State of Washington  
62nd Legislature  
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By Representatives Pearson, Chandler, Kristiansen, Harris, McCune, and Haler  

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1 AN ACT Relating to streamlining state environmental permitting through the elimination of the hydraulics project approval process; amending RCW 34.05.328, 43.21K.010, 70.105D.090, 76.09.030, 89.08.470, 90.48.310, and 90.58.147; creating a new section; decodifying RCW 88.28.070; and repealing RCW 77.55.011, 77.55.021, 77.55.031, 77.55.041, 77.55.051, 77.55.061, 77.55.081, 77.55.091, 77.55.101, 77.55.111, 77.55.121, 77.55.131, 77.55.141, 77.55.151, 77.55.161, 77.55.171, 77.55.181, 77.55.191, 77.55.201, 77.55.211, 77.55.221, 77.55.231, 77.55.241, 77.55.251, 77.55.261, 77.55.271, 77.55.281, 77.55.291, and 77.15.300.

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

NEW SECTION. Sec. 1. (1) The legislature finds that the hydraulic project approval process established in chapter 77.55 RCW is one of the oldest environmental permitting processes currently in use at the state level. In 1949, the time of the hydraulic code's initial inception, the hydraulic project approval process was not only an essential and critical tool necessary for the protection of fish life in Washington's waterways, but in many cases it was the only such tool available for the protection of the resource.
(2) The legislature further finds that, since 1949, many additional federal, state, and local resource protection regulations have emerged to complement the hydraulic project approval process. So complete is the safety net of regulations affecting Washington waterways that, with slightly different emphases within the existing authorities of other regulatory programs, the hydraulic project approval process has grown redundant and unnecessary.

(3) The legislature further finds that although the hydraulic project approval process is the only permitting process that on its face is specifically dedicated to protecting fish life, the importance of the program is minimized by the protection of fish life that occurs naturally as a result of the implementation of all of the other environmental laws and regulations affecting activities located in or near state waters. Even without the hydraulic project approval process, fish life protection would be ensured based on the operation of, to name only a few: The federal and state clean water act; the endangered species act; chapter 77.57 RCW; the shoreline management act; the growth management act and critical area ordinances; the forest practices act and the forest and fish habitat conservation plan; the state environmental policy act; local grading permits and other regulatory authorities; state proprietary discretion in aquatic lands permitting; watershed planning; salmon recovery programs; and the general sense of duty to protect and restore the aquatic environment that all Washingtonians feel is an important part of their natural heritage and is inherent in state resource management.

(4) The legislature further finds that, according to a report by the department of fish and wildlife, the administrative and technical costs of the state's hydraulic project approval process is approximately four million five hundred thousand dollars each fiscal year. This amount is fully borne by the general fund, without dedicated revenue, and takes financial resources away from other important state programs where it could be used to promote economic development, strengthen education investments, ensure the viability of social safety nets, or to protect citizens through an enhanced commitment to the criminal justice system; all of which are more vital to the state's present and future than the continued implementation of an antiquated and redundant permitting system.
(5) The legislature intends with this act to simply remove the
hydraulic project approval process responsibilities from the department
of fish and wildlife and rely on the government infrastructure and the
myriad other environmental programs to provide the vital role of
protecting fish life and habitat. This step would not only save the
state nearly nine million dollars in general fund moneys each biennium,
but it would also allow the department of fish and wildlife to free the
resources necessary to pursue its primary management responsibilities
under Title 77 RCW. This outcome is far more favorable as a public
policy than either continuing to rely on state taxpayers to fund the
hydraulic project approval program, charging a fee to applicants for an
antiquated and unnecessary program, or investing still more state money
into programmatic permits that offer little or no additional
protections to fish life yet maintain the misleading façade that the
contents of chapter 77.55 RCW are a wise investment for the people of
Washington.

