

# HOUSE BILL REPORT

## E2SHB 1382

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**As Passed House:**

March 2, 2021

**Title:** An act relating to streamlining the environmental permitting process for salmon recovery projects.

**Brief Description:** Streamlining the environmental permitting process for salmon recovery projects.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Tharinger, Dolan, Fitzgibbon, Wylie, Hackney and Callan).

**Brief History:**

**Committee Activity:**

Rural Development, Agriculture & Natural Resources: 2/2/21, 2/12/21 [DPS];  
Appropriations: 2/22/21 [DP2S(w/o sub RDAN)].

**Floor Activity:**

Passed House: 3/2/21, 95-2.

**Brief Summary of Engrossed Second Substitute Bill**

- Creates the Habitat Recovery Pilot Program (Pilot Program) for salmon restoration projects that meet certain criteria.
- Exempts qualifying projects from certain local permitting processes.
- Establishes a consultation and review process for projects under the Pilot Program.
- Expires the Pilot Program on June 30, 2025.

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**HOUSE COMMITTEE ON RURAL DEVELOPMENT, AGRICULTURE & NATURAL RESOURCES**

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Signed by 8 members: Representatives Chapman, Chair; Shewmake, Vice Chair; Fitzgibbon, Kloba, Lekanoff, Morgan, Ramos and Springer.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Chandler, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Klicker and Schmick.

**Minority Report:** Without recommendation. Signed by 3 members: Representatives Kretz, McEntire and Orcutt.

**Staff:** Robert Hatfield (786-7117).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Rural Development, Agriculture & Natural Resources. Signed by 25 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Corry, Assistant Ranking Minority Member; Chandler, Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Harris, Johnson, J., Lekanoff, Pollet, Rude, Ryu, Senn, Springer, Steele, Stonier, Sullivan and Tharinger.

**Minority Report:** Without recommendation. Signed by 8 members: Representatives Chambers, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Dye, Hoff, Jacobsen and Schmick.

**Staff:** Dan Jones (786-7118).

### **Background:**

#### Hydraulic Project Approvals.

A person must obtain a Hydraulic Project Approval (HPA) prior to commencing any construction project that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. Hydraulic Project Approvals are issued by the Department of Fish and Wildlife (WDFW) to ensure the proper protection of fish life. To receive an HPA, the applicant must provide certain information to the WDFW. This information includes general plans for the overall project and complete plans for the proper protection of fish life.

A person may file a hydraulic project pre-application with the WDFW to determine whether a project requires a complete application for a hydraulic project permit. The WDFW must provide tribes and local governments a seven-calendar-day review and comment period for pre-applications. If the WDFW determines that a complete application is required, the applicant would then be required to submit a complete application as defined in statute and

the WDFW would process the permitting decision.

#### *Fish Habitat Enhancement Projects.*

Fish habitat enhancement projects that meet a certain set of criteria may qualify for a streamlined administrative review and approval process. These are projects that are expected to result in beneficial impacts to the environment, and are of the size and scale, as determined by the WDFW, to accomplish one or more of the following:

- elimination of human-made or human-caused fish passage barriers;
- restoration of an eroded or unstable streambank employing the principle of bioengineering;
- placement of woody debris or other instream structures that benefit naturally reproducing fish stocks; or
- restoration of native kelp or eelgrass beds and native oysters.

Additionally, to qualify for streamlined review, a project must also be approved by certain sponsoring entities, including the WDFW, a conservation district, the Department of Transportation, a city or county, or other formal review and approval process.

In addition to a streamlined HPA process, projects that meet the criteria for fish habitat enhancement projects are eligible for exemption from the State Environmental Policy Act and exemption from local government permits and fees.

#### Floodplain Management.

The Department of Ecology (Ecology) is the lead state agency for floodplain management, which includes flood risk reduction and protection of floodplain environmental functions. Local governments are responsible for implementing local floodplain management plans as well as the National Flood Insurance Program (NFIP). Local governments may receive technical assistance from Ecology.

The NFIP, managed by the Federal Emergency Management Agency, makes federally backed flood insurance available in those states and communities that agree to adopt and enforce floodplain management ordinances to reduce future flood damage.

#### Inadvertent Discovery of Human Remains.

Any person who discovers skeletal human remains must notify the coroner and local law enforcement in the most expeditious manner possible. Any person knowing of the existence of human remains and not having good reason to believe that the coroner and local law enforcement has notice thereof and who fails to give notice thereof is guilty of a misdemeanor. Upon determination that the remains are nonforensic, the coroner must notify the Department of Archaeology and Historic Preservation within two business days.

