
SENATE BILL 5737

State of Washington

56th Legislature

1999 Regular Session

By Senator Jacobsen

Read first time 02/05/1999. Referred to Committee on Natural Resources, Parks & Recreation.

1 AN ACT Relating to fish passage barriers; amending RCW 75.20.040,
2 75.20.060, 75.20.061, 77.12.425, and 75.46.030; and adding new sections
3 to chapter 75.46 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 75.46 RCW
6 to read as follows:

7 (1) The interagency review team established under RCW 75.46.080
8 shall maintain a comprehensive inventory of barriers to fish passage.
9 The inventory shall be compiled from existing and ongoing inventories
10 being conducted by the state department of transportation, local
11 governments, and facility owners. The team shall place the highest
12 priority upon building the inventory for those geographic areas of the
13 state with salmon stocks listed under the federal endangered species
14 act, and for which fish passage barriers are identified as a factor
15 limiting stock recovery. The team shall seek recommendations from the
16 independent science panel created under RCW 75.46.050 on criteria and
17 methods for identifying high priority salmon stocks and high priority
18 passage barrier facilities to assist with compiling and maintaining the

1 inventory under this subsection and the listing under subsection (2) of
2 this section.

3 (2) Not later than June 30, 2001, the team shall identify from the
4 inventory those passage barriers that pose the greatest limitations
5 upon the recovery of salmon stocks listed on the federal endangered
6 species act, considering stocks state-wide and the relative impact of
7 these facilities on recovery and other limiting factors. Before adding
8 a facility to the list, the team shall notify the facility owner of the
9 proposed addition. The team shall not add a facility for which the
10 owner demonstrates to the team that construction to modify the facility
11 to eliminate the passage barrier will be commenced by July 1, 2003.
12 The list shall include not fewer than one hundred facilities posing
13 passage barriers.

14 (3) Upon finalizing the list required in subsection (2) of this
15 section, the team shall notify the owners of the listed facilities and
16 work with them to develop reasonable plans and compliance schedules for
17 modifying the facility to eliminate the passage barrier. The plans
18 shall include a design and construction component, a plan for
19 maintenance of the facility to prevent it becoming a barrier to fish
20 passage in the future, and a monitoring component to assess the
21 performance of the fish passage facility. The compliance schedule
22 shall establish a goal of early action to eliminate the barrier,
23 consistent with state recovery plans and consistent with applicable
24 habitat work schedules for the watershed in which the facility is
25 located.

26 NEW SECTION. **Sec. 2.** A new section is added to chapter 75.46 RCW
27 to read as follows:

28 Until June 30, 2003, any state agency considering the award of
29 grants or loans for a project to eliminate fish passage barriers shall
30 accord a preference for applications addressing facilities listed under
31 section 1 of this act and for which the applicant has adopted a plan
32 and compliance schedule approved by the interagency review team.

33 **Sec. 3.** RCW 75.20.040 and 1998 c 190 s 85 are each amended to read
34 as follows:

35 A diversion device used for conducting water from a lake, river, or
36 stream for any purpose shall be equipped with a fish guard approved by
37 the director to prevent the passage of fish into the diversion device.

1 The fish guard shall be maintained at all times when water is taken
2 into the diversion device. The fish guards shall be installed at
3 places and times prescribed by the director upon thirty days' notice to
4 the owner of the diversion device.

5 Each day the diversion device is not equipped with an approved fish
6 guard is a separate offense. If within thirty days after notice to
7 equip a diversion device the owner fails to do so, the director may
8 take possession of the diversion device and close the device until it
9 is properly equipped. Expenses incurred by the department constitute
10 the value of a lien upon the diversion device and upon the real and
11 personal property of the owner. Notice of the lien shall be filed and
12 recorded in the office of the county auditor of the county in which the
13 action is taken.

14 Until June 30, 2003, the director shall not take action under this
15 section where the director determines that the owner is in compliance
16 with a plan and compliance schedule approved by the interagency review
17 team under section 1 of this act.

18 **Sec. 4.** RCW 75.20.060 and 1998 c 190 s 86 are each amended to read
19 as follows:

20 (1) A dam or other obstruction across or in a stream shall be
21 provided with a durable and efficient fishway approved by the director.
22 Plans and specifications shall be provided to the department prior to
23 the director's approval. The fishway shall be maintained in an
24 effective condition and continuously supplied with sufficient water to
25 freely pass fish.

