

---

**HOUSE BILL 1478**

---

**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Representatives Shewmake, Ortiz-Self, Fitzgibbon, Rule, Lekanoff, and Pollet

Read first time 02/03/21. Referred to Committee on Rural Development, Agriculture & Natural Resources.

1 AN ACT Relating to fish habitat enhancement projects authorized  
2 pursuant to RCW 77.55.181; and amending RCW 77.55.181.

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

4 **Sec. 1.** RCW 77.55.181 and 2020 c 166 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;

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) By conservation districts as conservation district-sponsored  
23 fish habitat enhancement or restoration projects;

24 (vi) By federally recognized tribes as tribally sponsored fish  
25 habitat enhancement projects or restoration projects;

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

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

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

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

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

1       (~~(xi)~~) (xii) 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, except that, pursuant to  
13 chapter 86.16 RCW, a local government may impose such requirements,  
14 or charge such fees, or both, as may be necessary in order for the  
15 local government to administer the national flood insurance program  
16 regulation requirements.

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

--- END ---