

ESSB 5393 - H COMM AMD

By Committee on Agriculture & Natural Resources

NOT CONSIDERED 01/05/2018

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 77.55.181 and 2014 c 120 s 1 are each amended to
4 read as follows:

5 (1)(a) 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 this section and must be a project to accomplish
8 one or more of the following tasks:

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

11 (A) Culvert repair and replacement; and

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

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

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

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

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

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

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

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

5 (iv) Through the review and approval process for the jobs for the
6 environment program;

7 (v) Through the review and approval process for conservation
8 district-sponsored projects, where the project complies with design
9 standards established by the conservation commission through
10 interagency agreement with the United States fish and wildlife
11 service and the natural resource conservation service;

12 (vi) Through a formal grant program established by the
13 legislature or the department for fish habitat enhancement or
14 restoration;

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

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

21 (ix) By a city or county for a stand-alone fish passage barrier
22 correction project funded by the city or county; (~~and~~)

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

25 (xi) Through other formal review and approval processes
26 established by the legislature.

27 (2) Fish habitat enhancement projects meeting the criteria of
28 subsection (1) of this section are expected to result in beneficial
29 impacts to the environment. Decisions pertaining to fish habitat
30 enhancement projects meeting the criteria of subsection (1) of this
31 section and being reviewed and approved according to the provisions
32 of this section are not subject to the requirements of RCW
33 43.21C.030(2)(c).

34 (3)(a) A permit is required for projects that meet the criteria
35 of subsection (1) of this section and are being reviewed and approved
36 under this section. An applicant shall use a joint aquatic resource
37 permit application form developed by the office of regulatory
38 assistance to apply for approval under this chapter. On the same day,
39 the applicant shall provide copies of the completed application form
40 to the department and to each appropriate local government.

1 For applicants for a forest practices hydraulic project that are
2 not otherwise required to submit a joint aquatic resource permit
3 application, the department of natural resources must forward a copy
4 of the submitted forest practices application to the appropriate
5 local government consistent with RCW 76.09.490.

6 (b) Local governments shall accept the application identified in
7 this section as notice of the proposed project. (~~The department~~) A
8 local government shall (~~provide~~) be provided with a fifteen-day
9 comment period during which it (~~will receive~~) may transmit comments
10 regarding environmental impacts to the department or, for forest
11 practices hydraulic projects, to the department of natural resources.

12 (c) (~~Within forty-five days~~) Except for forest practices
13 hydraulic projects, the department shall either issue a permit, with
14 or without conditions, deny approval, or make a determination that
15 the review and approval process created by this section is not
16 appropriate for the proposed project within forty-five days. The
17 department shall base this determination on identification during the
18 comment period of adverse impacts that cannot be mitigated by the
19 conditioning of a permit. Permitting decisions over forest practices
20 hydraulic approvals must be made consistent with chapter 76.09 RCW.

21 (d) If the department determines that the review and approval
22 process created by this section is not appropriate for the proposed
23 project, the department shall notify the applicant and the
24 appropriate local governments of its determination. The applicant may
25 reapply for approval of the project under other review and approval
26 processes.

27 (e) Any person aggrieved by the approval, denial, conditioning,
28 or modification of a permit other than a forest practices hydraulic
29 project under this section may appeal the decision as provided in RCW
30 77.55.021(8). Appeals of a forest practices hydraulic project may be
31 made as provided in chapter 76.09 RCW.

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

36 (5) No civil liability may be imposed by any court on the state
37 or its officers and employees for any adverse impacts resulting from
38 a fish enhancement project permitted by the department or the
39 department of natural resources under the criteria of this section

1 except upon proof of gross negligence or willful or wanton
2 misconduct.

3 **Sec. 2.** RCW 76.09.490 and 2012 1st sp.s. c 1 s 202 are each
4 amended to read as follows:

5 (1) The department may request information and technical
6 assistance from the department of fish and wildlife regarding any
7 forest practices hydraulic project regulated under this chapter.

8 (2) A concurrence review process is established for certain
9 forest practices hydraulic projects, as follow[s]:

10 (a) After receiving an application under RCW 76.09.050 that
11 includes a forest practices hydraulic project involving one or more
12 water crossing structures meeting the criteria of (b) of this
13 subsection, the department shall provide all necessary information
14 provided by the applicant to the department of fish and wildlife for
15 concurrence review consistent with RCW 77.55.361(3). The required
16 information must be transmitted by the department to the department
17 of fish and wildlife as soon as practicable following the receipt of
18 a complete application.

19 (b) The concurrence review process applies only to:

20 (i) Culvert installation or replacement, and repair at or below
21 the bankfull width, as that term is defined in WAC 222-16-010 on July
22 10, 2012, in fish bearing rivers and streams that exceed five percent
23 gradient;

24 (ii) Bridge construction or replacement, and repair at or below
25 the bankfull width, of fish bearing unconfined streams; or

26 (iii) Fill within the flood level - 100 year, as that term is
27 defined in WAC 222-16-010, as it existed on July 10, 2012, of fish
28 bearing unconfined streams.

29 (3) After receiving an application under RCW 76.09.050 that
30 includes a forest practices hydraulic project involving one or more
31 fish passage barrier removals, the department must provide a copy of
32 that application to the appropriate local government for the purposes
33 of providing notification under RCW 77.55.181. The copy of the
34 application must be forwarded within forty-eight hours in the manner
35 deemed most efficient by the department. This may include
36 notification through web-based or other electronic notification
37 systems."

38 Correct the title.

EFFECT: Rather than prepare a joint aquatic resource permit application to submit to local government, applicants for forest practices hydraulic projects that remove fish passage barriers must submit a copy of their forest practices application (FPA) to the department of natural resources (DNR). The DNR must forward a copy of the FPA to the appropriate local government within 48 hours of receipt of the application.

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