Sec. 2. RCW 34.05.328 and 2010 c 112 s 15 are each amended to read
as follows:
(1) Before adopting a rule described in subsection (5) of this
section, an agency shall:
(a) Clearly state in detail the general goals and specific
objectives of the statute that the rule implements;
(b) Determine that the rule is needed to achieve the general goals
and specific objectives stated under (a) of this subsection, and
analyze alternatives to rule making and the consequences of not
adopting the rule;
(c) Provide notification in the notice of proposed rule making
under RCW 34.05.320 that a preliminary cost-benefit analysis is
available. The preliminary cost-benefit analysis must fulfill the
requirements of the cost-benefit analysis under (d) of this subsection.
If the agency files a supplemental notice under RCW 34.05.340, the
supplemental notice shall include notification that a revised
preliminary cost-benefit analysis is available. A final cost-benefit
analysis shall be available when the rule is adopted under RCW
34.05.360;
(d) Determine that the probable benefits of the rule are greater
than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented;

(e) Determine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection;

(f) Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law;

(g) Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law;

(h) Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by the following:

(i) A state statute that explicitly allows the agency to differ from federal standards; or

(ii) Substantial evidence that the difference is necessary to achieve the general goals and specific objectives stated under (a) of this subsection; and

(i) Coordinate the rule, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

(2) In making its determinations pursuant to subsection (1)(b) through (h) of this section, the agency shall place in the rule-making file documentation of sufficient quantity and quality so as to persuade a reasonable person that the determinations are justified.

(3) Before adopting rules described in subsection (5) of this section, an agency shall place in the rule-making file a rule implementation plan for rules filed under each adopting order. The plan shall describe how the agency intends to:

(a) Implement and enforce the rule, including a description of the resources the agency intends to use;

(b) Inform and educate affected persons about the rule;

(c) Promote and assist voluntary compliance; and
(d) Evaluate whether the rule achieves the purpose for which it was adopted, including, to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcomes.

(4) After adopting a rule described in subsection (5) of this section regulating the same activity or subject matter as another provision of federal or state law, an agency shall do all of the following:

(a) Coordinate implementation and enforcement of the rule with the other federal and state entities regulating the same activity or subject matter by making every effort to do one or more of the following:

(i) Deferring to the other entity;
(ii) Designating a lead agency; or
(iii) Entering into an agreement with the other entities specifying how the agency and entities will coordinate implementation and enforcement.

If the agency is unable to comply with this subsection (4)(a), the agency shall report to the legislature pursuant to (b) of this subsection;

(b) Report to the joint administrative rules review committee:

(i) The existence of any overlap or duplication of other federal or state laws, any differences from federal law, and any known overlap, duplication, or conflict with local laws; and
(ii) Make recommendations for any legislation that may be necessary to eliminate or mitigate any adverse effects of such overlap, duplication, or difference.

(5)(a) Except as provided in (b) of this subsection, this section applies to:

(i) Significant legislative rules of the departments of ecology, labor and industries, health, revenue, social and health services, and natural resources, the employment security department, the forest practices board, and the office of the insurance commissioner; and
(ii) Any rule of any agency, if this section is voluntarily made applicable to the rule by the agency, or is made applicable to the rule
by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW 34.05.320.

(b) This section does not apply to:
   (i) Emergency rules adopted under RCW 34.05.350;
   (ii) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;
   (iii) Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
   (iv) Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
   (v) Rules the content of which is explicitly and specifically dictated by statute;
   (vi) Rules that set or adjust fees or rates pursuant to legislative standards;
   (vii) Rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents; or
   (viii) Rules of the department of revenue that adopt a uniform expiration date for reseller permits as authorized in RCW 82.32.780 and 82.32.783.

(c) For purposes of this subsection:
   (i) A "procedural rule" is a rule that adopts, amends, or repeals (A) any procedure, practice, or requirement relating to any agency hearings; (B) any filing or related process requirement for making application to an agency for a license or permit; or (C) any policy statement pertaining to the consistent internal operations of an agency.
   (ii) An "interpretive rule" is a rule, the violation of which does not subject a person to a penalty or sanction, that sets forth the agency's interpretation of statutory provisions it administers.
(iii) A "significant legislative rule" is a rule other than a procedural or interpretive rule that (A) adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction; (B) establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or (C) adopts a new, or makes significant amendments to, a policy or regulatory program.

(d) In the notice of proposed rule making under RCW 34.05.320, an agency shall state whether this section applies to the proposed rule pursuant to (a)(i) of this subsection, or if the agency will apply this section voluntarily.

