

2 **2SHB 2879** - S COMM AMD (S5200.2)
3 By Committee on Natural Resources & Parks

4 ADOPTED AS AMENDED 3/12/98

5 Strike everything after the enacting clause and insert the
6 following:

7 NEW SECTION. **Sec. 1.** The legislature finds that fish habitat
8 enhancement projects play a key role in the state's salmon and
9 steelhead recovery efforts. The legislature finds that there are over
10 two thousand barriers to fish passage at road crossings throughout the
11 state, blocking fish access to as much as three thousand miles of
12 freshwater spawning and rearing habitat. The legislature further finds
13 that removal of these barriers and completion of other fish habitat
14 enhancement projects should be done in a cost-effective manner, which
15 includes providing technical assistance and training to people who will
16 undertake projects such as removal of barriers to salmon passage and
17 minimizing the expense and delays of various permitting processes. The
18 purpose of this act is to take immediate action to facilitate the
19 review and approval of fish habitat enhancement projects, to encourage
20 efforts that will continue to improve the process in the future, to
21 address known fish passage barriers immediately, and to develop over
22 time a comprehensive system to inventory and prioritize barriers on a
23 state-wide basis.

24 NEW SECTION. **Sec. 2.** The department of ecology permit assistant
25 center shall immediately modify the joint aquatic resource permit
26 application form to incorporate the permit process established in
27 section 3 of this act.

28 NEW SECTION. **Sec. 3.** A new section is added to chapter 75.20 RCW
29 to read as follows:

30 (1) In order to receive the permit review and approval process
31 created in this section, a fish habitat enhancement project must meet
32 the criteria under (a) and (b) of this subsection:

33 (a) A fish habitat enhancement project must be a project to
34 accomplish one or more of the following tasks:

1 (i) Elimination of human-made fish passage barriers, including
2 culvert repair and replacement;

3 (ii) Restoration of an eroded or unstable stream bank employing the
4 principle of bioengineering, including limited use of rock as a
5 stabilization only at the toe of the bank, and with primary emphasis on
6 using native vegetation to control the erosive forces of flowing water;
7 or

8 (iii) Placement of woody debris or other instream structures that
9 benefit naturally reproducing fish stocks.

10 The department shall develop size or scale threshold tests to
11 determine if projects accomplishing any of these tasks should be
12 evaluated under the process created in this section or under other
13 project review and approval processes. A project proposal shall not be
14 reviewed under the process created in this section if the department
15 determines that the scale of the project raises concerns regarding
16 public health and safety; and

17 (b) A fish habitat enhancement project must be approved in one of
18 the following ways:

19 (i) By the department pursuant to chapter 75.50 or 75.52 RCW;

20 (ii) By the sponsor of a watershed restoration plan as provided in
21 chapter 89.08 RCW;

22 (iii) By the department as a department-sponsored fish habitat
23 enhancement or restoration project;

24 (iv) Through the review and approval process for the jobs for the
25 environment program;

26 (v) Through the review and approval process for conservation
27 district-sponsored projects, where the project complies with design
28 standards established by the conservation commission through
29 interagency agreement with the United States fish and wildlife service
30 and the natural resource conservation service;

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

33 (vii) Through other formal review and approval processes
34 established by the legislature.

35 (2) Fish habitat enhancement projects meeting the criteria of
36 subsection (1) of this section are expected to result in beneficial
37 impacts to the environment. Decisions pertaining to fish habitat
38 enhancement projects meeting the criteria of subsection (1) of this
39 section and being reviewed and approved according to the provisions of

1 this section are not subject to the requirements of RCW
2 43.21C.030(2)(c).

3 (3) Hydraulic project approval is required for projects that meet
4 the criteria of subsection (1) of this section and are being reviewed
5 and approved under this section. An applicant shall use a joint
6 aquatic resource permit application form developed by the department of
7 ecology permit assistance center to apply for approval under this
8 chapter. On the same day, the applicant shall provide copies of the
9 completed application form to the department and to each appropriate
10 local government. Local governments shall accept the application as
11 notice of the proposed project. The department shall provide a
12 fifteen-day comment period during which it will receive comments
13 regarding environmental impacts. In no more than forty-five days, the
14 department shall either issue hydraulic project approval, with or
15 without conditions, deny approval, or make a determination that the
16 review and approval process created by this section is not appropriate
17 for the proposed project. The department shall base this determination
18 on identification during the comment period of adverse impacts that
19 cannot be mitigated by hydraulic project approval. If the department
20 determines that the review and approval process created by this section
21 is not appropriate for the proposed project, the department shall
22 notify the applicant and the appropriate local governments of its
23 determination. The applicant may reapply for approval of the project
24 under other review and approval processes.

