
SECOND SUBSTITUTE HOUSE BILL 2879

State of Washington

55th Legislature

1998 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Buck, Butler, Chandler, DeBolt, Sehlin, Hatfield, McCune, Doumit, Kessler, Morris, Kenney, Constantine, Ogden, Regala, Tokuda, Anderson, Thompson and Conway)

Read first time 02/07/98. Referred to Committee on .

1 AN ACT Relating to facilitating the review and approval of fish
2 habitat enhancement projects; amending RCW 90.58.147, 35.63.230,
3 35A.63.250, 36.70.992, 36.70A.460, 43.21C.0382, and 89.08.470; adding
4 a new section to chapter 75.20 RCW; adding a new section to chapter
5 19.27 RCW; creating new sections; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that fish habitat
8 enhancement projects play a key role in the state's salmon and
9 steelhead recovery efforts. The legislature further finds that,
10 despite repeated attempts to minimize the expense and delays of various
11 permitting processes, more improvements are necessary in order to allow
12 fish habitat enhancement projects to be put into place quickly and
13 easily. The purpose of this act is to take immediate action to
14 facilitate the review and approval of fish habitat enhancement projects
15 today and to encourage efforts that will continue to improve the
16 process in the future.

17 NEW SECTION. **Sec. 2.** The department of ecology permit assistant
18 center shall immediately modify the joint aquatic resource permit

1 application form to incorporate the permit process established in
2 section 3 of this act.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 75.20 RCW
4 to read as follows:

5 (1) In order to receive the permit review and approval process
6 created in this section, a fish habitat enhancement project must meet
7 the criteria under (a) and (b) of this subsection:

8 (a) A fish habitat enhancement project must be a project to
9 accomplish one or more of the following tasks:

10 (i) Elimination of human-made fish passage barriers, including
11 culvert repair and replacement;

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

17 (iii) Placement of woody debris or other instream structures that
18 benefit naturally reproducing fish stocks.

19 The department may develop size or scale threshold tests to
20 determine if projects accomplishing any of these tasks should be
21 evaluated under the process created in this section or under other
22 project review and approval processes. A project proposal shall not be
23 reviewed under the process created in this section if the department
24 determines that the scale of the project raises concerns regarding
25 public health and safety; and

26 (b) A fish habitat enhancement project must be approved in one of
27 the following ways:

28 (i) By the department pursuant to chapter 75.50 or 75.52 RCW;

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

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

33 (iv) Through the review and approval process for the jobs for the
34 environment program;

35 (v) Through the review and approval process for conservation
36 district-sponsored projects;

37 (vi) Through a formal grant program established by the legislature
38 or the department for fish habitat enhancement or restoration; and

1 (vii) 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 of
8 this section are not subject to the requirements of RCW
9 43.21C.030(2)(c).

10 (3) Hydraulic project approval is required for projects that meet
11 the criteria of subsection (1) of this section and are being reviewed
12 and approved under this section. An applicant shall use a joint
13 aquatic resource permit application form developed by the department of
14 ecology permit assistance center to apply for approval under this
15 chapter. On the same day, the applicant shall provide copies of the
16 completed application form to the department and to each appropriate
17 local government. Local governments shall accept the application as
18 notice of the proposed project. The department shall provide a
19 fifteen-day comment period during which it will receive comments
20 regarding environmental impacts. In no more than forty-five days, the
21 department shall either issue hydraulic project approval, with or
22 without conditions, deny approval, or make a determination that the
23 review and approval process created by this section is not appropriate
24 for the proposed project. The department shall base this determination
25 on identification during the comment period of adverse impacts that
26 cannot be mitigated by hydraulic project approval. If the department
27 determines that the review and approval process created by this section
28 is not appropriate for the proposed project, the department shall
29 notify the applicant and the appropriate local governments of its
30 determination. The applicant may reapply for approval of the project
31 under other review and approval processes.

32 Any person aggrieved by the approval, denial, conditioning, or
33 modification of hydraulic project approval under this section may
34 formally appeal the decision to the hydraulic appeals board pursuant to
35 the provisions of this chapter.

36 (4) No local government may require permits or charge fees for fish
37 habitat enhancement projects that meet the criteria of subsection (1)
38 of this section and that are reviewed and approved according to the
39 provisions of this section.

1 **Sec. 4.** RCW 90.58.147 and 1995 c 333 s 1 are each amended to read
2 as follows:

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

7 ~~((1))~~ (a) The project has been approved by the department of fish
8 and wildlife;

9 ~~((2))~~ (b) The project has received hydraulic project approval by
10 the department of fish and wildlife pursuant to chapter 75.20 RCW; and

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

15 (2) Fish habitat enhancement projects that conform to the
16 provisions of section 3 of this act are determined to be consistent
17 with local shoreline master programs.

18 **Sec. 5.** RCW 35.63.230 and 1995 c 378 s 8 are each amended to read
19 as follows:

20 A permit required under this chapter for a watershed restoration
21 project as defined in RCW 89.08.460 shall be processed in compliance
22 with RCW 89.08.450 through 89.08.510. A fish habitat enhancement
23 project meeting the criteria of section 3(1) of this act shall be
24 reviewed and approved according to the provisions of section 3 of this
25 act.