(6) By January 31, 1996, and by January 31st of each even-numbered year thereafter, the office of financial management, after consulting with state agencies, counties, and cities, and business, labor, and environmental organizations, shall report to the governor and the legislature regarding the effects of this section on the regulatory system in this state. The report shall document:

(a) The rules proposed to which this section applied and to the extent possible, how compliance with this section affected the substance of the rule, if any, that the agency ultimately adopted;

(b) The costs incurred by state agencies in complying with this section;

(c) Any legal action maintained based upon the alleged failure of any agency to comply with this section, the costs to the state of such action, and the result;

(d) The extent to which this section has adversely affected the capacity of agencies to fulfill their legislatively prescribed mission;

(e) The extent to which this section has improved the acceptability of state rules to those regulated; and

(f) Any other information considered by the office of financial management to be useful in evaluating the effect of this section.

Sec. 3. RCW 43.21K.010 and 2003 c 39 s 25 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.
(1) "State, regional, or local agency" means an agency, board, department, authority, or commission that administers environmental laws.

(2) "Coordinating agency" means the state, regional, or local agency with the primary regulatory responsibility for the proposed environmental excellence program agreement. If multiple agencies have jurisdiction to administer state environmental laws affected by an environmental excellence agreement, the department of ecology shall designate or act as the coordinating agency.

(3) "Director" means the individual or body of individuals in whom the ultimate legal authority of an agency is vested by any provision of law. If the agency head is a body of individuals, a majority of those individuals constitutes the director.

(4) "Environmental laws" means chapters 43.21A, 70.94, 70.95, 70.105, 70.119A, (77.55,)) 90.48, 90.52, 90.58, 90.64, and 90.71 RCW, and RCW 90.54.020(3)(b) and rules adopted under those chapters and section. The term environmental laws as used in this chapter does not include any provision of the Revised Code of Washington, or of any municipal ordinance or enactment, that regulates the selection of a location for a new facility.

(5) "Facility" means a site or activity that is regulated under any of the provisions of the environmental laws.

(6) "Legal requirement" includes any provision of an environmental law, rule, order, or permit.

(7) "Sponsor" means the owner or operator of a facility, including a municipal corporation, subject to regulation under the environmental laws of the state of Washington, or an authorized representative of the owner or operator, that submits a proposal for an environmental excellence program agreement.

(8) "Stakeholder" means a person who has a direct interest in the proposed environmental excellence program agreement or who represents a public interest in the proposed environmental excellence program agreement. Stakeholders may include communities near the project, local or state governments, permittees, businesses, environmental and other public interest groups, employees or employee representatives, or other persons.
Sec. 4. RCW 70.105D.090 and 2003 c 39 s 30 are each amended to read as follows:

(1) A person conducting a remedial action at a facility under a consent decree, order, or agreed order, and the department when it conducts a remedial action, are exempt from the procedural requirements of chapters 70.94, 70.95, 70.105, (77.55), 90.48, and 90.58 RCW, and the procedural requirements of any laws requiring or authorizing local government permits or approvals for the remedial action. The department shall ensure compliance with the substantive provisions of chapters 70.94, 70.95, 70.105, (77.55), 90.48, and 90.58 RCW, and the substantive provisions of any laws requiring or authorizing local government permits of approvals. The department shall establish procedures for ensuring that such remedial actions comply with the substantive requirements adopted pursuant to such laws, and shall consult with the state agencies and local governments charged with implementing these laws. The procedures shall provide an opportunity for comment by the public and by the state agencies and local governments that would otherwise implement the laws referenced in this section. Nothing in this section is intended to prohibit implementing agencies from charging a fee to the person conducting the remedial action to defray the costs of services rendered relating to the substantive requirements for the remedial action.

(2) An exemption in this section or in RCW 70.94.335, 70.95.270, 70.105.116, (77.55.030), 90.48.039, and 90.58.355 shall not apply if the department determines that the exemption would result in loss of approval from a federal agency necessary for the state to administer any federal law, including the federal resource conservation and recovery act, the federal clean water act, the federal clean air act, and the federal coastal zone management act. Such a determination by the department shall not affect the applicability of the exemptions to other statutes specified in this section.

Sec. 5. RCW 76.09.030 and 2008 c 46 s 1 are each amended to read as follows:

(1) There is hereby created the forest practices board of the state of Washington as an agency of state government consisting of members as follows:
(a) The commissioner of public lands or the commissioner's designee;
(b) The director of the department of community, trade, and economic development commerce or the director's designee;
(c) The director of the department of agriculture or the director's designee;
(d) The director of the department of ecology or the director's designee;
(e) The director of the department of fish and wildlife or the director's designee;
(f) An elected member of a county legislative authority appointed by the governor: PROVIDED, That such member's service on the board shall be conditioned on the member's continued service as an elected county official;
(g) One member representing a timber products union, appointed by the governor from a list of three names submitted by a timber labor coalition affiliated with a statewide labor organization that represents a majority of the timber product unions in the state; and
(h) Six members of the general public appointed by the governor, one of whom shall be a small forest landowner who actively manages his or her land, and one of whom shall be an independent logging contractor.

