

HB 1187 - H AMD 1005

By Representative Dent

ADOPTED 02/12/2020

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

3 "Sec. 1. RCW 77.55.181 and 2019 c 150 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;

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

22 (iv) Restoration of native kelp and eelgrass beds and restoring  
23 native oysters.

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

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

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

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

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

9 (iv) Through the review and approval process for the jobs for the  
10 environment program;

11 (v) (~~Through the review and approval process for conservation~~  
12 ~~district-sponsored projects, where the project complies with design~~  
13 ~~standards established by the conservation commission through~~  
14 ~~interagency agreement with the United States fish and wildlife~~  
15 ~~service and the natural resource conservation service)) By  
16 conservation districts as conservation district-sponsored fish  
17 habitat enhancement or restoration projects;~~

18 (vi) Through a formal grant program established by the  
19 legislature or the department for fish habitat enhancement or  
20 restoration;

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

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

27 (ix) By a city or county for a stand-alone fish passage barrier  
28 correction project funded by the city or county;

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

31 (xi) Through other formal review and approval processes  
32 established by the legislature.

33 (2) Fish habitat enhancement projects meeting the criteria of  
34 subsection (1) of this section are expected to result in beneficial  
35 impacts to the environment. Decisions pertaining to fish habitat  
36 enhancement projects meeting the criteria of subsection (1) of this  
37 section and being reviewed and approved according to the provisions  
38 of this section are not subject to the requirements of RCW  
39 43.21C.030(2)(c).

1 (3) (a) A permit is required for projects that meet the criteria  
2 of subsection (1) of this section and are being reviewed and approved  
3 under this section. An applicant shall use a joint aquatic resource  
4 permit application form developed by the office of regulatory  
5 assistance to apply for approval under this chapter. On the same day,  
6 the applicant shall provide copies of the completed application form  
7 to the department and to each appropriate local government.  
8 Applicants for a forest practices hydraulic project that are not  
9 otherwise required to submit a joint aquatic resource permit  
10 application must submit a copy of their forest practices application  
11 to the appropriate local government on the same day that they submit  
12 the forest practices application to the department of natural  
13 resources.

14 (b) Local governments shall accept the application identified in  
15 this section as notice of the proposed project. A local government  
16 shall be provided with a fifteen-day comment period during which it  
17 may transmit comments regarding environmental impacts to the  
18 department or, for forest practices hydraulic projects, to the  
19 department of natural resources.

20 (c) Except for forest practices hydraulic projects, the  
21 department shall either issue a permit, with or without conditions,  
22 deny approval, or make a determination that the review and approval  
23 process created by this section is not appropriate for the proposed  
24 project within forty-five days. The department shall base this  
25 determination on identification during the comment period of adverse  
26 impacts that cannot be mitigated by the conditioning of a permit.  
27 Permitting decisions over forest practices hydraulic approvals must  
28 be made consistent with chapter 76.09 RCW.

29 (d) If the department determines that the review and approval  
30 process created by this section is not appropriate for the proposed  
31 project, the department shall notify the applicant and the  
32 appropriate local governments of its determination. The applicant may  
33 reapply for approval of the project under other review and approval  
34 processes.

35 (e) Any person aggrieved by the approval, denial, conditioning,  
36 or modification of a permit other than a forest practices hydraulic  
37 project under this section may appeal the decision as provided in RCW  
38 77.55.021(8). Appeals of a forest practices hydraulic project may be  
39 made as provided in chapter 76.09 RCW.

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

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

11 Correct the title.

EFFECT: Updates the bill to reflect amendments to RCW 77.55.181  
from the 2019 legislative session.

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