
SECOND SUBSTITUTE HOUSE BILL 2251

State of Washington

63rd Legislature

2014 Regular Session

By House Appropriations (originally sponsored by Representatives Wilcox, Blake, Orcutt, and Clibborn)

READ FIRST TIME 02/11/14.

1 AN ACT Relating to fish barrier removals; amending RCW 77.55.181,
2 77.95.180, 77.95.170, 77.95.160, 19.27.490, 35.21.404, 35.63.230,
3 35A.21.290, 35A.63.250, 36.70.982, 36.70.992, 36.70A.460, and
4 43.21C.0382; adding new sections to chapter 77.95 RCW; creating a new
5 section; and providing an expiration date.

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

7 **Sec. 1.** RCW 77.55.181 and 2010 c 210 s 29 are each amended to read
8 as follows:

9 (1)(a) In order to receive the permit review and approval process
10 created in this section, a fish habitat enhancement project must meet
11 the criteria under ~~((a) and (b) of))~~ this ~~((subsection+~~

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

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

16 (ii) Restoration of an eroded or unstable streambank employing the
17 principle of bioengineering, including limited use of rock as a
18 stabilization only at the toe of the bank, and with primary emphasis on

1 using native vegetation to control the erosive forces of flowing water;
2 or

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

5 (b) The department shall develop size or scale threshold tests to
6 determine if projects accomplishing any of these tasks should be
7 evaluated under the process created in this section or under other
8 project review and approval processes. A project proposal shall not be
9 reviewed under the process created in this section if the department
10 determines that the scale of the project raises concerns regarding
11 public health and safety(~~(+and)~~).

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

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

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

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

20 (iv) Through the review and approval process for the jobs for the
21 environment program;

22 (v) Through the review and approval process for conservation
23 district-sponsored projects, where the project complies with design
24 standards established by the conservation commission through
25 interagency agreement with the United States fish and wildlife service
26 and the natural resource conservation service;

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

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

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

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

37 (x) Through other formal review and approval processes established
38 by the legislature.

1 (2) Fish habitat enhancement projects meeting the criteria of
2 subsection (1) of this section are expected to result in beneficial
3 impacts to the environment. Decisions pertaining to fish habitat
4 enhancement projects meeting the criteria of subsection (1) of this
5 section and being reviewed and approved according to the provisions of
6 this section are not subject to the requirements of RCW
7 43.21C.030(2)(c).

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

15 (b) Local governments shall accept the application as notice of the
16 proposed project. The department shall provide a fifteen-day comment
17 period during which it will receive comments regarding environmental
18 impacts.

19 (c) Within forty-five days, the department shall either issue a
20 permit, with or without conditions, deny approval, or make a
21 determination that the review and approval process created by this
22 section is not appropriate for the proposed project. The department
23 shall base this determination on identification during the comment
24 period of adverse impacts that cannot be mitigated by the conditioning
25 of a permit.

26 (d) If the department determines that the review and approval
27 process created by this section is not appropriate for the proposed
28 project, the department shall notify the applicant and the appropriate
29 local governments of its determination. The applicant may reapply for
30 approval of the project under other review and approval processes.

31 ((+b+)) (e) Any person aggrieved by the approval, denial,
32 conditioning, or modification of a permit under this section may appeal
33 the decision as provided in RCW 77.55.021((+4+)) (8).

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

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

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

6 (1)(a) To maximize available state resources, the department and
7 the department of transportation (~~shall~~) must work in partnership to
8 identify (~~cooperative~~) and complete projects to eliminate fish
9 passage barriers caused by state roads and highways.

10 (b) The partnership between the department and the department of
11 transportation must be based on the principle of maximizing habitat
12 recovery through a coordinated investment strategy that, to the maximum
13 extent practical and allowable, prioritizes opportunities: To correct
14 multiple fish barriers in whole streams rather than through individual,
15 isolated projects; to coordinate with other entities sponsoring barrier
16 removals, such as regional fisheries enhancement groups incorporated
17 under this chapter, in a manner that achieves the greatest cost savings
18 to all parties; and to correct barriers located furthest downstream in
19 a stream system. Examples of this principle include:

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

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

27 (iii) Recognizing that many of the barriers owned by the state are
28 located in the same stream systems as barriers that are owned by cities
29 and counties with limited financial resources for correction and that
30 state-local partnership opportunities should be sought to address these
31 barriers; and

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

36 (2) The department (~~of transportation~~) shall also provide
37 engineering and other technical services to assist (~~regional fisheries~~

1 ~~enhancement groups~~) nonstate barrier owners with fish passage barrier
2 removal projects, provided that the barrier removal projects have been
3 identified as a priority by the department (~~of fish and wildlife~~) and
4 the department (~~of transportation~~) has received an appropriation to
5 continue (~~the~~) that component of a fish barrier removal program.

