
HOUSE BILL 2722

State of Washington

57th Legislature

2002 Regular Session

By Representatives McDermott, Ericksen, Rockefeller, Sump, Murray, Kenney, Doumit, Morell, Linville, Upthegrove, Edwards, Jackley, Chase, Schmidt, Benson, Clements, Pflug, Bush and Talcott

Read first time 01/25/2002. Referred to Committee on Natural Resources.

1 AN ACT Relating to barriers to fish passage; amending RCW
2 77.55.040, 77.55.070, 77.55.060, and 77.55.080; creating a new section;
3 and repealing RCW 77.55.310 and 77.55.320.

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

5 NEW SECTION. **Sec. 1.** The current laws regarding fish guards, fish
6 screens, and fish bypasses contain inconsistent terms and provisions.
7 The legislature recognizes that these differences are a result of food
8 fish being regulated by the former department of fisheries and game
9 fish being regulated by the former department of wildlife. These two
10 agencies were merged into the department of fish and wildlife in 1993.
11 The existing set of statutes are confusing to read and can produce
12 different results depending on the type of fish that may be passing
13 through the stream at a given time. It is the intent of the
14 legislature to establish a consistent set of provisions for fish
15 guards, fish screens, and fish bypasses that apply in an identical
16 manner to both food fish and game fish.

17 **Sec. 2.** RCW 77.55.040 and 1998 c 190 s 85 are each amended to read
18 as follows:

1 A diversion device used for conducting water from a lake, river, or
2 stream for any purpose shall be equipped with a fish guard, screen, or
3 bypass approved by the director to prevent the passage of fish into the
4 diversion device. The fish guard, screen, or bypass shall be
5 maintained at all times when water is taken into the diversion device.
6 The fish guards, screens, or bypasses shall be installed at places and
7 times prescribed by the director upon thirty days' notice to the owner
8 of the diversion device. Plans for the fish guard, screen, or bypass
9 shall be approved by the director before construction. The
10 installation shall be approved by the director before the diversion of
11 water.

12 Each day the diversion device is not equipped with an approved fish
13 guard, screen, or bypass is a separate offense. If within thirty days
14 after notice to equip a diversion device the owner fails to do so, the
15 director may (~~take possession of~~) close the diversion device (~~and~~
16 ~~close the device~~) until it is properly equipped with an approved fish
17 guard, screen, or bypass. Expenses incurred by the department
18 constitute the value of a lien upon the diversion device and upon the
19 real and personal property of the owner. Notice of the lien shall be
20 filed and recorded in the office of the county auditor of the county in
21 which the action is taken.

22 **Sec. 3.** RCW 77.55.070 and 2000 c 107 s 14 are each amended to read
23 as follows:

24 If the director determines that a (~~fishway or~~) fish guard,
25 screen, or bypass described in RCW 77.55.040 and 77.55.060 (~~and in~~
26 ~~existence on September 1, 1963,~~) is inadequate, in addition to other
27 authority granted in this chapter, the director may remove, relocate,
28 reconstruct, or modify the device, without cost to the owner. The
29 director shall not materially modify the amount of flow of water
30 through the device or bypass. After the department has completed the
31 improvements, the (~~fishways and~~) fish guards, screens, and bypasses
32 shall be operated and maintained at the expense of the owner in
33 accordance with RCW 77.55.040 and 77.55.060.

34 **Sec. 4.** RCW 77.55.060 and 1998 c 190 s 86 are each amended to read
35 as follows:

36 A dam or other obstruction across or in a stream shall be provided
37 with a durable and efficient (~~fishway~~) fish bypass approved by the

1 director. Plans and specifications shall be provided to the department
2 prior to the director's approval. The ((fishway)) fish bypass shall be
3 maintained in an effective condition and continuously supplied with
4 sufficient water to freely pass fish.

5 If a person fails to construct and maintain a ((fishway)) fish
6 bypass or to remove the dam or obstruction in a manner satisfactory to
7 the director, then within thirty days after written notice to comply
8 has been served upon the owner, his agent, or the person in charge, the
9 director may construct a ((fishway)) fish bypass or remove the dam or
10 obstruction. Expenses incurred by the department constitute the value
11 of a lien upon the dam or obstruction and upon the personal property of
12 the person owning the dam or obstruction. Notice of the lien shall be
13 filed and recorded in the office of the county auditor of the county in
14 which the dam or obstruction is situated. The lien may be foreclosed
15 in an action brought in the name of the state.

16 If, within thirty days after notice to construct a ((fishway)) fish
17 bypass or remove a dam or obstruction, the owner, his agent, or the
18 person in charge fails to do so, the dam or obstruction is a public
19 nuisance and the director may take possession of the dam or obstruction
20 and destroy it. No liability shall attach for the destruction.

21 **Sec. 5.** RCW 77.55.080 and 1983 1st ex.s. c 46 s 74 are each
22 amended to read as follows:

23 Before a person commences construction on a dam or other hydraulic
24 project for which the director determines that a ((fishway)) fish
25 bypass is impractical, the person shall at the option of the director:

26 (1) Convey to the state a fish cultural facility on a site
27 satisfactory to the director and constructed according to plans and
28 specifications approved by the director, and enter into an agreement
29 with the director secured by sufficient bond, to furnish water and
30 electricity, without expense, and funds necessary to operate and
31 maintain the facilities; or

32 (2) Enter into an agreement with the director secured by sufficient
33 bond to make payments to the state as the director determines are
34 necessary to expand, maintain, and operate additional facilities at
35 existing hatcheries within a reasonable distance of the dam or other
36 hydraulic work to compensate for the damages caused by the dam or other
37 hydraulic work.

1 (3) A decision of the director under this section is subject to
2 review in the superior court of the state for Thurston county. Each
3 day that a person carries on construction work or operates a dam or
4 hydraulic project without complying with this section is a separate
5 offense.

6 NEW SECTION. **Sec. 6.** The following acts or parts of acts are each
7 repealed:

8 (1) RCW 77.55.310 (Director may modify inadequate fishways and
9 protective devices) and 2001 c 253 s 21, 1980 c 78 s 90, & 1963 c 152
10 s 1; and

11 (2) RCW 77.55.320 (Diversion of water--Screen, bypass required) and
12 2001 c 253 s 48, 1998 c 190 s 122, 1980 c 78 s 89, & 1955 c 36 s
13 77.16.220.

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