

SSB 6509 - S AMD 502
By Senator Liiias

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 77.55.181 and 2010 c 210 s 29 are each amended to
4 read as follows:

5 (1)(a) In order to receive the permit review and approval process
6 created in this section, a fish habitat enhancement project must meet
7 the criteria under (~~((a) and (b) of))~~ this (~~(subsection-~~

8 ~~(a) A fish habitat enhancement project)~~ section and must be a
9 project to accomplish one or more of the following tasks:

10 (i) Elimination of human-made or caused fish passage barriers,
11 including culvert repair and replacement;

12 (ii) Restoration of an eroded or unstable streambank employing the
13 principle of bioengineering, including limited use of rock as a
14 stabilization only at the toe of the bank, and with primary emphasis on
15 using native vegetation to control the erosive forces of flowing water;
16 or

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

19 (b) The department shall develop size or scale threshold tests to
20 determine if projects accomplishing any of these tasks should be
21 evaluated under the process created in this section or under other
22 project review and approval processes. A project proposal shall not be
23 reviewed under the process created in this section if the department
24 determines that the scale of the project raises concerns regarding
25 public health and safety(~~(+and)~~).

26 (~~((b))~~) (c) A fish habitat enhancement project must be approved in
27 one of the following ways in order to receive the permit review and
28 approval process created in this section:

29 (i) By the department pursuant to chapter 77.95 or 77.100 RCW;

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

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

5 (iv) Through the review and approval process for the jobs for the
6 environment program;

7 (v) Through the review and approval process for conservation
8 district-sponsored projects, where the project complies with design
9 standards established by the conservation commission through
10 interagency agreement with the United States fish and wildlife service
11 and the natural resource conservation service;

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

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

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

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

22 (x) Through other formal review and approval processes established
23 by the legislature.

24 (2) Fish habitat enhancement projects meeting the criteria of
25 subsection (1) of this section are expected to result in beneficial
26 impacts to the environment. Decisions pertaining to fish habitat
27 enhancement projects meeting the criteria of subsection (1) of this
28 section and being reviewed and approved according to the provisions of
29 this section are not subject to the requirements of RCW
30 43.21C.030(2)(c).

31 (3)(a) A permit is required for projects that meet the criteria of
32 subsection (1) of this section and are being reviewed and approved
33 under this section. An applicant shall use a joint aquatic resource
34 permit application form developed by the office of regulatory
35 assistance to apply for approval under this chapter. On the same day,
36 the applicant shall provide copies of the completed application form to
37 the department and to each appropriate local government.

1 **(b)** Local governments shall accept the application as notice of the
2 proposed project. The department shall provide a fifteen-day comment
3 period during which it will receive comments regarding environmental
4 impacts.

5 **(c)** Within forty-five days, the department shall either issue a
6 permit, with or without conditions, deny approval, or make a
7 determination that the review and approval process created by this
8 section is not appropriate for the proposed project. The department
9 shall base this determination on identification during the comment
10 period of adverse impacts that cannot be mitigated by the conditioning
11 of a permit.

12 **(d)** If the department determines that the review and approval
13 process created by this section is not appropriate for the proposed
14 project, the department shall notify the applicant and the appropriate
15 local governments of its determination. The applicant may reapply for
16 approval of the project under other review and approval processes.

17 ~~((b))~~ **(e)** Any person aggrieved by the approval, denial,
18 conditioning, or modification of a permit under this section may appeal
19 the decision as provided in RCW 77.55.021~~((4))~~ **(8)**.

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

24 (5) The state is not liable for any adverse impacts resulting from
25 a fish enhancement project that meets the criteria of this section and
26 has been permitted by the department.

27 **Sec. 2.** RCW 77.95.180 and 2010 1st sp.s. c 7 s 83 are each amended
28 to read as follows:

29 **(1)(a)** To maximize available state resources, the department and
30 the department of transportation ~~((shall))~~ must work in partnership to
31 identify ~~((cooperative))~~ and complete projects to eliminate fish
32 passage barriers caused by state roads and highways.

33 (b) The partnership between the department and the department of
34 transportation must be based on the principle of maximizing habitat
35 recovery through a coordinated investment strategy that, to the maximum
36 extent practical and allowable, prioritizes opportunities: To correct
37 multiple fish barriers in whole streams rather than through individual,

1 isolated projects; to coordinate with other entities sponsoring barrier
2 removals, such as regional fisheries enhancement groups incorporated
3 under this chapter, in a manner that achieves the greatest cost savings
4 to all parties; and to correct barriers located furthest downstream in
5 a stream system. Examples of this principle include:

6 (i) Coordinating with all relevant state agencies and local
7 governments to maximize the habitat recovery value of the investments
8 made by the state to correct fish passage barriers;

9 (ii) Maximizing the habitat recovery value of investments made by
10 public and private forest landowners through the road maintenance and
11 abandonment planning process outlined in the forest practices rules, as
12 that term is defined in RCW 76.09.020;

13 (iii) Recognizing that many of the barriers owned by the state are
14 located in the same stream systems as barriers that are owned by cities
15 and counties with limited financial resources for correction and that
16 state-local partnership opportunities should be sought to address these
17 barriers; and

18 (iv) Recognizing the need to continue investments in the family
19 forest fish passage program created pursuant to RCW 76.13.150 and other
20 efforts to address fish passage barriers owned by private parties that
21 are in the same stream systems as barriers owned by public entities.