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

7 (a) Alter the process and prioritization methods used in the
8 implementation of the forest practices rules, as that term is defined
9 in RCW 76.09.020, or the family forest fish passage program, created
10 pursuant to RCW 76.13.150, that provides public cost assistance to
11 small forest landowners associated with the road maintenance and
12 abandonment processes; or

13 (b) Prohibit or delay fish barrier projects undertaken by the
14 department of transportation or another state agency that are a
15 component of an overall transportation improvement project or that are
16 being undertaken as a direct result of state law, federal law, or a
17 court order. However, the department of transportation or another
18 state agency is required to work in partnership with the fish passage
19 barrier removal board created in RCW 77.95.160 to ensure that the
20 scheduling, staging, and implementation of these projects are, to
21 maximum extent practicable, consistent with the coordinated and
22 prioritized approach adopted by the fish passage barrier removal board.

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

25 (1) The department (~~of transportation and the department of fish~~
26 ~~and wildlife~~) may (~~administer and~~) coordinate with the recreation
27 and conservation office in the administration of all state grant
28 programs specifically designed to assist state agencies, (~~local~~
29 ~~governments,~~) private landowners, tribes, organizations, and volunteer
30 groups in identifying and removing impediments to salmonid fish
31 passage. The transportation improvement board may administer all grant
32 programs specifically designed to assist cities, counties, and other
33 units of local governments with fish passage barrier corrections
34 associated with transportation projects. All grant programs must be
35 administered and be consistent with the following:

36 (a) Salmonid-related corrective projects, inventory, assessment,
37 and prioritization efforts;

1 (b) Salmonid projects subject to a competitive application process;
2 and

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

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

13 (3) ~~((Except for projects administered by the transportation
14 improvement board,))~~ All projects subject to this section shall be
15 reviewed and approved by the fish passage barrier removal ~~((task
16 force))~~ board created in RCW 77.95.160 or an alternative oversight
17 committee designated by the state legislature.

18 (4) Other agencies that administer natural resource-based grant
19 programs ~~((that may include fish passage barrier removal projects))~~
20 shall use fish passage selection criteria that are consistent with this
21 section when those programs are addressing fish passage barrier removal
22 projects.

23 (5)(a) ~~The ((departments of transportation and fish and wildlife))~~
24 department shall establish a centralized database directory of all fish
25 passage barrier information. The database directory must include, but
26 is not limited to, existing fish passage inventories, fish passage
27 projects, grant program applications, and other databases. These data
28 must be used to coordinate and assist in habitat recovery and project
29 mitigation projects.

30 (b) The department must develop a barrier inventory training
31 program that qualifies participants to perform barrier inventories and
32 develop data that enhance the centralized database. The department may
33 decide the qualifications for participation. However, employees and
34 volunteers of conservation districts and regional salmon recovery
35 groups must be given priority consideration.

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

1 ~~(1) The department ((and the department of transportation)) shall~~
2 ~~((convene))~~ maintain a fish passage barrier removal ~~((task force))~~
3 board. ~~((The task force shall consist of one representative each from~~
4 ~~the department, the department of transportation, the department of~~
5 ~~ecology, tribes, cities, counties, a business organization, an~~
6 ~~environmental organization, regional fisheries enhancement groups, and~~
7 ~~other interested entities as deemed appropriate by the cochairs. The~~
8 ~~persons representing the department and the department of~~
9 ~~transportation shall serve as cochairs of the task force and shall~~
10 ~~appoint members to the task force. The task force shall make~~
11 ~~recommendations to expand the program in RCW 77.95.180))~~ The board must
12 be composed of a representative from the department, the department of
13 transportation, cities, counties, the governor's salmon recovery
14 office, tribal governments, and the department of natural resources.
15 The representative of the department must serve as chair of the board
16 and may expand the membership of the board to representatives of other
17 governments, stakeholders, and interested entities.

18 (2)(a) The duty of the board is to identify and expedite the
19 removal of human-made or caused impediments to anadromous fish passage
20 in the most efficient manner practical((. Program)) through the
21 development of a coordinated approach and schedule that identifies and
22 prioritizes the projects necessary to eliminate fish passage barriers
23 caused by state and local roads and highways and barriers owned by
24 private parties.

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

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

30 (i) Other fish passage correction programs, including local salmon
31 recovery plan implementation efforts through the governor's salmon
32 recovery office;

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

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

1 (d) Recommendations ((shall)) must include ((a)) proposed funding
2 mechanisms and other necessary mechanisms and methodologies to
3 coordinate ((and-prioritize)) state, tribal, local, and volunteer
4 barrier removal efforts within each water resource inventory area and
5 satisfy the principles of RCW 77.95.180. To the degree practicable,
6 the board must utilize the database created in RCW 77.95.170 and
7 information on fish barriers developed by conservation districts to
8 guide methodology development.

