H-1941.2

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**SUBSTITUTE HOUSE BILL 1760**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** House Agriculture & Natural Resources (originally sponsored by Representatives Blake, Orcutt, Chapman, and Buys)

AN ACT Relating to off-site mitigation for projects permitted under chapter 77.55 RCW; and amending RCW 77.55.241, 77.55.231, and 77.55.251.

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

**Sec.**  RCW 77.55.241 and 2010 c 210 s 30 are each amended to read as follows:

(1) The legislature finds that the construction of certain hydraulic projects may require mitigation for the protection of fish life, and that the mitigation may be most cost-effective and provide the most benefit to the fish resource if the mitigation is allowed to be applied in locations that are off-site of the hydraulic project location. The department may approve off-site mitigation plans that are submitted by permit applicants consistent with RCW 77.55.231 and 77.55.251.

(2) If a permit applicant proposes off-site mitigation and the department does not approve the permit or conditions the permit in such a manner as to render off-site mitigation unpracticable, the project proponent may appeal the decision as provided in RCW 77.55.021((~~(4)~~)) (8).

**Sec.**  RCW 77.55.231 and 2012 1st sp.s. c 1 s 106 are each amended to read as follows:

(1)(a) Conditions imposed upon a permit, including on or off-site mitigation, must be reasonably related to the project. The permit conditions must ensure that the project provides proper protection for fish life, but the department may not impose conditions that attempt to optimize conditions for fish life that are out of proportion to the impact of the proposed project.

(b) For the purposes of maintenance, repair, and preservation of existing publicly owned bridges and culverts that, at the time of application under RCW 77.55.021, do not create new impacts to fish life, any off-site mitigation other than as described in RCW 77.55.251 is considered, for the purposes of this chapter, to not be reasonably related to the maintenance, repair, or preservation activities. The only conditions that are reasonably related to the maintenance, repair, and preservation of existing publicly owned bridges and culverts are on-site conditions relating to the timing of the repair, maintenance, or preservation or other conditions directly relating to specific repair, maintenance, or preservation techniques. This subsection (1)(b) does not apply to projects that function as replacement projects or create a long-term impact to fish life.

(c) A mitigation plan that proposes to utilize RCW 90.74.040 and fund projects related to the riparian open space program or family forest fish passage program, as those terms are defined in RCW 90.74.010, or to remove a fish passage barrier that is part of the public infrastructure, in order to satisfy any off-site mitigation conditions, is presumed to be reasonably related to the project and is to be given preferred treatment by the department if the proposed off-site mitigation is located in the same watershed as the project. This subsection (1)(c) does not apply to mitigation for hydraulic projects located in marine environments.

(2) The permit must contain provisions allowing for minor modifications to the plans and specifications without requiring reissuance of the permit.

(3) The permit must contain provisions that allow for minor modifications to the required work timing without requiring the reissuance of the permit. "Minor modifications to the required work timing" means a minor deviation from the timing window set forth in the permit when there are no spawning or incubating fish present within the vicinity of the project.

**Sec.**  RCW 77.55.251 and 2005 c 146 s 603 are each amended to read as follows:

When reviewing a mitigation plan under RCW 77.55.021, the department shall, at the request of the project proponent, follow the guidance contained in chapter 90.74 RCW ((~~90.74.005 through 90.74.030~~)).

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