
SECOND SUBSTITUTE HOUSE BILL 1579

State of Washington

66th Legislature

2019 Regular Session

By House Appropriations (originally sponsored by Representatives Fitzgibbon, Peterson, Lekanoff, Doglio, Macri, Stonier, Tharinger, Stanford, Jinkins, Robinson, Pollet, Valdez, Cody, Kloba, Slatter, Frame, and Davis; by request of Office of the Governor)

READ FIRST TIME 02/28/19.

1 AN ACT Relating to implementing recommendations of the southern
2 resident killer whale task force related to increasing chinook
3 abundance; amending RCW 77.32.010 and 43.21B.110; adding a new
4 section to chapter 77.08 RCW; adding new sections to chapter 77.55
5 RCW; creating a new section; repealing RCW 77.55.141 and 77.55.291;
6 and prescribing penalties.

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

8 NEW SECTION. **Sec. 1.** (1) The legislature finds that the
9 population of southern resident killer whales has declined in recent
10 years and currently stands at a thirty-year low of seventy-four
11 animals.

12 (2) The governor convened the southern resident killer whale task
13 force after the 2018 legislative session to study and identify
14 actions that could be taken to help sustain and recover this
15 important species. In the course of its work, the task force found
16 that chinook salmon compose the largest portion of the whales' diet,
17 and are therefore critical to the recovery of the species. Further,
18 several runs of chinook salmon in Washington state are listed under
19 the federal endangered species act, making chinook recovery all the
20 more urgent.

1 (3) The task force identified four overarching southern resident
2 killer whale recovery goals and adopted several recommendations for
3 specific actions under each goal. Goal one identified by the task
4 force is to increase chinook abundance, and actions under that goal
5 relate to habitat protection, protection of chinook prey, such as
6 forage fish, and reducing impacts of nonnative chinook predators.

7 (4) To address the need identified by the task force to increase
8 chinook abundance, the legislature intends to take initial, important
9 steps consistent with recommendations made by the governor's southern
10 resident killer whale task force.

11 NEW SECTION. **Sec. 2.** A new section is added to chapter 77.08
12 RCW to read as follows:

13 The commission shall adopt rules to liberalize bag limits for
14 bass, walleye, and channel catfish in all anadromous waters of the
15 state in order to reduce the predation risk to salmon smolts.

16 **Sec. 3.** RCW 77.32.010 and 2014 c 48 s 26 are each amended to
17 read as follows:

18 (1) Except as otherwise provided in this chapter or department
19 rule, a recreational license issued by the director is required to
20 hunt, fish, or take wildlife or seaweed. A recreational fishing or
21 shellfish license is not required for carp, freshwater smelt, and
22 crawfish, and a hunting license is not required for bullfrogs.

23 (2) A pass or permit issued under RCW 79A.80.020, 79A.80.030, or
24 79A.80.040 is required to park or operate a motor vehicle on a
25 recreation site or lands, as defined in RCW 79A.80.010.

26 (3) The commission may, by rule, indicate that a fishing permit
27 issued to a nontribal member by the Colville Tribes shall satisfy the
28 license requirements in subsection (1) of this section on the waters
29 of Lake Rufus Woods and on the north shore of Lake Rufus Woods, and
30 that a Colville Tribes tribal member identification card shall
31 satisfy the license requirements in subsection (1) of this section on
32 all waters of Lake Rufus Woods.

33 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.55
34 RCW to read as follows:

35 (1) A person proposing construction or other work landward of the
36 ordinary high water line that will use, divert, obstruct, or change
37 the natural flow or bed of state waters shall submit a permit

1 application to the department. However, if a person is unsure about
2 whether the work requires a permit, they may request a preapplication
3 determination from the department. The department must evaluate the
4 proposed work and determine if the work is a hydraulic project and,
5 if so, whether a permit from the department is required to ensure
6 adequate protection of fish life.

7 (2) The preapplication determination request must be submitted
8 through the department's online permitting system and must contain:

9 (a) A description of the proposed project;

10 (b) A map showing the location of the project site; and

11 (c) Preliminary plans and specifications of the proposed
12 construction or work, if available.

13 (3) The department shall provide tribes and local governments a
14 seven calendar day review and comment period. The department shall
15 consider all applicable written comments received before issuing a
16 determination.

17 (4) The department shall issue a written determination, including
18 the rationale for the decision, within twenty-one calendar days of
19 receiving the request.

20 (5) Determinations made according to the provisions of this
21 section are not subject to the requirements of chapter 43.21C RCW.