(2) (The director of the department of fish and wildlife's service on the board may be terminated two years after August 18, 1999, if the legislature finds that after two years the department has not made substantial progress toward integrating the laws, rules, and programs governing forest practices, chapter 76.09 RCW, and the laws, rules, and programs governing hydraulic projects, chapter 77.55 RCW. Such a finding shall be based solely on whether the department of fish and wildlife makes substantial progress as defined in this subsection, and will not be based on other actions taken as a member of the board. Substantial progress shall include recommendations to the legislature for closer integration of the existing rule-making authorities of the board and the department of fish and wildlife, and closer integration of the forest practices and hydraulics permitting processes, including exploring the potential for a consolidated permitting process. These recommendations shall be designed to resolve problems currently associated with the existing dual regulatory and permitting processes.)
The members of the initial board appointed by the governor shall be appointed so that the term of one member shall expire December 31, 1975, the term of one member shall expire December 31, 1976, the term of one member shall expire December 31, 1977, the terms of two members shall expire December 31, 1978, and the terms of two members shall expire December 31, 1979. Thereafter, each member shall be appointed for a term of four years. Vacancies on the board shall be filled in the same manner as the original appointments. Each member of the board shall continue in office until his or her successor is appointed and qualified. The commissioner of public lands or the commissioner's designee shall be the chair of the board.

The board shall meet at such times and places as shall be designated by the chair or upon the written request of the majority of the board. The principal office of the board shall be at the state capital.

Members of the board, except public employees and elected officials, shall be compensated in accordance with RCW 43.03.250. Each member shall be entitled to reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060.

The board may employ such clerical help and staff pursuant to chapter 41.06 RCW as is necessary to carry out its duties.

Sec. 6. RCW 89.08.470 and 2003 c 39 s 47 are each amended to read as follows:

By January 1, 1996, the Washington conservation commission shall develop, in consultation with other state agencies, tribes, and local governments, a consolidated application process for permits for a watershed restoration project developed by an agency or sponsored by an agency on behalf of a volunteer organization. The consolidated process shall include a single permit application form for use by all responsible state and local agencies. The commission shall encourage use of the consolidated permit application process by any federal agency responsible for issuance of related permits. The permit application forms to be consolidated shall include, at a minimum, applications for: Approvals related to water quality standards under chapter 90.48 RCW; hydraulic project approvals...
under chapter 77.55 RCW and ((c) (2) section 401 water quality certifications under 33 U.S.C. Sec. 1341 and chapter 90.48 RCW.

(2) If a watershed restoration project is also a fish habitat enhancement project that meets the criteria of RCW 77.55.290(1), the project sponsor shall instead follow the permit review and approval process established in RCW 77.55.290 with regard to state and local government permitting requirements. The sponsor shall so notify state and local permitting authorities.)

Sec. 7. RCW 90.48.310 and 2007 c 30 s 1 are each amended to read as follows:

(1) Notwithstanding any other provisions of this chapter, the application of barley straw to waters of the state for the purposes of water clarification does not require a state waste discharge permit as long as the following provisions are met:

(a) The barley straw is applied at a rate of up to two hundred twenty-five pounds per acre of surface water;

(b) Whole bales or tightly packed straw are not used. Straw must be loosely packed in nylon or mesh bags;

(c) Bags of straw are placed where control is desired, such as around docks and swim areas, and around inlets to aid in aeration or mixing;

(d) The bags must be staked or anchored in place;

(e) Straw is placed in early spring, prior to the growth of algae; and

(f) Bags are removed four to six months after placement and must not be left in the water over winter.

(2) The placement of barley straw into waters of the state in any other instance is not authorized absent a permit.

((3) This section does not alter any permit requirement that may exist under chapter 77.55 RCW.)

