
HOUSE BILL 1268

State of Washington

67th Legislature

2021 Regular Session

By Representatives Shewmake, Fitzgibbon, and Rule

Read first time 01/19/21. Referred to Committee on Rural Development, Agriculture & Natural Resources.

1 AN ACT Relating to clarifying the authority of local governments
2 to administer national flood insurance program regulation
3 requirements in the context of fish habitat enhancement projects
4 authorized pursuant to RCW 77.55.181; and amending RCW 77.55.181.

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

6 **Sec. 1.** RCW 77.55.181 and 2020 c 166 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;

3 (iii) Placement of woody debris or other instream structures that
4 benefit naturally reproducing fish stocks; or

5 (iv) Restoration of native kelp and eelgrass beds and restoring
6 native oysters.

7 (b) The department shall develop size or scale threshold tests to
8 determine if projects accomplishing any of these tasks should be
9 evaluated under the process created in this section or under other
10 project review and approval processes. A project proposal shall not
11 be reviewed under the process created in this section if the
12 department determines that the scale of the project raises concerns
13 regarding public health and safety.

14 (c) A fish habitat enhancement project must be approved in one of
15 the following ways in order to receive the permit review and approval
16 process created in this section:

17 (i) By the department pursuant to chapter 77.95 or 77.100 RCW;

18 (ii) By the sponsor of a watershed restoration plan as provided
19 in chapter 89.08 RCW;

20 (iii) By the department as a department-sponsored fish habitat
21 enhancement or restoration project;

22 (iv) Through the review and approval process for the jobs for the
23 environment program;

24 (v) By conservation districts as conservation district-sponsored
25 fish habitat enhancement or restoration projects;

26 (vi) Through a formal grant program established by the
27 legislature or the department for fish habitat enhancement or
28 restoration;

29 (vii) Through the department of transportation's environmental
30 retrofit program as a stand-alone fish passage barrier correction
31 project;

32 (viii) Through a local, state, or federally approved fish barrier
33 removal grant program designed to assist local governments in
34 implementing stand-alone fish passage barrier corrections;

35 (ix) By a city or county for a stand-alone fish passage barrier
36 correction project funded by the city or county;

37 (x) Through the approval process established for forest practices
38 hydraulic projects in chapter 76.09 RCW; or

39 (xi) Through other formal review and approval processes
40 established by the legislature.

1 (2) Fish habitat enhancement projects meeting the criteria of
2 subsection (1) of this section are expected to result in beneficial
3 impacts to the environment. Decisions pertaining to fish habitat
4 enhancement projects meeting the criteria of subsection (1) of this
5 section and being reviewed and approved according to the provisions
6 of this section are not subject to the requirements of RCW
7 43.21C.030(2)(c).

8 (3)(a) A permit is required for projects that meet the criteria
9 of subsection (1) of this section and are being reviewed and approved
10 under this section. An applicant shall use a joint aquatic resource
11 permit application form developed by the office of regulatory
12 assistance to apply for approval under this chapter. On the same day,
13 the applicant shall provide copies of the completed application form
14 to the department and to each appropriate local government.
15 Applicants for a forest practices hydraulic project that are not
16 otherwise required to submit a joint aquatic resource permit
17 application must submit a copy of their forest practices application
18 to the appropriate local government on the same day that they submit
19 the forest practices application to the department of natural
20 resources.

21 (b) Local governments shall accept the application identified in
22 this section as notice of the proposed project. A local government
23 shall be provided with a fifteen-day comment period during which it
24 may transmit comments regarding environmental impacts to the
25 department or, for forest practices hydraulic projects, to the
26 department of natural resources.

27 (c) Except for forest practices hydraulic projects, the
28 department shall either issue a permit, with or without conditions,
29 deny approval, or make a determination that the review and approval
30 process created by this section is not appropriate for the proposed
31 project within forty-five days. The department shall base this
32 determination on identification during the comment period of adverse
33 impacts that cannot be mitigated by the conditioning of a permit.
34 Permitting decisions over forest practices hydraulic approvals must
35 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, except that, pursuant to
12 chapter 86.16 RCW, a local government may impose such requirements,
13 or charge such fees, or both, as may be necessary in order for the
14 local government to administer the national flood insurance program
15 regulation requirements.

16 (5) No civil liability may be imposed by any court on the state
17 or its officers and employees for any adverse impacts resulting from
18 a fish enhancement project permitted by the department or the
19 department of natural resources under the criteria of this section
20 except upon proof of gross negligence or willful or wanton
21 misconduct.

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