

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5381

Chapter 289, Laws of 2021

67th Legislature
2021 Regular Session

FISH PASSAGE PROJECT PERMITS—STREAMLINED REVIEW AND APPROVAL

EFFECTIVE DATE: July 25, 2021

Passed by the Senate April 15, 2021
Yeas 48 Nays 0

DENNY HECK

President of the Senate

Passed by the House April 6, 2021
Yeas 98 Nays 0

LAURIE JINKINS

**Speaker of the House of
Representatives**

Approved May 12, 2021 3:10 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5381** as passed by the Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

Secretary

FILED

May 12, 2021

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5381

AS AMENDED BY THE HOUSE

Passed Legislature - 2021 Regular Session

State of Washington 67th Legislature 2021 Regular Session

By Senate Transportation (originally sponsored by Senators Hobbs, Fortunato, King, and Warnick)

READ FIRST TIME 02/22/21.

1 AN ACT Relating to fish passage project permit streamlining; and
2 amending RCW 77.55.181, 90.58.147, and 47.85.020.

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

4 **Sec. 1.** RCW 77.55.181 and 2020 c 166 s 1 are each amended to
5 read as follows:

6 (1)(a) In order to receive the permit review and approval process
7 created in this section, a fish habitat enhancement project must meet
8 the criteria under this section and must be a project to accomplish
9 one or more of the following tasks:

10 (i) Elimination of human-made or caused fish passage barriers,
11 including:

12 (A) Culvert repair and replacement; and

13 (B) Fish passage barrier removal projects that comply with the
14 forest practices rules, as the term "forest practices rules" is
15 defined in RCW 76.09.020;

16 (ii) Restoration of an eroded or unstable stream bank employing
17 the principle of bioengineering, including limited use of rock as a
18 stabilization only at the toe of the bank, and with primary emphasis
19 on using native vegetation to control the erosive forces of flowing
20 water;

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

3 (iv) Restoration of native kelp and eelgrass beds and restoring
4 native oysters.

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) By conservation districts as conservation district-sponsored
23 fish habitat enhancement or restoration projects;

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

27 (vii) By federally recognized tribes as tribally sponsored fish
28 habitat enhancement projects or restoration projects;

29 (viii) Through the department of transportation's environmental
30 retrofit program as a stand-alone fish passage barrier correction
31 project, or the fish passage barrier correction portion of a larger
32 transportation project;

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

37 ~~((ix))~~ (x) By a city or county for a stand-alone fish passage
38 barrier correction project funded by the city or county;

39 ~~((x))~~ (xi) Through the approval process established for forest
40 practices hydraulic projects in chapter 76.09 RCW; or

1 (~~(xi)~~) (xii) 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. The department
15 of transportation shall use the department's online permit
16 application system or a joint aquatic resource permit application
17 form developed by the office of regulatory assistance to apply for
18 approval under this chapter. On the same day, the applicant shall
19 provide copies of the completed application form to the department
20 and to each appropriate local government. Applicants for a forest
21 practices hydraulic project that are not otherwise required to submit
22 a joint aquatic resource permit application must submit a copy of
23 their forest practices application to the appropriate local
24 government on the same day that they submit the forest practices
25 application to the department of natural resources.

26 (b) Local governments shall accept the application identified in
27 this section as notice of the proposed project. A local government
28 shall be provided with a (~~(fifteen-day)~~) 15-day comment period during
29 which it may transmit comments regarding environmental impacts to the
30 department or, for forest practices hydraulic projects, to the
31 department of natural resources.

32 (c) (i) Except for forest practices hydraulic projects, the
33 department shall, within 45 days, either issue a permit, with or
34 without conditions, deny approval, or make a determination that the
35 review and approval process created by this section is not
36 appropriate for the proposed project (~~(within forty-five days)~~). The
37 department shall base this determination on identification during the
38 comment period of adverse impacts that cannot be mitigated by the
39 conditioning of a permit. Permitting decisions over forest practices
40 hydraulic approvals must be made consistent with chapter 76.09 RCW.

1 (ii) For department of transportation fish passage barrier
2 correction projects, the department of fish and wildlife shall,
3 within 30 days, either issue a permit, with or without conditions,
4 deny approval, or make a determination that the review and approval
5 process created by this section is not appropriate for the proposed
6 project.

7 (d) If the department determines that the review and approval
8 process created by this section is not appropriate for the proposed
9 project, the department shall notify the applicant and the
10 appropriate local governments of its determination. The applicant may
11 reapply for approval of the project under other review and approval
12 processes.

