

SENATE BILL REPORT

2SHB 2879

As Reported By Senate Committee On:
Natural Resources & Parks, February 26, 1998
Ways & Means, March 2, 1998

Title: An act relating to facilitating the review and approval of fish habitat enhancement projects.

Brief Description: Facilitating the review and approval of fish habitat enhancement projects.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Buck, Butler, Chandler, DeBolt, Sehlin, Hatfield, McCune, Doumit, Kessler, Morris, Kenney, Constantine, Ogden, Regala, Tokuda, Anderson, Thompson and Conway).

Brief History:

Committee Activity: Natural Resources & Parks: 2/20/98, 2/26/98 [DPA-WM].
Ways & Means: 3/2/98 [DPA (NRP)].

SENATE COMMITTEE ON NATURAL RESOURCES & PARKS

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Oke, Chair; Rossi, Vice Chair; Hargrove, Morton, Roach, Snyder, Stevens and Swecker.

Staff: Paul Mabrey (786-7412)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Vic Moon (786-7469)

Majority Report: Do pass as amended by Committee on Natural Resources & Parks.
Signed by Senators West, Chair; Deccio, Vice Chair; Strannigan, Vice Chair; Bauer, Fraser, Hochstatter, Kohl, Long, Loveland, McDonald, Roach, Rossi, Schow, Snyder, Spanel, Swecker, Thibaudeau and Zarelli.

Background: A variety of in-water projects are carried out to enhance salmon and steelhead habitat. Such projects include, among others, improving fish passage, bank stabilization to prevent erosion and siltation, placement of large woody debris, and the creation of overwintering ponds. Under current law, these projects are subjected to a review and approval process that includes the following steps:

- hydraulic projects approval;
- possible State Environmental Policy Act (SEPA) review; and
- differing local requirements.

A report to the Legislature from the Regional Fisheries Enhancement Group Program Citizens Advisory Board found that local permitting requirements can differ widely. Some counties waive local permits and fees in order to encourage community projects. Other counties often charge substantial fees for SEPA reviews and grading and filling permits. These processes and fees can frustrate local volunteer efforts and impede efforts to fit within the "work window" intended to ensure that in-water projects do not harm critical life stages for salmonids.

The Legislature addressed a similar issue pertaining to review and approval of watershed restoration projects. In 1995, the Legislature required (ESSB 5616) the Conservation Commission to 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. All agencies of the state and local governments are required to accept the single application developed by the Conservation Commission, to process the application without charge, and to issue permit decisions within 45 days. Watershed restoration projects are exempted from substantial development permits under the Shoreline Management Act.

Summary of Amended Bill: The review and approval of fish habitat enhancement projects is facilitated by identifying projects that are eligible for expedited review. The Department of Ecology is directed to modify the joint aquatic resource permit application (JARPA) form to incorporate the process established for expedited review of certain fish habitat enhancement projects.

Fish habitat enhancement projects eligible for expedited review are limited to those that (1) eliminate fish passage barriers; (2) restore eroded or unstable stream banks; or (3) provide instream structures that benefit fish stocks

The Department of Fish and Wildlife must develop size and scale thresholds to determine whether eligible projects should be reviewed under an expedited process or the standard process.

Local governments are prohibited from requiring permits or charging fees for the review and approval of eligible projects.

Projects are considered for expedited review only if they are approved:

- by the department pursuant to the Salmon Enhancement Program or to the Volunteer Cooperative Fish and Wildlife Enhancement Program;
- by the sponsor of a watershed restoration plan;
- by the department as a department-sponsored fish habitat enhancement or restoration project;
- through the review and approval process for the Jobs for the Environment Program;
- through the review and approval process for conservation district-sponsored projects;
- through a formal grant program established by the Legislature or the department for fish habitat enhancement or restoration; and
- through other formal review and approval processes established by the Legislature.

Hydraulic project approval is required for eligible projects, and must be applied for with a JARPA form. Projects sponsors must provide a completed JARPA form to both the Department of Fish and Wildlife and to each appropriate local government. A 15-day comment period is provided by the department so that comments can be made on the environmental impacts associated with the proposed project.

Within 45 days, the department will: (1) issue the hydraulic project approval, with or without conditions; (2) deny approval; or (3) make a determination that the expedited review process is not appropriate for the proposed project.

The State Environmental Policy Act is amended to exempt those fish habitat enhancement projects eligible for expedited review from environmental review decisions. In addition, projects eligible for expedited review are presumed consistent with local shoreline master programs.

Requirements pertaining to planning commissions, planning and zoning in code cities, the Planning Enabling Act, growth management, the Shoreline Management Act, and the state building code are each amended to require that eligible fish habitat enhancement projects be reviewed according to the expedited permit review and approval process established for such projects. If an eligible fish habitat enhancement project is also a watershed restoration project as defined in Chapter 89.08, the project sponsor must follow the expedited process.

Authority is granted to Department of Transportation to administer a grant program which would assist state agencies, local governments, private landowners, and volunteer groups in the removal of fish passage barriers. Projects are reviewed by the fish passage barrier removal task force. The task force reports to the Legislature by January 1, 1999 regarding the progress of implementation of the program.

The Department of Fish and Wildlife is required to lead an effort, also involving the Conservation Commission, local governments, fish habitat enhancement project applicants, and other interested parties, to continue improving the permitting and approval process for fish habitat enhancement projects, and to report to the Legislature on the group's progress by December 1, 1998.

Counties are not held responsible for adverse impacts resulting from a fish enhancement project that has been approved for expedited approval and has been exempted from the normal approval processes.

Amended Bill Compared to Second Substitute Bill: The amended bill grants authority to Department of Transportation to administer a grant program which would assist state agencies, local governments, private landowners, and volunteer groups in the removal of fish passage barriers. Projects are reviewed by the fish passage barrier removal task force. The task force will report to the legislature by January 1, 1999 regarding the progress of implementation of the program. Counties are not held responsible for adverse impacts resulting from a fish enhancement project that has been approved for expedited approval and has been exempted from the normal approval processes.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For (Natural Resources & Parks): The bill is needed to enable volunteer groups to aid in the state's restoration effort without incurring delays and expense for projects that are minor in nature but that nonetheless require hydraulic permits, SMA, SEPA, and various local permitting requirements and regulation. Such projects are abandoned because of this bureaucratic red tape. The bill is designed to provide facilitated approval of minor projects. Major projects would still require the normal approval process. Concern over the possibility that a small project might evolve into a project that would require more fee or scrutiny.

Testimony Against (Natural Resources & Parks): There may not be a problem as presumed by the drafters of this legislation. Counties could issue waivers. Counties could streamline their own permitting systems. The perceived problems can be resolved without this legislation. Question of liability with regard to the county's duty to protect and the possibility that an expedited project would result in an untoward effect.

Testified (Natural Resources & Parks): Gordon White, Department of Ecology; Paul Parker, Washington State Association of Counties (con); Dave Williams, Association of Washington Cities (con).

Testimony For (Ways & Means): This bill is necessary to simplify the fish restoration process and to improve the environment. The bill is needed so that the Department of Transportation and local government can continue the improvement of culverts which are barriers to fish passage. This bill is the allocation mechanism for grant funding in the 1998 supplemental budget for fish passage barrier removal.

Testimony Against (Ways & Means): None.

Testified (Ways & Means): Representative Jim Buck, original prime sponsor; Jerry Alb, Department of Transportation.