26 (2) If a person fails to construct and maintain a fishway or to
27 remove the dam or obstruction in a manner satisfactory to the director,
28 then within thirty days after written notice to comply has been served
29 upon the owner, his agent, or the person in charge, the director may
30 construct a fishway or remove the dam or obstruction. Expenses
31 incurred by the department constitute the value of a lien upon the dam
32 and upon the personal property of the person owning the dam. Notice of
33 the lien shall be filed and recorded in the office of the county
34 auditor of the county in which the dam or obstruction is situated. The
35 lien may be foreclosed in an action brought in the name of the state.

36 (3) If, within thirty days after notice to construct a fishway or
37 remove a dam or obstruction, the owner, his agent, or the person in
38 charge fails to do so, the dam or obstruction is a public nuisance and

1 the director may take possession of the dam or obstruction and destroy
2 it. No liability shall attach for the destruction.

3 (4) Until June 30, 2003, the director shall not take action under
4 subsections (2) and (3) of this section where the director determines
5 that the owner is in compliance with a plan and compliance schedule
6 approved by the interagency review team under section 1 of this act.

7 **Sec. 5.** RCW 75.20.061 and 1983 1st ex.s. c 46 s 73 are each
8 amended to read as follows:

9 (1) If the director determines that a fishway or fish guard
10 described in RCW 75.20.040 and 75.20.060 and in existence on September
11 1, 1963, is inadequate, in addition to other authority granted in this
12 chapter, the director may remove, relocate, reconstruct, or modify the
13 device, without cost to the owner. The director shall not materially
14 modify the amount of flow of water through the device. After the
15 department has completed the improvements, the fishways and fish guards
16 shall be operated and maintained at the expense of the owner in
17 accordance with RCW 75.20.040 and 75.20.060.

18 (2) Until June 30, 2003, the director shall not take action under
19 this section where the director determines that the owner is in
20 compliance with a plan and compliance schedule approved by the
21 interagency review team under section 1 of this act.

22 **Sec. 6.** RCW 77.12.425 and 1980 c 78 s 90 are each amended to read
23 as follows:

24 (1) The director may authorize removal, relocation, reconstruction,
25 or other modification of an inadequate fishway or fish protective
26 device required by RCW 77.16.210 and 77.16.220 which device was in
27 existence on September 1, 1963, without cost to the owner for materials
28 and labor. The modification may not materially alter the amount of
29 water flowing through the fishway or fish protective device. Following
30 modification, the fishway or fish protective device shall be maintained
31 at the expense of the person or governmental agency owning the
32 obstruction or water diversion device.

33 (2) Until June 30, 2003, the director shall not take action under
34 this section where the director determines that the owner is in
35 compliance with a plan and compliance schedule approved by the
36 interagency review team under section 1 of this act.

1 **Sec. 7.** RCW 75.46.030 and 1998 c 246 s 4 are each amended to read
2 as follows:

3 Beginning in December 2000, the governor shall submit a biennial
4 state of the salmon report to the legislature during the first week of
5 December. The report may include the following:

6 (1) A description of the amount of in-kind and financial
7 contributions, including volunteer, private, and state, federal, tribal
8 as available, and local government money directly spent on salmon
9 recovery in response to actual, proposed, or expected endangered
10 species act listings;

11 (2) A summary of habitat projects including but not limited to:

12 (a) A summary of accomplishments in removing barriers to salmon
13 passage and an identification of existing barriers;

14 (b) A summary of salmon restoration efforts undertaken in the past
15 two years;

16 (c) A summary of the role which private volunteer initiatives
17 contribute in salmon habitat restoration efforts; and

18 (d) A summary of efforts taken to protect salmon habitat;

19 (3) A summary of collaborative efforts undertaken with adjoining
20 states or Canada;

21 (4) A summary of harvest and hatchery management activities
22 affecting salmon recovery;

23 (5) A summary of information regarding impediments to successful
24 salmon recovery efforts;

25 (6) A summary of the number and types of violations of existing
26 laws pertaining to: (a) Water quality; ~~((and))~~ (b) passage barriers;
27 and (c) salmon. The summary shall include information about the types
28 of sanctions imposed for these violations;

29 (7) Information on the estimated carrying capacity of new habitat
30 created pursuant to chapter 246, Laws of 1998; ~~((and))~~

31 (8) A summary of actions to eliminate passage barriers, including
32 the inventory, priority list, and project plans and compliance
33 schedules under section 1 of this act; and

34 (9) Recommendations to the legislature that would further the
35 success of salmon recovery. The recommendations may include:

36 (a) The need to expand or improve nonregulatory programs and
37 activities; and

1 (b) The need to expand or improve state and local laws and
2 regulations.

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