

SSB 5393 - S AMD 12
By Senator Warnick

ADOPTED 02/28/2017

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 Applicants for a forest practices hydraulic project that are not
2 otherwise required to submit a joint aquatic resource permit
3 application must submit a copy of their forest practices application
4 to the appropriate local government.

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

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

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

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

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

35 (5) No civil liability may be imposed by any court on the state
36 or its officers and employees for any adverse impacts resulting from
37 a fish enhancement project permitted by the department or the
38 department of natural resources under the criteria of this section
39 except upon proof of gross negligence or willful or wanton
40 misconduct."

ADOPTED 02/28/2017

1 On page 1, line 3 of the title, after "77.55.181;" strike the
2 remainder of the title and insert "and amending RCW 77.55.181."

EFFECT: Specifies that the use of this review process for forestry-related applications does not negate the need to submit a joint aquatic resource permit application if the applicant is otherwise required to do so. States that appeals of a forest practices hydraulic project proceed under the forest practices act. Makes technical changes.

--- END ---