13 (e) Any person aggrieved by the approval, denial, conditioning,
14 or modification of a permit other than a forest practices hydraulic
15 project under this section may appeal the decision as provided in RCW
16 77.55.021(8). Appeals of a forest practices hydraulic project may be
17 made as provided in chapter 76.09 RCW.

18 (4) No local government may require permits or charge fees for
19 fish habitat enhancement projects that meet the criteria of
20 subsection (1) of this section and that are reviewed and approved
21 according to the provisions of this section, except that, pursuant to
22 chapter 86.16 RCW, a local government may impose such requirements,
23 or charge such fees, or both, only as may be necessary in order for
24 the local government to administer the national flood insurance
25 program regulation requirements.

26 (5) No civil liability may be imposed by any court on the state
27 or its officers and employees for any adverse impacts resulting from
28 a fish enhancement project permitted by the department or the
29 department of natural resources under the criteria of this section
30 except upon proof of gross negligence or willful or wanton
31 misconduct.

32 **Sec. 2.** RCW 90.58.147 and 2019 c 150 s 2 are each amended to
33 read as follows:

34 (1) A public or private project that is designed to improve fish
35 or wildlife habitat or fish passage shall be exempt from the
36 substantial development permit requirements of this chapter when all
37 of the following apply:

38 (a) The project has been approved by the department of fish and
39 wildlife or, for forest practices hydraulic projects within the scope

1 of RCW 77.55.181, the department of natural resources if the local
2 government notification provisions of RCW 77.55.181 are satisfied;

3 (b) The project has received hydraulic project approval by the
4 department of fish and wildlife pursuant to chapter 77.55 RCW or
5 approval of a forest practices hydraulic project within the scope of
6 RCW 77.55.181 from the department of natural resources if the local
7 government notification provisions of RCW 77.55.181 are satisfied;
8 and

9 (c) The local government has determined that the project is
10 substantially consistent with the local shoreline master program. The
11 local government shall make such determination in a timely manner and
12 provide it by letter to the project proponent.

13 (2) Fish habitat enhancement projects that conform to the
14 provisions of RCW 77.55.181 are determined to be consistent with
15 local shoreline master programs.

16 (3) Public projects for the primary purpose of fish passage
17 improvement or fish passage barrier removal are exempt from the
18 substantial development permit requirements of this chapter.

19 **Sec. 3.** RCW 47.85.020 and 2015 3rd sp.s. c 17 s 3 are each
20 amended to read as follows:

21 The department must streamline the permitting process by
22 developing and maintaining positive relationships with the regulatory
23 agencies and the Indian tribes. The department can reduce the time it
24 takes to obtain permits by incorporating impact avoidance and
25 minimization measures into project design and by developing complete
26 permit applications. To streamline the permitting process, the
27 department must:

28 (1) Implement a multiagency permit program, commensurate with
29 program funding levels, consisting of appropriate regulatory agency
30 staff with oversight and management from the department.

31 (a) The multiagency permit program must provide early project
32 coordination, expedited project review, project status updates,
33 technical and regulatory guidance, and construction support to ensure
34 compliance.

35 (b) The multiagency permit program staff must assist department
36 project teams with developing complete biological assessments and
37 permit applications, provide suggestions for how the project can
38 avoid and minimize impacts, and provide input regarding mitigation
39 for unavoidable impacts;

1 (2) Establish, implement, and maintain programmatic agreements
2 and permits with federal and state agencies to expedite the process
3 of ensuring compliance with the endangered species act, section 106
4 of the national historic preservation act, hydraulic project
5 approvals, the clean water act, and other federal acts as
6 appropriate;

7 (3) Collaborate with permitting staff from the United States army
8 corps of engineers, Seattle district, department of ecology, and
9 department of fish and wildlife to develop, implement, and maintain
10 complete permit application guidance. The guidance must identify the
11 information that is required for agencies to consider a permit
12 application complete; ((and))

13 (4) Perform internal quality assurance and quality control to
14 ensure that permit applications are complete before submitting them
15 to the regulatory agencies; and

16 (5) Implement a multiagency effort, in coordination with the
17 department of ecology and the department of fish and wildlife, and
18 work with the relevant federal environmental permitting agencies to
19 streamline the acquisition of commonly needed environmental permits
20 and approvals for department of transportation fish passage barrier
21 correction projects. Expected results include developing programmatic
22 permit options that simplify the application process, reduce
23 paperwork, and reduce the amount of time and cost it takes to acquire
24 these permits and approvals.

Passed by the Senate April 15, 2021.

Passed by the House April 6, 2021.

Approved by the Governor May 12, 2021.

Filed in Office of Secretary of State May 12, 2021.

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