

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 1187

Chapter 166, Laws of 2020

66th Legislature
2020 Regular Session

CONSERVATION DISTRICT-SPONSORED FISH HABITAT ENHANCEMENT PROJECTS--
HYDRAULIC PROJECT ELIGIBILITY STANDARDS

EFFECTIVE DATE: June 11, 2020

Passed by the House February 12, 2020
Yeas 97 Nays 0

LAURIE JINKINS

**Speaker of the House of
Representatives**

Passed by the Senate March 3, 2020
Yeas 49 Nays 0

CYRUS HABIB

President of the Senate

Approved March 27, 2020 2:08 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 1187** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

March 27, 2020

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 1187

Passed Legislature - 2020 Regular Session

State of Washington **66th Legislature** **2019 Regular Session**

By Representatives Dent, Blake, Chandler, Kretz, Schmick, and Bergquist

Read first time 01/16/19. Referred to Committee on Rural Development, Agriculture, & Natural Resources.

1 AN ACT Relating to revising hydraulic project eligibility
2 standards under RCW 77.55.181 for conservation district-sponsored
3 fish habitat enhancement projects; and amending RCW 77.55.181.

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

5 **Sec. 1.** RCW 77.55.181 and 2019 c 150 s 1 are each amended to
6 read as follows:

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

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

13 (A) Culvert repair and replacement; and

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

17 (ii) Restoration of an eroded or unstable stream bank employing
18 the principle of bioengineering, including limited use of rock as a
19 stabilization only at the toe of the bank, and with primary emphasis
20 on using native vegetation to control the erosive forces of flowing
21 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) (~~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)) By
27 conservation districts as conservation district-sponsored fish
28 habitat enhancement or restoration projects;~~

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

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

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

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

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

3 (xi) Through other formal review and approval processes
4 established by the legislature.

5 (2) Fish habitat enhancement projects meeting the criteria of
6 subsection (1) of this section are expected to result in beneficial
7 impacts to the environment. Decisions pertaining to fish habitat
8 enhancement projects meeting the criteria of subsection (1) of this
9 section and being reviewed and approved according to the provisions
10 of this section are not subject to the requirements of RCW
11 43.21C.030(2)(c).

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

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

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

1 (d) If the department determines that the review and approval
2 process created by this section is not appropriate for the proposed
3 project, the department shall notify the applicant and the
4 appropriate local governments of its determination. The applicant may
5 reapply for approval of the project under other review and approval
6 processes.

7 (e) Any person aggrieved by the approval, denial, conditioning,
8 or modification of a permit other than a forest practices hydraulic
9 project under this section may appeal the decision as provided in RCW
10 77.55.021(8). Appeals of a forest practices hydraulic project may be
11 made as provided in chapter 76.09 RCW.

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

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

Passed by the House February 12, 2020.
Passed by the Senate March 3, 2020.
Approved by the Governor March 27, 2020.
Filed in Office of Secretary of State March 27, 2020.

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