
HOUSE BILL 2085

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68th Legislature

2024 Regular Session

By Representatives Nance, Doglio, Simmons, Reed, Ramel, Timmons, Thai, Lekanoff, Riccelli, and Reeves; by request of Department of Fish and Wildlife

Prefiled 01/02/24. Read first time 01/08/24. Referred to Committee on Agriculture and Natural Resources.

1 AN ACT Relating to modifying the department of fish and
2 wildlife's habitat recovery pilot program; and amending RCW
3 77.55.480.

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

5 **Sec. 1.** RCW 77.55.480 and 2021 c 75 s 2 are each amended to read
6 as follows:

7 (1) The habitat recovery pilot program is created.

8 (2)(a) In order to be included in this statewide pilot program
9 and qualify for the permit review and approval process created in
10 this section, an environmental restoration project must directly
11 benefit freshwater, estuarine, or marine fish, or the habitat they
12 rely on, and must be included on a list of projects reviewed,
13 approved, or funded by one of the following restoration programs:

14 (i) The Bonneville power administration restoration program;

15 (ii) The Brian Abbott fish barrier removal board;

16 (iii) The estuary and salmon restoration program;

17 (iv) The floodplains by design program;

18 (v) The office of Chehalis basin aquatic species restoration
19 program;

20 (vi) The office of Columbia river habitat recovery projects;

21 (vii) The Puget Sound acquisition and restoration fund;

1 (viii) The Puget Sound national estuary program;
2 (ix) The salmon recovery funding board;
3 (x) The Washington coast restoration and resiliency initiative;
4 (xi) The Yakima tributary access and habitat program;
5 (xii) Fish recovery projects sponsored by a federally recognized
6 tribe; and
7 (xiii) Fish acclimation facility projects sponsored or operated
8 by a federally recognized tribe.

9 (b) A project application reviewed under this section must
10 document consistency with local, state, and federal flood risk
11 reduction requirements. A project may not be reviewed under the
12 process created in this section if the local government within whose
13 geographical jurisdiction the project will be located determines that
14 the project does not meet applicable flood risk reduction
15 requirements, or otherwise determines that the project raises
16 concerns regarding public health and safety, and the local government
17 provides timely notice of its determination to the department.

18 (c) (i) With regard to cultural resources, a project applicant or
19 funding agency must review the project with the department of
20 archaeology and historic preservation and complete any required site
21 surveys (~~before the project applicant files an application under~~
22 ~~this section~~). A project applicant must document consistency in the
23 application with applicable cultural resource protection
24 requirements.

25 (ii) A project applicant must provide a copy of its application
26 to the department of archaeology and historic preservation((~~r~~)) and
27 to affected federally recognized tribes(~~(, no fewer than 60 days~~
28 ~~before the application may be filed with the department)~~).

29 (iii) The department may not review a project under the expedited
30 process created in this section if a cultural resource site is
31 identified at the project site or if an affected federally recognized
32 tribe withholds its consent that the project should be expedited
33 according to the process set forth in this section. Such consent may
34 be withheld upon a determination that the project may adversely
35 impact cultural resources. Notice of such a determination must be
36 provided to the department by the affected federally recognized tribe
37 in a timely manner.

38 (iv) In the event of an inadvertent discovery of cultural
39 resources or human remains, the project applicant shall immediately
40 notify the department, the department of archaeology and historic

1 preservation, and affected federally recognized tribes. In the event
2 of an inadvertent discovery of cultural resources or human remains,
3 existing requirements applicable to inadvertent discoveries of
4 cultural resources and human remains, including those set forth in
5 chapters 27.53, 27.44, and 68.60 RCW, apply.

6 (d) For those projects that require a lease or other land use
7 authorization from the department of natural resources, the project
8 applicant must include in its application for a permit under this
9 section a signed joint aquatic resources permit application,
10 attachment E. The project applicant must provide a copy of a
11 completed application to the department of natural resources no fewer
12 than 30 days before the application may be filed with the department.
13 The department of natural resources must make a final decision on
14 applications for projects under this section within 30 days of the
15 issuance of a permit under this section.

