

SENATE BILL REPORT

2SHB 2251

As Reported by Senate Committee On:
Natural Resources & Parks, February 27, 2014

Title: An act relating to fish barrier removals.

Brief Description: Concerning fish barrier removals.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Wilcox, Blake, Orcutt and Clibborn).

Brief History: Passed House: 2/17/14, 98-0.

Committee Activity: Natural Resources & Parks: 2/25/14, 2/27/14 [DPA].

SENATE COMMITTEE ON NATURAL RESOURCES & PARKS

Majority Report: Do pass as amended.

Signed by Senators Pearson, Chair; Liias, Ranking Member; Dandel, Hargrove, Hewitt, Kline and Parlette.

Staff: Bonnie Kim (786-7316)

Background: Any construction project that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters in Washington requires hydraulic project approval (HPA). To receive an HPA, an applicant must provide the Washington Department of Fish and Wildlife (WDFW) with certain information, including general plans for the overall project, complete plans for proposed construction within the mean higher high water line in saltwater or ordinary high water line in freshwater, and complete plans for the proper protection of fish life.

Certain fish habitat enhancement projects expected to benefit the environment may qualify for streamlined permit review and are exempt from the State Environmental Policy Act and local permitting. Streamlined review is available for projects that eliminate human-made fish passage barriers, restore eroded or unstable streambanks, or place woody debris or other in-stream structures that benefit naturally reproducing fish stocks. Eligible projects must also be approved through certain fish habitat and wildlife enhancement or conservation programs.

Summary of Bill (Recommended Amendments): WDFW may, under streamlined review, approve the following three types of fish habitat enhancement projects: (1) the Department

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of Transportation's (DOT's) environmental retrofit program as a standalone fish passage barrier correction projects; (2) a local, state, or federally approved fish barrier removal grant program designed to assist local governments implementing standalone fish passage barrier corrections; and (3) standalone fish passage barrier correction projects funded by a city or county.

WDFW may seek partnerships and contract with cities and counties to identify and remove fish passage barriers. WDFW is the sole administrator of state grant programs designed to assist public and private entities in removing fish passage barriers. WDFW also maintains a centralized database to inventory fish barrier information and provides technical support to non-state barrier owners. WDFW must convene and chair a board, with representatives from DOT, the Department of Natural Resources, and other local and tribal entities, to identify and expedite human-made or caused fish passage barriers. The board must give priority to barriers caused by state and local roads and highways or owned by private parties.

DOT and WDFW must initiate contact with the U.S. Army Corps of Engineers, the National Oceanic and Atmospheric Administration, and, if necessary, the U.S. Fish and Wildlife Service to explore bundling multiple transportation-related fish barrier removal projects under nationwide permits to streamline federal permitting. DOT and WDFW must report to the Legislature by October 1, 2016, summarizing the information gathered and any progress made toward using the bundling concept. The partnership between WDFW and DOT must be based on a principle of maximizing habitat recovery at the greatest cost savings and prioritize opportunities to correct multiple fish barriers in whole streams and barriers located furthest downstream.

Fish barrier projects that are part of an overall transportation improvement project or undertaken as a direct result of state or federal law or a court order are not delayed or prohibited. Transportation-related fish passage barrier removals must be as consistent as practicable with the approach adopted by the board. WDFW must implement this act with available funds. The state is not liable for harm caused by fish enhancement projects permitted under the streamlined HPA process unless the harm is caused by acts of gross negligence or willful or wanton misconduct.

EFFECT OF CHANGES MADE BY NATURAL RESOURCES & PARKS COMMITTEE (Recommended Amendments): Encourages the board to consider recommendations by interested entities from the private sector and regional fisheries enhancement groups. Provides the state immunity from civil liability for harm caused by fish enhancement projects permitted under the streamlined HPA process unless the harm is caused by gross negligence or willful or wanton misconduct.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Second Substitute House Bill: PRO: The only concern with this version of the bill is having WDFW work within existing resources. This restriction could impact existing services offered by WDFW. The bill creates a coordinated strategy and focuses efforts on whole streams and watersheds so that barrier investments can open up large amounts of habitat to the benefit of salmon and fish recovery. The bill supports regulatory streamlining and increases cost efficiencies and savings. There have been provisos in the past two transportation budgets to inventory, analyze, and prioritize city fish passage barriers. There has been significant stakeholder consultation and work to arrive at this bill.

Persons Testifying: PRO: Julie Henning, WDFW; Nona Snell, Recreation and Conservation Office; Alison Hellberg, Assn. of WA Cities; Margaret Neuman, Regional Fisheries Enhancement Group Coalition, Mid-Columbia Fisheries; Dawn Vyvyan, Regional Fisheries Enhancement Group Coalition.