25 Any person aggrieved by the approval, denial, conditioning, or
26 modification of hydraulic project approval under this section may
27 formally appeal the decision to the hydraulic appeals board pursuant to
28 the provisions of this chapter.

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

33 **Sec. 4.** RCW 90.58.147 and 1995 c 333 s 1 are each amended to read
34 as follows:

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

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

3 (~~(2)~~) (b) The project has received hydraulic project approval by
4 the department of fish and wildlife pursuant to chapter 75.20 RCW; and

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

9 (2) Fish habitat enhancement projects that conform to the
10 provisions of section 3 of this act are determined to be consistent
11 with local shoreline master programs.

12 **Sec. 5.** RCW 35.63.230 and 1995 c 378 s 8 are each amended to read
13 as follows:

14 A permit required under this chapter for a watershed restoration
15 project as defined in RCW 89.08.460 shall be processed in compliance
16 with RCW 89.08.450 through 89.08.510. A fish habitat enhancement
17 project meeting the criteria of section 3(1) of this act shall be
18 reviewed and approved according to the provisions of section 3 of this
19 act.

20 **Sec. 6.** RCW 35A.63.250 and 1995 c 378 s 9 are each amended to read
21 as follows:

22 A permit required under this chapter for a watershed restoration
23 project as defined in RCW 89.08.460 shall be processed in compliance
24 with RCW 89.08.450 through 89.08.510. A fish habitat enhancement
25 project meeting the criteria of section 3(1) of this act shall be
26 reviewed and approved according to the provisions of section 3 of this
27 act.

28 **Sec. 7.** RCW 36.70.992 and 1995 c 378 s 10 are each amended to read
29 as follows:

30 A permit required under this chapter for a watershed restoration
31 project as defined in RCW 89.08.460 shall be processed in compliance
32 with RCW 89.08.450 through 89.08.510. A fish habitat enhancement
33 project meeting the criteria of section 3(1) of this act shall be
34 reviewed and approved according to the provisions of section 3 of this
35 act.

1 NEW SECTION. **Sec. 8.** A new section is added to chapter 36.70 RCW
2 to read as follows:

3 A county is not liable for adverse impacts resulting from a fish
4 enhancement project that meets the criteria of section 3 of this act
5 and has been permitted by the department of fish and wildlife.

6 NEW SECTION. **Sec. 9.** A new section is added to chapter 35.21 RCW
7 to read as follows:

8 A city or town is not liable for adverse impacts resulting from a
9 fish enhancement project that meets the criteria of section 3 of this
10 act and has been permitted by the department of fish and wildlife.

11 NEW SECTION. **Sec. 10.** A new section is added to chapter 35A.21
12 RCW to read as follows:

13 A code city is not liable for adverse impacts resulting from a fish
14 enhancement project that meets the criteria of section 3 of this act
15 and has been permitted by the department of fish and wildlife.

16 **Sec. 11.** RCW 36.70A.460 and 1995 c 378 s 11 are each amended to
17 read as follows:

18 A permit required under this chapter for a watershed restoration
19 project as defined in RCW 89.08.460 shall be processed in compliance
20 with RCW 89.08.450 through 89.08.510. A fish habitat enhancement
21 project meeting the criteria of section 3(1) of this act shall be
22 reviewed and approved according to the provisions of section 3 of this
23 act.

24 **Sec. 12.** RCW 43.21C.0382 and 1995 c 378 s 12 are each amended to
25 read as follows:

26 Decisions pertaining to watershed restoration projects as defined
27 in RCW 89.08.460 are not subject to the requirements of RCW
28 43.21C.030(2)(c). Decisions pertaining to fish habitat enhancement
29 projects meeting the criteria of section 3(1) of this act and being
30 reviewed and approved according to the provisions of section 3 of this
31 act are not subject to the requirements of RCW 43.21C.030(2)(c).

32 **Sec. 13.** RCW 89.08.470 and 1995 c 378 s 3 are each amended to read
33 as follows:

1 (1) By January 1, 1996, the Washington conservation commission
2 shall develop, in consultation with other state agencies, tribes, and
3 local governments, a consolidated application process for permits for
4 a watershed restoration project developed by an agency or sponsored by
5 an agency on behalf of a volunteer organization. The consolidated
6 process shall include a single permit application form for use by all
7 responsible state and local agencies. The commission shall encourage
8 use of the consolidated permit application process by any federal
9 agency responsible for issuance of related permits. The permit
10 application forms to be consolidated shall include, at a minimum,
11 applications for: ~~((1))~~ (a) Approvals related to water quality
12 standards under chapter 90.48 RCW; ~~((2))~~ (b) hydraulic project
13 approvals under chapter 75.20 RCW; and ~~((3))~~ (c) section 401 water
14 quality certifications under 33 U.S.C. Sec. 1341 and chapter 90.48 RCW.

