravel, sediment, and woody debris deposited into farm fields.

15 (6) By December 31, 2020, the state conservation commission must
16 coordinate the development of a report to the legislative committees
17 with oversight of agriculture, water, rural economic development,
18 ecology, fish and wildlife, and natural resources. The report should
19 include the input of all state agencies, tribes, local entities, and
20 stakeholders participating in, or commenting on, the process
21 identified in this section. The report must include, but not be
22 limited to, the following elements: (a) Their progress toward setting
23 benchmarks and meeting the stakeholder group's timetable; (b) any
24 decisions made in assessing the projects; and (c) agency
25 recommendations for funding of the projects from federal grants,
26 federal loans, state grants and loans, and private donations, or if
27 other funding sources are not available or complete, submitting the
28 three projects for consideration in the biennial capital budget
29 request to the governor and the legislature. The departments must
30 report annually thereafter by December 31st of each year.

31 (7) The stakeholder group must be staffed jointly by the
32 departments.

33 (8) Within amounts appropriated in the omnibus operating
34 appropriations act, the state conservation commission, the department
35 of ecology, the department of agriculture, the department of fish and
36 wildlife, and the department of natural resources shall implement all
37 requirements in this section.

38 (9) This section expires June 30, 2030.

*Sec. 13 was vetoed. See message at end of chapter.

1 NEW SECTION. **Sec. 14.** 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.

Passed by the House April 18, 2019.

Passed by the Senate April 10, 2019.

Approved by the Governor May 8, 2019, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 13, 2019.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Sections 13 and 8(1)(a), Second Substitute House Bill No. 1579 entitled:

"AN ACT Relating to implementing recommendations of the southern resident killer whale task force related to increasing chinook abundance."

This bill implements recommendations of the Southern Resident orca task force (task force) related to increasing chinook abundance.

Current laws and protections are not sufficient. Salmon populations continue to decline putting our beloved orca at risk.

This bill provides the long needed tools to protect salmon habitat when development permits are issued along our marine and freshwater shoreline. Strengthening the hydraulic code will help ensure development projects that affect salmon and their habitats do no harm.

However, I am vetoing Section 13, which would require certain state agencies and local governments to identify river management demonstration projects in Whatcom, Snohomish, and Grays Harbor counties, because it is not a recommendation of the task force. As such, it is outside of both the title and scope of the bill, in violation of Article 2, Sections 19 and 38 of our constitution. Section 13 is unrelated, unnecessary and an unfortunate addition to this important bill about salmon and orca habitat and recovery.

In addition, I am also vetoing Section 8(1)(a), which establishes maximum civil penalty amounts for violations of Chapter 77.55 RCW (Construction Projects in State Waters). Consistent with the task force's recommendations, the original bill established a maximum civil penalty of up to ten thousand dollars for each violation. When the Legislature amended the bill to add Section 13, it simultaneously amended Section 8 and tied the original civil penalty amount to passage of Section 13. It did so by reducing the maximum civil penalty to "up to one hundred dollars" if Section 13 is not enacted by June 30, 2019. By making the original civil penalty amount contingent on passage of an unconstitutional section of the bill, the Legislature further compounded the constitutional violation. In addition, by structuring the contingency language within a subsection of Section 8, the Legislature intentionally attempted to circumvent

and impede my veto authority by entangling an unrelated and unconstitutional provision within a recommendation of the task force. In vetoing this subsection, I direct the department to continue to use its authority to secure the effect of the statute, to establish a maximum civil penalty not to exceed the penalty amount established in the original bill, and to use its rulemaking authority to support these efforts as needed.

I understand the concerns of landowners who are living and working in floodplains and the need for better approaches to protecting their property. We also need to find balance to provide habitat for salmon to spawn and grow if we want to save our orcas. We already have important programs in place to address ecosystem based river management. Watershed solutions should come from local efforts and I encourage people living in these communities to work collaboratively, with their neighbors, local governments, salmon recovery and agricultural preservation organizations to fund effective local solutions.

For these reasons I have vetoed Sections 13 and 8(1)(a) of Second Substitute House Bill No. 1579.

With the exception of Sections 13 and 8(1)(a), Second Substitute House Bill No. 1579 is approved."

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