22 (2) The department ((of transportation)) shall also provide
23 engineering and other technical services to assist ((regional fisheries
24 enhancement groups)) nonstate barrier owners with fish passage barrier
25 removal projects, provided that the barrier removal projects have been
26 identified as a priority by the department ((of fish and wildlife)) and
27 the department ((of transportation)) has received an appropriation to
28 continue ((the)) that component of a fish barrier removal program.

29 (3) Nothing in this section is intended to:

30 (a) Alter the process and prioritization methods used in the
31 implementation of the forest practices rules, as that term is defined
32 in RCW 76.09.020, or the family forest fish passage program, created
33 pursuant to RCW 76.13.150, that provides public cost assistance to
34 small forest landowners associated with the road maintenance and
35 abandonment processes; or

36 (b) Prohibit or delay fish barrier projects undertaken by the
37 department of transportation or another state agency that are a
38 component of an overall transportation improvement project or that are

1 being undertaken as a direct result of state law, federal law, or a
2 court order. However, the department of transportation or another
3 state agency is required to work in partnership with the fish passage
4 barrier removal board created in RCW 77.95.160 to ensure that the
5 scheduling, staging, and implementation of these projects are, to
6 maximum extent practicable, consistent with the coordinated and
7 prioritized approach adopted by the fish passage barrier removal board.

8 **Sec. 3.** RCW 77.95.170 and 1999 c 242 s 4 are each amended to read
9 as follows:

10 (1) The department (~~(of transportation and the department of fish~~
11 ~~and wildlife)) may (~~administer and~~) coordinate with the recreation
12 and conservation office in the administration of all state grant
13 programs specifically designed to assist state agencies, (~~local~~
14 ~~governments,~~) private landowners, tribes, organizations, and volunteer
15 groups in identifying and removing impediments to salmonid fish
16 passage. The transportation improvement board may administer all grant
17 programs specifically designed to assist cities, counties, and other
18 units of local governments with fish passage barrier corrections
19 associated with transportation projects. All grant programs must be
20 administered and be consistent with the following:~~

21 (a) Salmonid-related corrective projects, inventory, assessment,
22 and prioritization efforts;

23 (b) Salmonid projects subject to a competitive application process;
24 and

25 (c) A minimum dollar match rate that is consistent with the funding
26 authority's criteria. If no funding match is specified, a match amount
27 of at least twenty-five percent per project is required. For local,
28 private, and volunteer projects, in-kind contributions may be counted
29 toward the match requirement.

30 (2) Priority shall be given to projects that (~~(immediately increase~~
31 ~~access to available and improved spawning and rearing habitat for~~
32 ~~depressed, threatened, and endangered stocks. Priority shall also be~~
33 ~~given to project applications that are coordinated with other efforts~~
34 ~~within a watershed)) match the principles provided in RCW 77.95.180.~~

35 (3) (~~(Except for projects administered by the transportation~~
36 ~~improvement board,)) All projects subject to this section shall be~~

1 reviewed and approved by the fish passage barrier removal ((task
2 force)) board created in RCW 77.95.160 or an alternative oversight
3 committee designated by the state legislature.

4 (4) Other agencies that administer natural resource-based grant
5 programs ((that may include fish passage barrier removal projects))
6 shall use fish passage selection criteria that are consistent with this
7 section when those programs are addressing fish passage barrier removal
8 projects.

9 (5)(a) The ((departments of transportation and fish and wildlife))
10 department shall establish a centralized database directory of all fish
11 passage barrier information. The database directory must include, but
12 is not limited to, existing fish passage inventories, fish passage
13 projects, grant program applications, and other databases. These data
14 must be used to coordinate and assist in habitat recovery and project
15 mitigation projects.

16 (b) The department must develop a barrier inventory training
17 program that qualifies participants to perform barrier inventories and
18 develop data that enhance the centralized database. The department may
19 decide the qualifications for participation. However, employees and
20 volunteers of conservation districts and regional salmon recovery
21 groups must be given priority consideration.