22 NEW SECTION. **Sec. 5.** A new section is added to chapter 77.55
23 RCW to read as follows:

24 (1) When the department determines that a violation of this
25 chapter, or of any of the rules that implement this chapter, has
26 occurred or is about to occur, it shall first attempt to achieve
27 voluntary compliance. The department shall offer information and
28 technical assistance to the project proponent, identifying one or
29 more means to accomplish the project proponent's purposes within the
30 framework of the law. The department shall provide a reasonable
31 timeline to achieve voluntary compliance that takes into
32 consideration factors specific to the violation, such as the
33 complexity of the hydraulic project, the actual or potential harm to
34 fish life or fish habitat, and the environmental conditions at the
35 time.

36 (2) If a person violates this chapter, or any of the rules that
37 implement this chapter, or deviates from a permit, the department may
38 issue a notice of correction in accordance with chapter 43.05 RCW, a
39 notice of violation in accordance with chapter 43.05 RCW, a stop work

1 order, a notice to comply, or a notice of civil penalty as authorized
2 by law and subject to chapter 43.05 RCW and RCW 34.05.110.

3 (3) For purposes of this section, the term "project proponent"
4 means a person who has applied for a hydraulic project approval, a
5 person identified as an authorized agent on an application for a
6 hydraulic project approval, a person who has obtained a hydraulic
7 project approval, or a person who undertakes a hydraulic project
8 without a hydraulic project approval.

9 (4) This section does not apply to a project, or to that portion
10 of a project, that has received a forest practices hydraulic project
11 permit from the department of natural resources pursuant to chapter
12 76.09 RCW.

13 NEW SECTION. **Sec. 6.** A new section is added to chapter 77.55
14 RCW to read as follows:

15 (1) The department may serve upon a project proponent a stop work
16 order, which is a final order of the department, if:

17 (a) There is any violation of this chapter or of the rules
18 implementing this chapter or there is a deviation from the hydraulic
19 project approval; and

20 (b) Immediate action is necessary to prevent continuation of or
21 to avoid more than minor harm to fish life or fish habitat.

22 (2) (a) The stop work order must set forth:

23 (i) A description of the condition that is not in compliance and
24 the text of the specific section or subsection of this chapter or the
25 rules that implement this chapter;

26 (ii) A statement of what is required to achieve compliance;

27 (iii) The date by which the department requires compliance;

28 (iv) Notice of the means to contact any technical assistance
29 services provided by the department or others;

30 (v) Notice of when, where, and to whom the request to extend the
31 time to achieve compliance for good cause may be filed with the
32 department; and

33 (vi) The right to an appeal.

34 (b) A stop work order may require that any project proponent stop
35 all work connected with the violation until corrective action is
36 taken. A stop work order may also require that any project proponent
37 take corrective action to prevent, correct, or compensate for adverse
38 impacts to fish life and fish habitat.

1 (c) A stop work order must be authorized by senior or executive
2 department personnel. The department shall initiate rule making to
3 identify the appropriate level of senior and executive level staff
4 approval for these actions based on the level of financial effect on
5 the violator and the scope and scale of the impact to fish life and
6 habitat.

7 (3) Within five business days of issuing the stop work order, the
8 department shall mail a copy of the stop work order to the last known
9 address of any project proponent, to the last known address of the
10 owner of the land on which the hydraulic project is located, and to
11 the local jurisdiction in which the hydraulic project is located.
12 Substantial compliance with these mailing requirements is deemed
13 satisfactory compliance with this subsection. For purposes of this
14 subsection, "substantial compliance" means mailing to the last known
15 address of the owner of the land on which the hydraulic project is
16 located, to the local jurisdiction in which the hydraulic project is
17 located, and to the last known address of any project proponent who
18 has applied for a hydraulic project approval, who is identified as an
19 authorized agent on an application for a hydraulic project approval,
20 or who has obtained a hydraulic project approval.

21 (4) Issuance of a stop work order may be informally appealed by a
22 project proponent who was served with the stop work order or who
23 received a copy of the stop work order from the department, or by the
24 owner of the land on which the hydraulic project is located, to the
25 department within thirty days from the date of receipt of the stop
26 work order. Requests for informal appeal must be filed in the form
27 and manner prescribed by the department by rule. A stop work order
28 that has been informally appealed to the department is appealable to
29 the board within thirty days from the date of receipt of the
30 department's decision on the informal appeal.

31 (5) The project proponent who was served with the stop work order
32 or who received a copy of the stop work order from the department, or
33 the owner of the land on which the hydraulic project is located, may
34 commence an appeal to the board within thirty days from the date of
35 receipt of the stop work order. If such an appeal is commenced, the
36 proceeding is an adjudicative proceeding under the administrative
37 procedure act, chapter 34.05 RCW. The recipient of the stop work
38 order must comply with the order of the department immediately upon
39 being served, but the board may stay, modify, or discontinue the
40 order, upon motion, under such conditions as the board may impose.