## **Summary of Engrossed Second Substitute Bill:**

### Habitat Recovery Pilot Program.

The Habitat Recovery Pilot Program (Pilot Program) is created. In order to qualify to be included in the Pilot Program, an environmental restoration project must directly benefit freshwater, estuarine, or marine fish, or the habitat they rely on. In addition, the project must be included on a list of projects reviewed, approved, or funded by one of a number of specified entities, including, among others:

- the Bonneville Power Administration Restoration Program;
- the Brian Abbott Fish Passage Barrier Removal Board; and
- the Salmon Recovery Funding Board.

A project reviewed under the Pilot Program must document consistency with local, state, and federal flood risk reduction requirements. A project may not be reviewed under the Pilot Program if the local government in which the project will be located determines that the project does not meet applicable flood risk reduction requirements, or otherwise determines that the project raises concerns regarding public health and safety, and the local government provides timely notice of its determination to the Department of Fish and Wildlife (WDFW).

### *Cultural Resources.*

A project applicant or funding agency must review the proposed project with the Department of Archaeology and Historic Preservation (DAHP) and complete any required site surveys before the project applicant files an application under the Pilot Program. A project applicant must document consistency in the application with applicable cultural resource protection requirements. A project applicant must provide a copy of its application to the DAHP, and to affected federally recognized tribes, no fewer than 60 days before the application may be filed with the WDFW.

The WDFW may not review a project under the Pilot Program if a cultural resource site is identified at the project site or if an affected federally recognized tribe withholds its consent that the project should be expedited according to the process set forth in this section. Such consent may be withheld upon a determination that the project may adversely impact cultural resources. Notice of such a determination must be provided to the WDFW by the affected federally recognized tribe in a timely manner.

In the event of an inadvertent discovery of cultural resources or human remains, the project applicant must immediately notify the WDFW, the DAHP, and affected federally recognized tribes. In the event of an inadvertent discovery of cultural resources or human remains, existing requirements applicable to inadvertent discoveries of cultural resources and human remains apply.

*Aquatic Lands—Lease or other Land Use Authorization.*

For projects that require a lease or other land use authorization from the Department of Natural Resources (DNR), the project applicant must include in its application for a permit under the Pilot Program a signed Joint Aquatic Resources Permit Application, Attachment E. The project applicant must provide a copy of a completed application to the DNR no fewer than 30 days before the application may be filed with the WDFW. The DNR must make a final decision on applications for projects under the Pilot Program within 30 days of the issuance of a permit under the Pilot Program.

*Permitting.*

A permit under the Pilot Program is required for any project that meets the criteria for inclusion in the Pilot Program and that would otherwise be required to obtain a Hydraulic Project Approval (HPA). An applicant for a permit under the Pilot Program must submit an application through the WDFW online application system, and must at the same time also submit a copy of the application to the appropriate local government, to the Pilot Program's multiagency permitting team, and to potentially affected federally recognized tribes.

Projects approved for inclusion in the Pilot Program and that are reviewed and approved according to the provisions of the Pilot Program are not required to prepare an Environmental Impact Statement under the State Environmental Policy Act. Projects are also not required to obtain local or state permits or approvals other than the permit issued under the Pilot Program, except permits minimally necessary as a requirement of participation in a federal program.

When the WDFW concludes that a complete application has been submitted under the Pilot Program and copies of the application have been provided as required by the Pilot Program, the WDFW must provide notice to the local government within whose geographical jurisdiction the project will be located, to potentially affected federally recognized tribes, and to the members of the multiagency permitting team of receipt of a complete permit application.

The WDFW must, in a timely manner, provide a copy of any application seeking review under the Pilot Program and shall thereafter coordinate with affected federally recognized tribes as it implements the Pilot Program.

The WDFW must evaluate and make a decision on the application not sooner than 25 days, and not later than 45 days, after receipt of a complete permit application unless the multiagency permitting team process has been invoked.

Within 25 days of receiving a copy of the complete project application, the local government within whose geographical jurisdiction the project would be located, any member of the multiagency permitting team, or a potentially affected federally recognized

tribe may request that the WDFW place the application on hold and immediately convene a meeting with the requesting entity and the multiagency permitting team to review and evaluate the project.