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

11 (i) Projects benefiting depressed, threatened, and endangered
12 stocks;

13 (ii) Projects providing access to available and high quality
14 spawning and rearing habitat;

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

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

17 (v) Projects that are coordinated with other adjacent barrier
18 removal projects; and

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

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

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

31 The department must implement RCW 77.95.160 and 77.95.180 within
32 existing funds.

33 NEW SECTION. Sec. 6. A new section is added to chapter 77.95 RCW
34 to read as follows:

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

1 NEW SECTION. **Sec. 7.** (1) The department of fish and wildlife must
2 initiate contact with the United States army corps of engineers, the
3 national oceanic and atmospheric administration, and, if necessary,
4 the United States fish and wildlife service to explore the feasibility
5 of bundling multiple transportation-related fish barrier removal
6 projects under any available nationwide permits for the purpose of
7 achieving streamlined federal permitting with a reduced processing
8 time.

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

14 (3) This section must be implemented by the department of fish and
15 wildlife using existing funds.

16 (4) This section expires June 30, 2017.

17 **Sec. 8.** RCW 19.27.490 and 2003 c 39 s 11 are each amended to read
18 as follows:

19 A fish habitat enhancement project meeting the criteria of RCW
20 ((~~77.55.290(1)~~)) 77.55.181 is not subject to grading permits,
21 inspections, or fees and shall be reviewed according to the provisions
22 of RCW ((~~77.55.290~~)) 77.55.181.

23 **Sec. 9.** RCW 35.21.404 and 2003 c 39 s 14 are each amended to read
24 as follows:

25 A city or town is not liable for adverse impacts resulting from a
26 fish enhancement project that meets the criteria of RCW ((~~77.55.290~~))
27 77.55.181 and has been permitted by the department of fish and
28 wildlife.

29 **Sec. 10.** RCW 35.63.230 and 2003 c 39 s 15 are each amended to read
30 as follows:

31 A permit required under this chapter for a watershed restoration
32 project as defined in RCW 89.08.460 shall be processed in compliance
33 with RCW 89.08.450 through 89.08.510. A fish habitat enhancement
34 project meeting the criteria of RCW ((~~77.55.290(1)~~)) 77.55.181 shall be

1 reviewed and approved according to the provisions of RCW ((77.55.290))
2 77.55.181.

3 **Sec. 11.** RCW 35A.21.290 and 2003 c 39 s 16 are each amended to
4 read as follows:

5 A code city is not liable for adverse impacts resulting from a fish
6 enhancement project that meets the criteria of RCW ((77.55.290))
7 77.55.181 and has been permitted by the department of fish and
8 wildlife.

9 **Sec. 12.** RCW 35A.63.250 and 2003 c 39 s 17 are each amended to
10 read as follows:

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

14 (2) A fish habitat enhancement project meeting the criteria of RCW
15 ((77.55.290(1))) 77.55.181 shall be reviewed and approved according to
16 the provisions of RCW ((77.55.290)) 77.55.181.

17 **Sec. 13.** RCW 36.70.982 and 2003 c 39 s 19 are each amended to read
18 as follows:

19 A county is not liable for adverse impacts resulting from a fish
20 enhancement project that meets the criteria of RCW ((77.55.290))
21 77.55.181 and has been permitted by the department of fish and
22 wildlife.

23 **Sec. 14.** RCW 36.70.992 and 2003 c 39 s 20 are each amended to read
24 as follows:

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

28 (2) A fish habitat enhancement project meeting the criteria of RCW
29 ((77.55.290(1))) 77.55.181 shall be reviewed and approved according to
30 the provisions of RCW ((77.55.290)) 77.55.181.

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

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

4 (2) A fish habitat enhancement project meeting the criteria of RCW
5 (~~(77.55.290(1))~~) 77.55.181 shall be reviewed and approved according to
6 the provisions of RCW (~~(77.55.290)~~) 77.55.181.

7 **Sec. 16.** RCW 43.21C.0382 and 2003 c 39 s 23 are each amended to
8 read as follows:

9 (1) Decisions pertaining to watershed restoration projects as
10 defined in RCW 89.08.460 are not subject to the requirements of RCW
11 43.21C.030(2)(c).

12 (2) Decisions pertaining to fish habitat enhancement projects
13 meeting the criteria of RCW (~~(77.55.290(1))~~) 77.55.181 and being
14 reviewed and approved according to the provisions of RCW (~~(77.55.290)~~)
15 77.55.181 are not subject to the requirements of RCW 43.21C.030(2)(c).

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