

SENATE BILL REPORT

SB 5207

As of January 26, 2021

Title: An act relating to environmental permit streamlining.

Brief Description: Concerning environmental permit streamlining.

Sponsors: Senators Wilson, J., Holy and Short.

Brief History:

Committee Activity: Agriculture, Water, Natural Resources & Parks: 1/26/21.

Brief Summary of Bill

- Establishes that fish barrier correction done as part of a larger transportation project may receive a streamlined hydraulic project review.
- Requires the Department of Fish and Wildlife to respond to certain hydraulic project permit applications within 15 days.
- Exempts a public fish or wildlife habitat project or fish passage project from the substantial development permit requirements of the Shoreline Management Act.
- Requires Department of Transportation to implement a multiagency effort to streamline the permitting process for fish passage barrier correction projects.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Staff: Karen Epps (786-7424)

Background: Hydraulic Project Approval for Fish Habitat Enhancement Projects. A

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

hydraulic project approval (HPA) is required for any project that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. The Department of Fish and Wildlife (WDFW) issues HPAs to ensure the proper protection of fish life.

Fish habitat enhancement projects meeting a certain set of criteria may qualify for a streamlined administrative review and approval process. These are projects expected to result in beneficial impacts to the environment, and are of the size and scale, as determined by WDFW, to accomplish one or more of the following:

- elimination of human-made or human-caused fish passage barriers;
- restoration of an eroded or unstable streambank employing the principle of bioengineering; or
- placement of woody debris or other instream structures that benefit naturally reproducing fish stocks.

To qualify for streamlined review, a project must be approved by certain sponsoring entities, including WDFW, a conservation district, the Washington State Department of Transportation (WSDOT), a city or county, or another formal review and approval process.

Shoreline Management Act Permits. The SMA of 1971 governs shoreline usage of the state. With some exceptions, shorelines include all water areas of the state, the land underlying them, and their associated shorelands. The SMA requires that most developments near state shorelines be consistent with shoreline master programs, which are plans developed by local governments for the uses of its shoreline areas. Certain projects require a substantial development permit that is reviewed by the local government and filed with the Department of Ecology (Ecology). Projects that require a substantial development permit include developments exceeding a certain cost, or any development that materially interferes with the normal public use of the water or shorelines of the state.

Department of Transportation Streamlined Permitting. WSDOT must streamline its permitting process by developing and maintaining positive relationships with permitting agencies and the Indian tribes. WSDOT can reduce the time it takes to obtain permits by incorporating impact avoidance and minimization measures into project design and by developing complete permit applications.

WSDOT uses a multiagency permit program, which must provide early project coordination, expedited project review, project status updates, technical and regulatory guidance, and construction support. The multiagency permit program staff assists with project mitigation and assessments, establishes programmatic agreements, develops permit application guidance, and performs quality assurance regarding these functions. The multiagency permit program staff is also required to collaborate with federal staff from various agencies to develop, implement, and maintain complete permit application guidance

Summary of Bill: Hydraulic Project Approval for Fish Habitat Enhancement Projects.

Fish habitat enhancement projects receive a streamlined administrative review and approval process for projects that are approved through WSDOT's environmental retrofit program as a fish barrier correction done as part of a larger transportation project. For WSDOT fish passage barrier correction projects, WDFW must either issue a permit, with or without conditions, deny approval, or make a determination that the streamlined administrative review and approval process is not appropriate for the proposed project within 15 days.

Shoreline Management Act Permits. A public project that is designed to improve fish or wildlife habitat or fish passage is exempt from the substantial development permit requirements of the SMA.

Department of Transportation Streamlined Permitting. WSDOT must implement a multiagency effort, in coordination with Ecology and WDFW, and work with the relevant federal environmental permitting agencies to streamline the acquisition of commonly needed environmental permits and approvals for WSDOT fish passage barrier correction projects. Expected results include developing programmatic permit options that:

- simplify the application process,
- reduce paperwork, and
- reduce the amount of time and cost it takes to acquire these permits and approvals.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill is designed to address extensive delays in road projects due to the long time it takes for permit approval related to fish passage barrier correction. The bill is intended to help restore fish habitat more effectively and efficiently.

OTHER: There is value in including the fish passage components of a larger project in the streamlined review process, but the bill should be clarified, and the standard 45-day processing time frame should remain. If the 15-day review time frame remains, it could be limited to only required culvert projects. The bill exempts any public habitat or fish passage project from shoreline review without criteria or a requirement to consult with local governments, and the bill could be clarified to include projects eligible to skip review. The current processes for approval of fish barrier projects are complex and modification is worthwhile. Defining larger project and clarifying the new multi-agency process would be helpful. WSDOT has implemented several approaches to accelerate the process for these important projects, including using the fish enhancement project provision and utilizing programmatic endangered species consultations. The language in the bill could be clarified

to apply to only the fish passage portion of larger projects. This bill would create a more deliberate approach to creating more permitting options for WSDOT's fish passage projects.

Persons Testifying: PRO: Senator Jeff Wilson, Prime Sponsor

OTHER: Margen Carlson, Washington Department of Fish and Wildlife; Tim Gates, Washington Department of Ecology; Van Collins, American Council of Engineering Companies of Washington; Kim Mueller, Washington State Department of Transportation.

Persons Signed In To Testify But Not Testifying: No one.