1 (6) This section does not apply to a project, or to that portion
2 of a project, that has received a forest practices hydraulic project
3 permit from the department of natural resources pursuant to chapter
4 76.09 RCW.

5 (7) For the purposes of this section, "project proponent" has the
6 same meaning as defined in section 5(3) of this act.

7 NEW SECTION. **Sec. 7.** A new section is added to chapter 77.55
8 RCW to read as follows:

9 (1)(a) If a violation of this chapter or of the rules
10 implementing this chapter, a deviation from the hydraulic project
11 approval, damage to fish life or fish habitat, or potential damage to
12 fish life or fish habitat, has occurred and the department determines
13 that a stop work order is unnecessary, the department may issue and
14 serve upon a project proponent a notice to comply, which must clearly
15 set forth:

16 (i) A description of the condition that is not in compliance and
17 the text of the specific section or subsection of this chapter or the
18 rules that implement this chapter;

19 (ii) A statement of what is required to achieve compliance;

20 (iii) The date by which the department requires compliance to be
21 achieved;

22 (iv) Notice of the means to contact any technical assistance
23 services provided by the department or others;

24 (v) Notice of when, where, and to whom a request to extend the
25 time to achieve compliance for good cause may be filed with the
26 department; and

27 (vi) The right to an appeal.

28 (b) The notice to comply may require that any project proponent
29 take corrective action to prevent, correct, or compensate for adverse
30 impacts to fish life or fish habitat.

31 (2) Within five business days of issuing the notice to comply,
32 the department shall mail a copy of the notice to comply to the last
33 known address of any project proponent, to the last known address of
34 the owner of the land on which the hydraulic project is located, and
35 to the local jurisdiction in which the hydraulic project is located.
36 Substantial compliance with these mailing requirements is deemed
37 satisfactory compliance with this subsection. For purposes of this
38 subsection, "substantial compliance" means mailing to the last known
39 address of the owner of the land on which the hydraulic project is

1 located, to the local jurisdiction in which the hydraulic project is
2 located, and to the last known address of any project proponent who
3 has applied for a hydraulic project approval, who is identified as an
4 authorized agent on an application for a hydraulic project approval,
5 or who has obtained a hydraulic project approval.

6 (3) Issuance of a notice to comply may be informally appealed by
7 a project proponent who was served with the notice to comply or who
8 received a copy of the notice to comply from the department, or by
9 the owner of the land on which the hydraulic project is located, to
10 the department within thirty days from the date of receipt of the
11 notice to comply. Requests for informal appeal must be filed in the
12 form and manner prescribed by the department by rule. A notice to
13 comply that has been informally appealed to the department is
14 appealable to the board within thirty days from the date of receipt
15 of the department's decision on the informal appeal.

16 (4) The project proponent who was served with the notice to
17 comply, the project proponent who received a copy of the notice to
18 comply from the department, or the owner of the land on which the
19 hydraulic project is located may commence an appeal to the board
20 within thirty days from the date of receipt of the notice to comply.
21 If such an appeal is commenced, the proceeding is an adjudicative
22 proceeding under the administrative procedure act, chapter 34.05 RCW.
23 The recipient of the notice to comply must comply with the notice to
24 comply immediately upon being served, but the board may stay, modify,
25 or discontinue the notice to comply, upon motion, under such
26 conditions as the board may impose.

27 (5) This section does not apply to a project, or to that portion
28 of a project, that has received a forest practices hydraulic project
29 permit from the department of natural resources pursuant to chapter
30 76.09 RCW.

31 (6) For the purposes of this section, "project proponent" has the
32 same meaning as defined in section 5(3) of this act.

33 NEW SECTION. **Sec. 8.** A new section is added to chapter 77.55
34 RCW to read as follows:

35 (1)(a) The department may levy civil penalties of up to ten
36 thousand dollars for every violation of this chapter or of the rules
37 that implement this chapter. Each and every violation is a separate
38 and distinct civil offense.

1 (b) Penalties must be authorized by senior or executive
2 department personnel. The department shall initiate rule making to
3 identify the appropriate level of senior and executive level staff
4 approval for these actions based on the level of financial effect on
5 the violator and the scope and scale of the impact to fish life and
6 habitat.

7 (2) The penalty provided must be imposed by notice in writing by
8 the department, provided either by certified mail or by personal
9 service, to the person incurring the penalty and to the local
10 jurisdiction in which the hydraulic project is located, describing
11 the violation. The civil penalty notice must set forth:

12 (a) The basis for the penalty;

13 (b) The amount of the penalty; and

14 (c) The right of the person incurring the penalty to appeal the
15 civil penalty.