26 **Sec. 6.** RCW 35A.63.250 and 1995 c 378 s 9 are each amended to read
27 as follows:

28 A permit required under this chapter for a watershed restoration
29 project as defined in RCW 89.08.460 shall be processed in compliance
30 with RCW 89.08.450 through 89.08.510. A fish habitat enhancement
31 project meeting the criteria of section 3(1) of this act shall be
32 reviewed and approved according to the provisions of section 3 of this
33 act.

34 **Sec. 7.** RCW 36.70.992 and 1995 c 378 s 10 are each amended to read
35 as follows:

1 A permit required under this chapter for a watershed restoration
2 project as defined in RCW 89.08.460 shall be processed in compliance
3 with RCW 89.08.450 through 89.08.510. A fish habitat enhancement
4 project meeting the criteria of section 3(1) of this act shall be
5 reviewed and approved according to the provisions of section 3 of this
6 act.

7 **Sec. 8.** RCW 36.70A.460 and 1995 c 378 s 11 are each amended to
8 read as follows:

9 A permit required under this chapter for a watershed restoration
10 project as defined in RCW 89.08.460 shall be processed in compliance
11 with RCW 89.08.450 through 89.08.510. A fish habitat enhancement
12 project meeting the criteria of section 3(1) of this act shall be
13 reviewed and approved according to the provisions of section 3 of this
14 act.

15 **Sec. 9.** RCW 43.21C.0382 and 1995 c 378 s 12 are each amended to
16 read as follows:

17 Decisions pertaining to watershed restoration projects as defined
18 in RCW 89.08.460 are not subject to the requirements of RCW
19 43.21C.030(2)(c). Decisions pertaining to fish habitat enhancement
20 projects meeting the criteria of section 3(1) of this act and being
21 reviewed and approved according to the provisions of section 3 of this
22 act are not subject to the requirements of RCW 43.21C.030(2)(c).

23 **Sec. 10.** RCW 89.08.470 and 1995 c 378 s 3 are each amended to read
24 as follows:

25 (1) By January 1, 1996, the Washington conservation commission
26 shall develop, in consultation with other state agencies, tribes, and
27 local governments, a consolidated application process for permits for
28 a watershed restoration project developed by an agency or sponsored by
29 an agency on behalf of a volunteer organization. The consolidated
30 process shall include a single permit application form for use by all
31 responsible state and local agencies. The commission shall encourage
32 use of the consolidated permit application process by any federal
33 agency responsible for issuance of related permits. The permit
34 application forms to be consolidated shall include, at a minimum,
35 applications for: ~~((1))~~ (a) Approvals related to water quality
36 standards under chapter 90.48 RCW; ~~((2))~~ (b) hydraulic project

1 approvals under chapter 75.20 RCW; and (~~(+3)~~) (c) section 401 water
2 quality certifications under 33 U.S.C. Sec. 1341 and chapter 90.48 RCW.

3 (2) If a watershed restoration project is also a fish habitat
4 enhancement project that meets the criteria of section 3(1) of this
5 act, the project sponsor shall instead follow the permit review and
6 approval process established in section 3 of this act with regard to
7 state and local government permitting requirements. The sponsor shall
8 so notify state and local permitting authorities.

9 NEW SECTION. Sec. 11. A new section is added to chapter 19.27 RCW
10 to read as follows:

11 A fish habitat enhancement project meeting the criteria of section
12 3(1) of this act is not subject to grading permits, inspections, or
13 fees and shall be reviewed according to the provisions of section 3 of
14 this act.

15 NEW SECTION. Sec. 12. The legislature finds that, while the
16 process created in this act can improve the speed with which fish
17 habitat enhancement projects are put into place, additional efforts can
18 improve the review and approval process for the future. The
19 legislature directs the department of fish and wildlife, the
20 conservation commission, local governments, fish habitat enhancement
21 project applicants, and other interested parties to work together to
22 continue to improve the permitting review and approval process.
23 Specific efforts shall include the following:

24 (1) Development of common acceptable design standards, best
25 management practices, and standardized hydraulic project approval
26 conditions for each type of fish habitat enhancement project;

27 (2) An evaluation of the potential for using technical evaluation
28 teams in evaluating specific project proposals or stream reaches;

29 (3) An evaluation of techniques appropriate for restoration and
30 enhancement of pasture and crop land adjacent to riparian areas;

31 (4) A review of local government shoreline master plans to identify
32 and correct instances where the local plan does not acknowledge
33 potentially beneficial instream work;

34 (5) An evaluation of the potential for local governments to
35 incorporate fish habitat enhancement projects into their comprehensive
36 planning process; and

1 (6) Continued work with the federal government agencies on federal
2 permitting for fish habitat enhancement projects.

3 The department of fish and wildlife shall coordinate this joint
4 effort and shall report back to the legislature on the group's progress
5 by December 1, 1998.

6 NEW SECTION. **Sec. 13.** This act is necessary for the immediate
7 preservation of the public peace, health, or safety, or support of the
8 state government and its existing public institutions, and takes effect
9 immediately.

10 NEW SECTION. **Sec. 14.** If specific funding for the purposes of
11 this act, referencing this act by bill or chapter number, is not
12 provided by June 30, 1998, in the omnibus appropriations act, this act
13 is null and void.

--- END ---