22 **Sec. 4.** RCW 77.95.160 and 2000 c 107 s 110 are each amended to
23 read as follows:

24 (1) The department ((and the department of transportation)) shall
25 ((convene)) maintain a fish passage barrier removal ((task force))
26 board. ((The task force shall consist of one representative each from
27 the department, the department of transportation, the department of
28 ecology, tribes, cities, counties, a business organization, an
29 environmental organization, regional fisheries enhancement groups, and
30 other interested entities as deemed appropriate by the cochairs. The
31 persons representing the department and the department of
32 transportation shall serve as cochairs of the task force and shall
33 appoint members to the task force. The task force shall make
34 recommendations to expand the program in RCW 77.95.180)) The board must
35 be composed of a representative from the department, the department of
36 transportation, cities, counties, the governor's salmon recovery
37 office, tribal governments, and the department of natural resources.

1 The representative of the department must serve as chair of the board
2 and may expand the membership of the board to representatives of other
3 governments, stakeholders, and interested entities.

4 (2)(a) The duty of the board is to identify and expedite the
5 removal of human-made or caused impediments to anadromous fish passage
6 in the most efficient manner practical(~~(.——Program)~~) through the
7 development of a coordinated approach and schedule that identifies and
8 prioritizes the projects necessary to eliminate fish passage barriers
9 caused by state and local roads and highways and barriers owned by
10 private parties.

11 (b) The coordinated approach must address fish passage barrier
12 removals in all areas of the state in a manner that is consistent with
13 a recognition that scheduling and prioritization is necessary.

14 (c) The board must coordinate and mutually share information, when
15 appropriate, with:

16 (i) Other fish passage correction programs, including local salmon
17 recovery plan implementation efforts through the governor's salmon
18 recovery office;

19 (ii) The applicable conservation districts when developing
20 schedules and priorities within set geographic areas or counties; and

21 (iii) The recreation and conservation office to ensure that barrier
22 removal methodologies are consistent with, and maximizing the value of,
23 other salmon recovery efforts and habitat improvements that are not
24 primarily based on the removal of barriers.

25 (d) Recommendations (~~(shall)~~) must include (~~(a)~~) proposed funding
26 mechanisms and other necessary mechanisms and methodologies to
27 coordinate (~~(and prioritize)~~) state, tribal, local, and volunteer
28 barrier removal efforts within each water resource inventory area and
29 satisfy the principles of RCW 77.95.180. To the degree practicable,
30 the board must utilize the database created in RCW 77.95.170 and
31 information on fish barriers developed by conservation districts to
32 guide methodology development. The board may consider recommendations
33 by interested entities from the private sector and regional fisheries
34 enhancement groups.

35 (e) When developing a prioritization methodology under this
36 section, the board shall consider:

37 (i) Projects benefiting depressed, threatened, and endangered
38 stocks;

1 (ii) Projects providing access to available and high quality
2 spawning and rearing habitat;

3 (iii) Correcting the lowest barriers within the stream first;

4 (iv) Whether an existing culvert is a full or partial barrier;

5 (v) Projects that are coordinated with other adjacent barrier
6 removal projects; and

7 (vi) Projects that address replacement of infrastructure associated
8 with flooding, erosion, or other environmental damage. ((A priority
9 shall be given to projects that immediately increase access to
10 available and improved spawning and rearing habitat for depressed,
11 threatened, and endangered stocks. The department or the department of
12 transportation may contract with cities and counties to assist in the
13 identification and removal of impediments to anadromous fish passage.))

14 (f) The board may not make decisions on fish passage standards or
15 categorize as impassible culverts or other infrastructure developments
16 that have been deemed passable by the department.

17 NEW SECTION. Sec. 5. A new section is added to chapter 77.95 RCW
18 to read as follows:

19 The department may contract with cities and counties to assist in
20 the identification and removal of impediments to fish passage.

21 NEW SECTION. Sec. 6. (1) The department of fish and wildlife must
22 initiate contact with the United States army corps of engineers, the
23 national oceanic and atmospheric administration, and, if necessary,
24 the United States fish and wildlife service to explore the feasibility
25 of bundling multiple transportation-related fish barrier removal
26 projects under any available nationwide permits for the purpose of
27 achieving streamlined federal permitting with a reduced processing
28 time.

29 (2) The department of fish and wildlife must report back to the
30 legislature, consistent with RCW 43.01.036, by October 31, 2016,
31 summarizing the information gathered and any progress made towards
32 using the bundling concept to streamline permitting for transportation-
33 related fish barrier removal projects.

34 (3) This section expires June 30, 2017.

1 **Sec. 7.** RCW 19.27.490 and 2003 c 39 s 11 are each amended to read
2 as follows:

3 A fish habitat enhancement project meeting the criteria of RCW
4 (~~(77.55.290(1))~~) 77.55.181 is not subject to grading permits,
5 inspections, or fees and shall be reviewed according to the provisions
6 of RCW (~~(77.55.290)~~) 77.55.181.