16 (3)(a) Except as provided in (b) of this subsection, any person
17 incurring any penalty under this chapter may appeal the penalty to
18 the board pursuant to chapter 34.05 RCW. Appeals must be filed within
19 thirty days from the date of receipt of the notice of civil penalty
20 in accordance with RCW 43.21B.230.

21 (b) Issuance of a civil penalty may be informally appealed by the
22 person incurring the penalty to the department within thirty days
23 from the date of receipt of the notice of civil penalty. Requests for
24 informal appeal must be filed in the form and manner prescribed by
25 the department by rule. A civil penalty that has been informally
26 appealed to the department is appealable to the board within thirty
27 days from the date of receipt of the department's decision on the
28 informal appeal.

29 (4) The penalty imposed becomes due and payable thirty days after
30 receipt of a notice imposing the penalty unless an appeal is filed.
31 Whenever an appeal of any penalty incurred under this chapter is
32 filed, the penalty becomes due and payable only upon completion of
33 all review proceedings and the issuance of a final order confirming
34 the penalty in whole or in part. When the penalty becomes past due,
35 it is also subject to interest at the rate allowed by RCW 43.17.240
36 for debts owed to the state.

37 (5) If the amount of any penalty is not paid within thirty days
38 after it becomes due and payable, the attorney general, upon the
39 request of the director, shall bring an action in the name of the
40 state of Washington in the superior court of Thurston county or of

1 the county in which such a violation occurred, to recover the
2 penalty. In all such actions, the rules of civil procedures and the
3 rules of evidence are the same as in an ordinary civil action. The
4 department is also entitled to recover reasonable attorneys' fees and
5 costs incurred in connection with the penalty recovered under this
6 section. All civil penalties received or recovered by state agency
7 action for violations as prescribed in subsection (1) of this section
8 must be deposited into the state's general fund. The department is
9 authorized to retain any attorneys' fees and costs it may be awarded
10 in connection with an action brought to recover a civil penalty
11 issued pursuant to this section.

12 (6) The department shall adopt by rule a penalty schedule to be
13 effective by January 1, 2020. The penalty schedule must be developed
14 in consideration of the following:

15 (a) Previous violation history;

16 (b) Severity of the impact on fish life and fish habitat;

17 (c) Whether the violation of this chapter or of its rules was
18 intentional;

19 (d) Cooperation with the department;

20 (e) Reparability of any adverse effects resulting from the
21 violation; and

22 (f) The extent to which a penalty to be imposed on a person for a
23 violation committed by another should be reduced if the person was
24 unaware of the violation and has not received a substantial economic
25 benefit from the violation.

26 (7) This section does not apply to a project, or to that portion
27 of a project, that has received a forest practices hydraulic project
28 permit from the department of natural resources pursuant to chapter
29 76.09 RCW.

30 NEW SECTION. **Sec. 9.** A new section is added to chapter 77.55
31 RCW to read as follows:

32 (1) The department may apply for an administrative inspection
33 warrant in either Thurston county superior court or the superior
34 court in the county in which the hydraulic project is located. The
35 court may issue an administrative inspection warrant where:

36 (a) Department personnel need to inspect the hydraulic project
37 site to ensure compliance with this chapter or with rules adopted to
38 implement this chapter; or

1 (b) Department personnel have probable cause to believe that a
2 violation of this chapter or of the rules that implement this chapter
3 is occurring or has occurred.

4 (2) This section does not apply to a project, or to that portion
5 of a project, that has received a forest practices hydraulic project
6 permit from the department of natural resources pursuant to chapter
7 76.09 RCW.

8 NEW SECTION. **Sec. 10.** A new section is added to chapter 77.55
9 RCW to read as follows:

10 (1) The department may disapprove an application for hydraulic
11 project approval submitted by a person who has failed to comply with
12 a final order issued pursuant to section 6 or 7 of this act or who
13 has failed to pay civil penalties issued pursuant to section 8 of
14 this act. Applications may be disapproved for up to one year from the
15 issuance of a notice of intent to disapprove applications under this
16 section, or until all outstanding civil penalties are paid and all
17 outstanding notices to comply and stop work orders are complied with,
18 whichever is longer.

19 (2) The department shall provide written notice of its intent to
20 disapprove an application under this section to the applicant and to
21 any authorized agent or landowner identified in the application.

22 (3) The disapproval period runs from thirty days following the
23 date of actual notice of intent or when all administrative and
24 judicial appeals, if any, have been exhausted.