15 (2) If a watershed restoration project is also a fish habitat
16 enhancement project that meets the criteria of section 3(1) of this
17 act, the project sponsor shall instead follow the permit review and
18 approval process established in section 3 of this act with regard to
19 state and local government permitting requirements. The sponsor shall
20 so notify state and local permitting authorities.

21 NEW SECTION. Sec. 14. A new section is added to chapter 19.27 RCW
22 to read as follows:

23 A fish habitat enhancement project meeting the criteria of section
24 3(1) of this act is not subject to grading permits, inspections, or
25 fees and shall be reviewed according to the provisions of section 3 of
26 this act.

27 NEW SECTION. Sec. 15. The legislature finds that, while the
28 process created in this act can improve the speed with which fish
29 habitat enhancement projects are put into place, additional efforts can
30 improve the review and approval process for the future. The
31 legislature directs the department of fish and wildlife, the
32 conservation commission, local governments, fish habitat enhancement
33 project applicants, and other interested parties to work together to
34 continue to improve the permitting review and approval process.
35 Specific efforts shall include the following:

1 (1) Development of common acceptable design standards, best
2 management practices, and standardized hydraulic project approval
3 conditions for each type of fish habitat enhancement project;

4 (2) An evaluation of the potential for using technical evaluation
5 teams in evaluating specific project proposals or stream reaches;

6 (3) An evaluation of techniques appropriate for restoration and
7 enhancement of pasture and crop land adjacent to riparian areas;

8 (4) A review of local government shoreline master plans to identify
9 and correct instances where the local plan does not acknowledge
10 potentially beneficial instream work;

11 (5) An evaluation of the potential for local governments to
12 incorporate fish habitat enhancement projects into their comprehensive
13 planning process; and

14 (6) Continued work with the federal government agencies on federal
15 permitting for fish habitat enhancement projects.

16 The department of fish and wildlife shall coordinate this joint
17 effort and shall report back to the legislature on the group's progress
18 by December 1, 1998.

19 NEW SECTION. **Sec. 16.** A new section is added to chapter 75.50 RCW
20 to read as follows:

21 (1) The department of transportation is authorized to administer a
22 grant program to assist state agencies, local governments, private
23 landowners, tribes, and volunteer groups in identifying and removing
24 impediments to anadromous fish passage. The program shall be
25 administered consistent with the following:

26 (a) Eligible projects include corrective projects, inventory,
27 assessment, and prioritization efforts;

28 (b) Projects shall be subject to a competitive application process;

29 (c) Priority shall be given to projects that immediately increase
30 access to available and improved spawning and rearing habitat for
31 depressed, threatened, and endangered stocks. Priority shall also be
32 given to project applications that are coordinated with other efforts
33 within a watershed;

34 (d) All projects shall be reviewed and approved by the fish passage
35 barrier removal task force; and

36 (e) A match of at least twenty-five percent per project shall be
37 required. For local, private, and volunteer projects, in-kind
38 contributions may be counted toward the match requirement.

1 (2) The department of transportation shall proceed expeditiously in
2 implementing the grant program during the 1998 summer construction
3 season.

4 NEW SECTION. **Sec. 17.** By January 1, 1999, the fish passage
5 barrier removal task force as specified in RCW 75.50.160 shall report
6 to the legislature on its progress in implementing the provisions in
7 sections 16 and 19 of this act. The report shall also include
8 recommendations on future governance and administrative structures to
9 coordinate local, state, and private fish passage correction projects
10 and to administer state fish passage grants.

11 NEW SECTION. **Sec. 18.** This act is necessary for the immediate
12 preservation of the public peace, health, or safety, or support of the
13 state government and its existing public institutions, and takes effect
14 immediately."

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16 By Committee on Natural Resources & Parks

17 ADOPTED AS AMENDED 3/12/98

18 On page 1, line 2 of the title, after "projects;" strike the
19 remainder of the title and insert "amending RCW 90.58.147, 35.63.230,
20 35A.63.250, 36.70.992, 36.70A.460, 43.21C.0382, and 89.08.470; adding
21 a new section to chapter 75.20 RCW; adding a new section to chapter
22 36.70 RCW; adding a new section to chapter 35.21 RCW; adding a new
23 section to chapter 35.21A RCW; adding a new section to chapter 19.27
24 RCW; adding a new section to chapter 75.50 RCW; creating new sections;
25 and declaring an emergency."

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