All parties involved in the consultation process must work in good faith to expedite permitting. Any party with concerns must provide the basis for its concerns and potential pathways to address those concerns. Any party objecting to expedited permitting must provide a written basis for its objections to the WDFW or the multiagency permitting team.

*Multiagency Permitting Team.*

The multiagency permitting team is made up of representatives of the local government in whose geographical jurisdiction the project would be located, the WDFW, the Department of Ecology, the Recreation and Conservation Office, the Governor's Salmon Recovery Office, the DNR, and, when the project in question is located in the Puget Sound basin, the Puget Sound Partnership.

The WDFW and the multiagency permitting team must exclude from the Pilot Program any project if the WDFW or the multiagency permitting team concludes that the project may adversely impact human health, public safety, or the environment.

*Appeals.*

Any person aggrieved by the approval, denial, conditioning, or modification of a permit under the Pilot Program may appeal the decision pursuant to the Hydraulic Code.

*Liability.*

No civil liability may be imposed by any court on the state or its officers and employees for any adverse impacts resulting from a fish recovery pilot project permitted by the WDFW or the DNR under the criteria of the Pilot Program except upon proof of gross negligence or willful or wanton misconduct.

*Expiration.*

The Pilot Program expires on June 30, 2025.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony (Rural Development, Agriculture & Natural Resources):**

(In support) It is important to make sure that well-vetted capital projects at the state level are ready to capitalize on potential federal stimulus funding. There is support for a short-term pilot program to expand access to state and local permitting. It is important that there be support for the bill from tribes in order for it to be successful. The bill addresses federal flood control requirements.

It is important to accelerate a well-defined set of salmon recovery projects. Almost every salmon run in the state is in decline; the state is headed in the wrong direction on salmon. One thing the state can and should do is accelerate restoration projects, which is what this bill does. It is good that it is a five-year pilot, in order to allow for course correction if needed. Work is underway with the Department of Archaeology and Historic Preservation, tribes, and the Department of Natural Resources to address issues that have been raised.

(Opposed) None.

(Other) The Puget Sound region is not meeting its salmon recovery targets. The state is underfunding salmon recovery efforts. One challenge is that it is very difficult to get needed grants, because permitting delays make it hard to align grant deadlines. The bill would allow projects to happen more quickly and efficiently, and would allow for the aligning of grant deadlines. The bill would help improve the pace of salmon recovery.

There is support for the intent of the bill. The Family Forest Fish Passage Program already has its own streamlined process and so does not need to be in the bill.

The bill offers a straightforward path to meeting multiple state goals. The bill helps the salmon recovery system to be ready to receive funding.

There is support for the bill subject to several amendments that have already been submitted.

**Staff Summary of Public Testimony (Appropriations):**

(In support) This bill is a pilot that would streamline permitting for environmental resilience projects without sacrificing the review that permits provide. The bill follows a recommendation of the Southern Resident Orca Task Force, and would include involvement from tribes. Certain restoration projects that have not been successful accessing the state's current streamlined Hydraulic Project Approval process would receive streamlined permitting under this bill.

The restoration projects eligible for this pilot project will result in the completion of hundreds of publicly funded projects. The bill will bring more money and environmental

benefits to communities. Federal financial resources could be forthcoming for restoration projects and this pilot program will help more projects be shovel ready.

Washington is in the middle of a salmon crisis. This bill will push a class of fisheries restoration projects through on an expedited process. In the long run, this bill will be effective and will save the state money.

The pilot program will help additional projects be ready to get through the permitting process faster than they otherwise would be able to. There is a desire to demonstrate that this is a viable permitting pathway in the hopes of perhaps expanding it beyond a pilot project.

(Opposed) None.

**Persons Testifying (Rural Development, Agriculture & Natural Resources):** (In support) Representative Tharinger, prime sponsor; Justin Allegro, The Nature Conservancy; and Jay Manning, Puget Sound Leadership Council.

(Other) Todd Myers, Washington Policy Center; Heather Hansen, Washington Farm Forestry Association; Margen Carlson, Department of Fish and Wildlife; and Jim Hedrick, Muckleshoot Indian Tribe.

**Persons Testifying (Appropriations):** Representative Tharinger, prime sponsor; Justin Allegro, The Nature Conservancy; Margen Carlson, Washington Department of Fish and Wildlife; and Jay Manning.

**Persons Signed In To Testify But Not Testifying (Rural Development, Agriculture & Natural Resources):** None.

**Persons Signed In To Testify But Not Testifying (Appropriations):** None.