Sec. 8. RCW 90.58.147 and 2003 c 39 s 49 are each amended to read as follows:

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

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((a))  (1) The project has been approved by the department of fish and wildlife; and

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

((c))  (2) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

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

NEW SECTION. Sec. 9. The following acts or parts of acts are each repealed:

(1) RCW 77.55.011 (Definitions) and 2010 c 210 s 26, 2009 c 549 s 1028, & 2005 c 146 s 101;
(2) RCW 77.55.021 (Permit) and 2010 c 210 s 27, 2008 c 272 s 1, & 2005 c 146 s 201;
(3) RCW 77.55.031 (Driving across established ford) and 2005 c 146 s 301;
(4) RCW 77.55.041 (Derelict fishing, crab, and other shellfish gear--Removal) and 2010 c 193 s 10, 2005 c 146 s 302, & 2002 c 20 s 4;
(5) RCW 77.55.051 (Spartina/purple loosestrife--Removal or control) and 2005 c 146 s 303;
(6) RCW 77.55.061 (Hazardous substance remedial actions--Procedural requirements not applicable) and 1994 c 257 s 18;
(7) RCW 77.55.081 (Removal or control of aquatic noxious weeds--Rules--Pamphlet) and 2005 c 146 s 401 & 1995 c 255 s 4;
(8) RCW 77.55.091 (Small scale prospecting and mining--Rules) and 2005 c 146 s 402 & 1997 c 415 s 2;
(9) RCW 77.55.101 (Environmental excellence program agreements--Effect on chapter) and 1997 c 381 s 25;
(10) RCW 77.55.111 (Habitat incentives agreement) and 2005 c 146 s 403, 2001 c 253 s 54, & 1997 c 425 s 4;
(11) RCW 77.55.121 (Habitat incentives program--Goal--Requirements of agreement--Application evaluation factors) and 2005 c 146 s 404, 2000 c 107 s 229, & 1997 c 425 s 3;
(12) RCW 77.55.131 (Dike vegetation management guidelines--Memorandum of agreement) and 2005 c 146 s 405, 2000 c 107 s 18, 1993 sp.s. c 2 s 34, & 1991 c 322 s 19;

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

(14) RCW 77.55.151 (Marina or marine terminal) and 2005 c 146 s 502, 2002 c 368 s 7, & 1996 c 192 s 2;

(15) RCW 77.55.161 (Storm water discharges) and 2005 c 146 s 503 & 2002 c 368 s 4;

(16) RCW 77.55.171 (Watershed restoration projects--Permit processing) and 2005 c 146 s 504 & 1995 c 378 s 14;

(17) RCW 77.55.181 (Fish habitat enhancement project--Permit review and approval process) and 2010 c 210 s 29, 2005 c 146 s 505, 2001 c 253 s 55, & 1998 c 249 s 3;

(18) RCW 77.55.191 (Columbia river anadromous fish sanctuary--Restrictions) and 2005 c 146 s 506, 1998 c 190 s 89, 1995 1st sp.s. c 2 s 27, 1993 sp.s. c 2 s 36, 1988 c 36 s 36, 1985 c 307 s 5, 1983 1st ex.s. c 46 s 76, & 1961 c 4 s 1;

(19) RCW 77.55.201 (Landscape management plan) and 2005 c 146 s 507;

(20) RCW 77.55.211 (Informational brochure) and 2005 c 146 s 406, 1993 sp.s. c 2 s 28, & 1991 c 322 s 21;

(21) RCW 77.55.221 (Flood damage repair and reduction activities--Five-year maintenance permit agreements) and 2005 c 146 s 508;

(22) RCW 77.55.231 (Conditions imposed upon a permit--Reasonably related to project) and 2005 c 146 s 601 & 2002 c 368 s 5;

(23) RCW 77.55.241 (Off-site mitigation) and 2010 c 210 s 30, 2005 c 146 s 602, & 1996 c 276 s 1;

(24) RCW 77.55.251 (Mitigation plan review) and 2005 c 146 s 603, 2000 c 107 s 15, & 1997 c 424 s 6;

(25) RCW 77.55.261 (Placement of woody debris as condition of permit) and 2005 c 146 s 604, 2000 c 107 s 17, 1993 sp.s. c 2 s 33, & 1991 c 322 s 18;

(26) RCW 77.55.271 (Sediment dredging or capping actions--Dredging of existing channels and berthing areas--Mitigation not required) and 1997 c 424 s 5;

(27) RCW 77.55.281 (Fishways on certain agricultural drainage facilities) and 2005 c 146 s 605;
NEW SECTION. Sec. 10. RCW 88.28.070 is decodified.