16 (3) Fish recovery and fish habitat restoration projects meeting
17 the criteria of subsection (2) of this section are expected to result
18 in beneficial impacts to the aquatic environment. Projects approved
19 for inclusion in this pilot program and that are reviewed and
20 approved according to the provisions of this section are not subject
21 to the requirements of RCW 43.21C.030(2) and are not required to
22 obtain local or state permits or approvals other than the permit
23 issued under this section, except permits minimally necessary as a
24 requirement of participation in a federal program.

25 (4) (a) A permit under this chapter is required for projects that
26 meet the criteria of subsection (2) of this section and must be
27 reviewed and, if appropriate, approved under this section. An
28 applicant shall use the department's online permitting system to
29 apply for approval under this section and shall at the same time
30 provide a copy of the application to the local government within
31 whose geographical jurisdiction the project will be located, to the
32 members of the multiagency permitting team created in this section,
33 and to potentially affected federally recognized tribes.

34 (b) When the department concludes that a complete application has
35 been submitted under this section and copies of the application have
36 been provided as required in this section, the department shall
37 provide notice to the local government within whose geographical
38 jurisdiction the project will be located, to potentially affected
39 federally recognized tribes, and to the members of the multiagency
40 permitting team of receipt of a complete permit application.

1 (i) Unless the multiagency permitting team process described in
2 this section is invoked, the department shall evaluate and make a
3 decision on the application not sooner than 25 days, and not later
4 than 45 days, after receipt of a complete permit application.

5 (ii) Within 25 days of receiving a copy of the complete project
6 application, the local government within whose geographical
7 jurisdiction the project would be located, any member of the
8 multiagency permitting team, or a potentially affected federally
9 recognized tribe may request that the department place the
10 application on hold and immediately convene a meeting with the
11 requesting entity and the multiagency permitting team to review and
12 evaluate the project.

13 (iii) All parties involved in this review process shall work in
14 good faith to expedite permitting and any party with concerns shall
15 provide the basis for its concerns and potential pathways to address
16 those concerns. Any party objecting to expedited permitting shall
17 provide a written basis for its objections to the department or the
18 multiagency permitting team.

19 (iv) The multiagency review process may not exceed 45 days from
20 the request for review.

21 (c) The multiagency permitting team consists of representatives
22 of the local government in whose geographical jurisdiction the
23 project would be located, the department, the department of ecology,
24 the recreation and conservation office, the governor's salmon
25 recovery office, the department of natural resources, and, when the
26 project in question is located in the Puget Sound basin, the Puget
27 Sound partnership. For projects located in the Puget Sound basin,
28 meetings of the multiagency permitting team must be facilitated by
29 the Puget Sound partnership. All other meetings of the multiagency
30 permitting team must be facilitated by the recreation and
31 conservation office.

32 (d) The department or, where applicable, the multiagency
33 permitting team, shall exclude any project from the review and
34 approval process created by this section if it concludes that the
35 project may adversely impact human health, public safety, or the
36 environment, or that the project's scope or complexity renders it
37 inappropriate for expedited review.

38 (e) If the department or the multiagency permitting team
39 determines that the review and approval process created by this
40 section is not appropriate for the proposed project, the department

1 shall notify the applicant, the appropriate local government, and
2 potentially affected federally recognized tribes of its
3 determination. The applicant may reapply for approval of the project
4 under generally applicable review and approval processes. If the
5 multiagency permitting team determines that the review and approval
6 process created by this section is appropriate for the proposed
7 project, the hold on the application must be lifted and the
8 department shall make a decision within the time that remains of the
9 original 45-day decision deadline.

10 (f) Any person aggrieved by the approval, denial, conditioning,
11 or modification of a permit under this section may appeal the
12 decision as provided in RCW 77.55.021(8).

13 (g) The department shall, in a timely manner, provide a copy of
14 any application seeking review under this section and shall
15 thereafter coordinate with affected federally recognized tribes as it
16 implements this section.

17 (5) No local or state government may require permits or charge
18 fees other than the permit issued under this section, except permits
19 minimally necessary as a requirement of participation in a federal
20 program, for fish recovery pilot projects that meet the criteria of
21 subsection (2) of this section and that are reviewed and approved
22 according to the provisions of this section.

23 (6) No civil liability may be imposed by any court on the state
24 or its officers and employees for any adverse impacts resulting from
25 a fish recovery stimulus pilot project permitted by the department
26 under the criteria of this section except upon proof of gross
27 negligence or willful or wanton misconduct.

28 (7) This section expires June 30, 2025.

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