7 **Sec. 8.** RCW 35.21.404 and 2003 c 39 s 14 are each amended to read
8 as follows:

9 A city or town is not liable for adverse impacts resulting from a
10 fish enhancement project that meets the criteria of RCW (~~(77.55.290)~~)
11 77.55.181 and has been permitted by the department of fish and
12 wildlife.

13 **Sec. 9.** RCW 35.63.230 and 2003 c 39 s 15 are each amended to read
14 as follows:

15 A permit required under this chapter for a watershed restoration
16 project as defined in RCW 89.08.460 shall be processed in compliance
17 with RCW 89.08.450 through 89.08.510. A fish habitat enhancement
18 project meeting the criteria of RCW (~~(77.55.290(1))~~) 77.55.181 shall be
19 reviewed and approved according to the provisions of RCW (~~(77.55.290)~~)
20 77.55.181.

21 **Sec. 10.** RCW 35A.21.290 and 2003 c 39 s 16 are each amended to
22 read as follows:

23 A code city is not liable for adverse impacts resulting from a fish
24 enhancement project that meets the criteria of RCW (~~(77.55.290)~~)
25 77.55.181 and has been permitted by the department of fish and
26 wildlife.

27 **Sec. 11.** RCW 35A.63.250 and 2003 c 39 s 17 are each amended to
28 read as follows:

29 (1) A permit required under this chapter for a watershed
30 restoration project as defined in RCW 89.08.460 shall be processed in
31 compliance with RCW 89.08.450 through 89.08.510.

32 (2) A fish habitat enhancement project meeting the criteria of RCW
33 (~~(77.55.290(1))~~) 77.55.181 shall be reviewed and approved according to
34 the provisions of RCW (~~(77.55.290)~~) 77.55.181.

1 **Sec. 12.** RCW 36.70.982 and 2003 c 39 s 19 are each amended to read
2 as follows:

3 A county is not liable for adverse impacts resulting from a fish
4 enhancement project that meets the criteria of RCW (~~((77.55.290))~~)
5 77.55.181 and has been permitted by the department of fish and
6 wildlife.

7 **Sec. 13.** RCW 36.70.992 and 2003 c 39 s 20 are each amended to read
8 as follows:

9 (1) A permit required under this chapter for a watershed
10 restoration project as defined in RCW 89.08.460 shall be processed in
11 compliance with RCW 89.08.450 through 89.08.510.

12 (2) A fish habitat enhancement project meeting the criteria of RCW
13 (~~((77.55.290(1)))~~) 77.55.181 shall be reviewed and approved according to
14 the provisions of RCW (~~((77.55.290))~~) 77.55.181.

15 **Sec. 14.** RCW 36.70A.460 and 2003 c 39 s 21 are each amended to
16 read as follows:

17 (1) A permit required under this chapter for a watershed
18 restoration project as defined in RCW 89.08.460 shall be processed in
19 compliance with RCW 89.08.450 through 89.08.510.

20 (2) A fish habitat enhancement project meeting the criteria of RCW
21 (~~((77.55.290(1)))~~) 77.55.181 shall be reviewed and approved according to
22 the provisions of RCW (~~((77.55.290))~~) 77.55.181.

23 **Sec. 15.** RCW 43.21C.0382 and 2003 c 39 s 23 are each amended to
24 read as follows:

25 (1) Decisions pertaining to watershed restoration projects as
26 defined in RCW 89.08.460 are not subject to the requirements of RCW
27 43.21C.030(2)(c).

28 (2) Decisions pertaining to fish habitat enhancement projects
29 meeting the criteria of RCW (~~((77.55.290(1)))~~) 77.55.181 and being
30 reviewed and approved according to the provisions of RCW (~~((77.55.290))~~)
31 77.55.181 are not subject to the requirements of RCW 43.21C.030(2)(c)."

1 On page 1, line 1 of the title, after "removals;" strike the
2 remainder of the title and insert "amending RCW 77.55.181, 77.95.180,
3 77.95.170, 77.95.160, 19.27.490, 35.21.404, 35.63.230, 35A.21.290,
4 35A.63.250, 36.70.982, 36.70.992, 36.70A.460, and 43.21C.0382; adding
5 a new section to chapter 77.95 RCW; creating a new section; and
6 providing an expiration date."

EFFECT: Adds a new partnership principle for DOT and WDFW: Coordinating with other entities to remove barriers at the greatest cost savings for all entities; changes a reference to barriers that are the responsibility of local governments to barriers that are owned by local governments; removes the word "potentially" as it applies to the limited resources of counties; gives direction to the state to seek partnerships for barrier removals with local government; requires transportation-related fish passage barrier removals to be as consistent as practicable with the approach adopted by the fish passage barrier removal board; allows the board to consider recommendations by interested entities from the private sector and regional fisheries enhancement groups; and adds city and county funded barrier correction projects to the types of projects that receive streamlined permit review.

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