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HOUSE BILL 1760

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State of Washington

65th Legislature

2017 Regular Session

By Representatives Blake, Orcutt, Chapman, and Buys

Read first time 01/27/17. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to off-site mitigation for projects permitted  
2 under chapter 77.55 RCW; and amending RCW 77.55.241, 77.55.231, and  
3 77.55.251.

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

5 **Sec. 1.** RCW 77.55.241 and 2010 c 210 s 30 are each amended to  
6 read as follows:

7 (1) The legislature finds that the construction of certain  
8 hydraulic projects may require mitigation for the protection of fish  
9 life, and that the mitigation may be most cost-effective and provide  
10 the most benefit to the fish resource if the mitigation is allowed to  
11 be applied in locations that are off-site of the hydraulic project  
12 location. The department may approve off-site mitigation plans that  
13 are submitted by permit applicants consistent with RCW 77.55.231 and  
14 77.55.251.

15 (2) If a permit applicant proposes off-site mitigation and the  
16 department does not approve the permit or conditions the permit in  
17 such a manner as to render off-site mitigation unpracticable, the  
18 project proponent may appeal the decision as provided in RCW  
19 77.55.021(~~(+4)~~) (8).

1       **Sec. 2.** RCW 77.55.231 and 2012 1st sp.s. c 1 s 106 are each  
2 amended to read as follows:

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

9       (b) For the purposes of maintenance, repair, and preservation of  
10 existing publicly owned bridges and culverts that, at the time of  
11 application under RCW 77.55.021, do not create new impacts to fish  
12 life, any off-site mitigation other than as described in RCW  
13 77.55.251 is considered, for the purposes of this chapter, to not be  
14 reasonably related to the maintenance, repair, or preservation  
15 activities. The only conditions that are reasonably related to the  
16 maintenance, repair, and preservation of existing publicly owned  
17 bridges and culverts are on-site conditions relating to the timing of  
18 the repair, maintenance, or preservation or other conditions directly  
19 relating to specific repair, maintenance, or preservation  
20 techniques. This subsection (1)(b) does not apply to projects that  
21 function as replacement projects or create a long-term impact to fish  
22 life.

23       (c) A mitigation plan that proposes to utilize RCW 90.74.040 and  
24 fund projects related to the forestry riparian easement program,  
25 riparian open space program, or family forest fish passage program,  
26 as those terms are defined in RCW 90.74.010, or remove a fish passage  
27 barrier that is part of the public infrastructure, to satisfy any  
28 off-site mitigation conditions is presumed to be reasonably related  
29 to the project and is to be given preferred treatment by the  
30 department if the proposed off-site mitigation is located in the same  
31 watershed as the project.

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

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

1       **Sec. 3.** RCW 77.55.251 and 2005 c 146 s 603 are each amended to  
2 read as follows:

3       When reviewing a mitigation plan under RCW 77.55.021, the  
4 department shall, at the request of the project proponent, follow the  
5 guidance contained in chapter 90.74 RCW ((~~90.74.005~~ through  
6 ~~90.74.030~~)).

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