
SENATE BILL 5404

State of Washington

66th Legislature

2019 Regular Session

By Senators Rolfes, Honeyford, Van De Wege, McCoy, Salomon, and Hasegawa

Read first time 01/21/19. Referred to Committee on Agriculture, Water, Natural Resources & Parks.

1 AN ACT Relating to expanding the definition of fish habitat
2 enhancement projects; and amending RCW 77.55.181 and 90.58.147.

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

4 **Sec. 1.** RCW 77.55.181 and 2017 c 241 s 1 are each amended to
5 read as follows:

6 (1)(a) In order to receive the permit review and approval process
7 created in this section, a fish habitat enhancement project must meet
8 the criteria under this section and must be a project to accomplish
9 one or more of the following tasks:

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

12 (A) Culvert repair and replacement; and

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

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

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

3 (iv) Restoration of native kelp and eelgrass beds and restoring
4 native oysters.

5 (b) The department shall develop size or scale threshold tests to
6 determine if projects accomplishing any of these tasks should be
7 evaluated under the process created in this section or under other
8 project review and approval processes. A project proposal shall not
9 be reviewed under the process created in this section if the
10 department determines that the scale of the project raises concerns
11 regarding public health and safety.

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

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

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

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

20 (iv) Through the review and approval process for the jobs for the
21 environment program;

22 (v) Through the review and approval process for conservation
23 district-sponsored projects, where the project complies with design
24 standards established by the conservation commission through
25 interagency agreement with the United States fish and wildlife
26 service and the natural resource conservation service;

27 (vi) Through a formal grant program established by the
28 legislature or the department for fish habitat enhancement or
29 restoration;

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

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

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

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

1 (xi) Through other formal review and approval processes
2 established by the legislature.

3 (2) Fish habitat enhancement projects meeting the criteria of
4 subsection (1) of this section are expected to result in beneficial
5 impacts to the environment. Decisions pertaining to fish habitat
6 enhancement projects meeting the criteria of subsection (1) of this
7 section and being reviewed and approved according to the provisions
8 of this section are not subject to the requirements of RCW
9 43.21C.030(2)(c).

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

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

29 (c) Except for forest practices hydraulic projects, the
30 department shall either issue a permit, with or without conditions,
31 deny approval, or make a determination that the review and approval
32 process created by this section is not appropriate for the proposed
33 project within forty-five days. The department shall base this
34 determination on identification during the comment period of adverse
35 impacts that cannot be mitigated by the conditioning of a permit.
36 Permitting decisions over forest practices hydraulic approvals must
37 be made consistent with chapter 76.09 RCW.

38 (d) If the department determines that the review and approval
39 process created by this section is not appropriate for the proposed
40 project, the department shall notify the applicant and the

1 appropriate local governments of its determination. The applicant may
2 reapply for approval of the project under other review and approval
3 processes.

4 (e) Any person aggrieved by the approval, denial, conditioning,
5 or modification of a permit other than a forest practices hydraulic
6 project under this section may appeal the decision as provided in RCW
7 77.55.021(8). Appeals of a forest practices hydraulic project may be
8 made as provided in chapter 76.09 RCW.

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

13 (5) No civil liability may be imposed by any court on the state
14 or its officers and employees for any adverse impacts resulting from
15 a fish enhancement project permitted by the department or the
16 department of natural resources under the criteria of this section
17 except upon proof of gross negligence or willful or wanton
18 misconduct.

19 **Sec. 2.** RCW 90.58.147 and 2003 c 39 s 49 are each amended to
20 read as follows:

21 (1) A public or private project that is designed to improve fish
22 or wildlife habitat or fish passage shall be exempt from the
23 substantial development permit requirements of this chapter when all
24 of the following apply:

25 (a) The project has been approved by the department of fish and
26 wildlife;

27 (b) The project has received hydraulic project approval by the
28 department of fish and wildlife pursuant to chapter 77.55 RCW; and

29 (c) The local government has determined that the project is
30 substantially consistent with the local shoreline master program. The
31 local government shall make such determination in a timely manner and
32 provide it by letter to the project proponent.

33 (2) Fish habitat enhancement projects that conform to the
34 provisions of RCW (~~77.55.290~~) 77.55.181 are determined to be
35 consistent with local shoreline master programs.

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