25 (4) Any person provided the notice may seek review from the board
26 by filing a request for review within thirty days of the date of the
27 notice of intent to disapprove applications.

28 NEW SECTION. **Sec. 11.** A new section is added to chapter 77.55
29 RCW to read as follows:

30 The remedies under this chapter are not exclusive and do not
31 limit or abrogate any other civil or criminal penalty, remedy, or
32 right available in law, equity, or statute.

33 **Sec. 12.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to
34 read as follows:

35 (1) The hearings board shall only have jurisdiction to hear and
36 decide appeals from the following decisions of the department, the
37 director, local conservation districts, the air pollution control

1 boards or authorities as established pursuant to chapter 70.94 RCW,
2 local health departments, the department of natural resources, the
3 department of fish and wildlife, the parks and recreation commission,
4 and authorized public entities described in chapter 79.100 RCW:

5 (a) Civil penalties imposed pursuant to RCW 18.104.155,
6 70.94.431, 70.105.080, 70.107.050, 76.09.170, (~~77.55.291~~) section 8
7 of this act, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
8 90.56.310, 90.56.330, and 90.64.102.

9 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
10 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
11 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

12 (c) Except as provided in RCW 90.03.210(2), the issuance,
13 modification, or termination of any permit, certificate, or license
14 by the department or any air authority in the exercise of its
15 jurisdiction, including the issuance or termination of a waste
16 disposal permit, the denial of an application for a waste disposal
17 permit, the modification of the conditions or the terms of a waste
18 disposal permit, or a decision to approve or deny an application for
19 a solid waste permit exemption under RCW 70.95.300.

20 (d) Decisions of local health departments regarding the grant or
21 denial of solid waste permits pursuant to chapter 70.95 RCW.

22 (e) Decisions of local health departments regarding the issuance
23 and enforcement of permits to use or dispose of biosolids under RCW
24 70.95J.080.

25 (f) Decisions of the department regarding waste-derived
26 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
27 decisions of the department regarding waste-derived soil amendments
28 under RCW 70.95.205.

29 (g) Decisions of local conservation districts related to the
30 denial of approval or denial of certification of a dairy nutrient
31 management plan; conditions contained in a plan; application of any
32 dairy nutrient management practices, standards, methods, and
33 technologies to a particular dairy farm; and failure to adhere to the
34 plan review and approval timelines in RCW 90.64.026.

35 (h) Any other decision by the department or an air authority
36 which pursuant to law must be decided as an adjudicative proceeding
37 under chapter 34.05 RCW.

38 (i) Decisions of the department of natural resources, the
39 department of fish and wildlife, and the department that are
40 reviewable under chapter 76.09 RCW, and the department of natural

1 resources' appeals of county, city, or town objections under RCW
2 76.09.050(7).

3 (j) Forest health hazard orders issued by the commissioner of
4 public lands under RCW 76.06.180.

5 (k) Decisions of the department of fish and wildlife to issue,
6 deny, condition, or modify a hydraulic project approval permit under
7 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
8 comply, to issue a civil penalty, or to issue a notice of intent to
9 disapprove applications.

10 (l) Decisions of the department of natural resources that are
11 reviewable under RCW 78.44.270.

12 (m) Decisions of an authorized public entity under RCW 79.100.010
13 to take temporary possession or custody of a vessel or to contest the
14 amount of reimbursement owed that are reviewable by the hearings
15 board under RCW 79.100.120.

16 (2) The following hearings shall not be conducted by the hearings
17 board:

18 (a) Hearings required by law to be conducted by the shorelines
19 hearings board pursuant to chapter 90.58 RCW.

20 (b) Hearings conducted by the department pursuant to RCW
21 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
22 90.44.180.

23 (c) Appeals of decisions by the department under RCW 90.03.110
24 and 90.44.220.

25 (d) Hearings conducted by the department to adopt, modify, or
26 repeal rules.

27 (3) Review of rules and regulations adopted by the hearings board
28 shall be subject to review in accordance with the provisions of the
29 administrative procedure act, chapter 34.05 RCW.

30 NEW SECTION. **Sec. 13.** The following acts or parts of acts are
31 each repealed:

32 (1) RCW 77.55.141 (Marine beach front protective bulkheads or
33 rockwalls) and 2010 c 210 s 28, 2005 c 146 s 501, & 1991 c 279 s 1;
34 and

35 (2) RCW 77.55.291 (Civil penalty) and 2010 c 210 s 31, 2005 c 146
36 s 701, 2000 c 107 s 19, 1993 sp.s. c 2 s 35, 1988 c 36 s 35, & 1986 c
37 173 s 6.

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