
HOUSE BILL 2251

State of Washington

63rd Legislature

2014 Regular Session

By Representatives Wilcox, Blake, Orcutt, and Clibborn

Read first time 01/15/14. Referred to Committee on Agriculture & Natural Resources.

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 a new section 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 fish passage barriers, including
15 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; and

35 (ix) Through other formal review and approval processes established
36 by the legislature.

37 (2) Fish habitat enhancement projects meeting the criteria of
38 subsection (1) of this section are expected to result in beneficial

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

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

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

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

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

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

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

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

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

5 (b) The department and the department of transportation must use
6 the following prioritization principles to guide state fish barrier
7 removal efforts:

8 (i) Efforts to improve habitat in whole streams and subbasins have
9 priority over individual, isolated projects;

10 (ii) Priority must be given to projects located in streams and
11 subbasins that benefit depressed, threatened, and endangered stocks;

12 (iii) Projects must be prioritized if they immediately increase
13 access to available and high quality upstream spawning and rearing
14 habitat;

15 (iv) Within a watershed, downstream projects must be prioritized
16 over upstream blockages;

17 (v) Full passage barriers must have priority over partial passage
18 barriers; and

19 (vi) Projects that are coordinated with other adjacent barrier
20 removal projects must be prioritized.

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

28 (3) Nothing in this section is intended to prohibit, delay, or
29 otherwise involve fish barrier projects undertaken by the department of
30 transportation that are a component of an overall transportation
31 improvement project.

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

34 (1) The department (~~((of transportation and the department of fish~~
35 ~~and wildlife))~~) may administer and coordinate all state grant programs
36 specifically designed to assist state agencies, local governments,
37 private landowners, tribes, organizations, and volunteer groups in

1 identifying and removing impediments to salmonid fish passage. The
2 transportation improvement board may administer all grant programs
3 specifically designed to assist cities, counties, and local governments
4 with fish passage barrier corrections associated with transportation
5 projects. All grant programs must be administered and be consistent
6 with the following:

7 (a) Salmonid-related corrective projects, inventory, assessment,
8 and prioritization efforts;

9 (b) Salmonid projects subject to a competitive application process;
10 and

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

16 (2) Priority shall be given to projects that (~~immediately increase~~
17 ~~access to available and improved spawning and rearing habitat for~~
18 ~~depressed, threatened, and endangered stocks. Priority shall also be~~
19 ~~given to project applications that are coordinated with other efforts~~
20 ~~within a watershed~~) match the prioritization principles provided in
21 RCW 77.95.180.

22 (3) (~~Except for projects administered by the transportation~~
23 ~~improvement board,~~) All projects shall be reviewed and approved by the
24 fish passage barrier removal (~~task force~~) board created in RCW
25 77.95.160 or an alternative oversight committee designated by the state
26 legislature.

27 (4) Other agencies that administer natural resource-based grant
28 programs (~~that may include fish passage barrier removal projects~~)
29 shall use fish passage selection criteria that are consistent with this
30 section when those programs are addressing fish passage barrier removal
31 projects.

32 (5)(a) The (~~departments of transportation and fish and wildlife~~)
33 department shall establish a centralized database directory of all fish
34 passage barrier information. The database directory must include, but
35 is not limited to, existing fish passage inventories, fish passage
36 projects, grant program applications, and other databases. These data
37 must be used to coordinate and assist in habitat recovery and project
38 mitigation projects.

1 (b) The department must develop a barrier inventory training
2 program that qualifies participants to perform barrier inventories and
3 develop data that enhance the centralized database. The department may
4 decide the qualifications for participation. However, employees and
5 volunteers of conservation districts and regional salmon recovery
6 groups must be given priority consideration.

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

9 (1) The department ((and the department of transportation)) shall
10 ((convene)) maintain a fish passage barrier removal ((task force))
11 board. ((The task force shall consist of one representative each from
12 the department, the department of transportation, the department of
13 ecology, tribes, cities, counties, a business organization, an
14 environmental organization, regional fisheries enhancement groups, and
15 other interested entities as deemed appropriate by the cochairs. The
16 persons representing the department and the department of
17 transportation shall serve as cochairs of the task force and shall
18 appoint members to the task force. The task force shall)) The board
19 must be composed of a representative from the department, the
20 department of transportation, cities, counties, the governor's salmon
21 recovery office, tribal governments, and the department of natural
22 resources. The representative of the department must serve as chair of
23 the board and may expand the membership of the board to representatives
24 of other governments, stakeholders, and interested entities.

25 (2)(a) The duty of the board is to make recommendations to expand
26 the program created in RCW 77.95.180 to identify and expedite the
27 removal of human-made or caused impediments to anadromous fish passage
28 in the most efficient manner practical. ((Program))

29 (b) Recommendations ((shall)) must include ((a)) proposed funding
30 mechanisms and other necessary mechanisms and methodologies to
31 coordinate ((and prioritize)) state, tribal, local, and volunteer
32 barrier removal efforts within each water resource inventory area and
33 satisfy the prioritization principles of RCW 77.95.180. To the degree
34 practicable, the board must utilize the database created in RCW
35 77.95.170 to guide methodology development.

36 (c) The board must coordinate with the recreation and conservation
37 office to ensure that barrier removal methodologies are consistent with

1 other salmon recovery efforts and that state and federal investments in
2 nonbarrier removal habitat improvements are both maximized. ((A
3 ~~priority shall be given to projects that immediately increase access to~~
4 ~~available and improved spawning and rearing habitat for depressed,~~
5 ~~threatened, and endangered stocks. The department or the department of~~
6 ~~transportation may contract with cities and counties to assist in the~~
7 ~~identification and removal of impediments to anadromous fish passage.))~~

8 (d) The board may not make decisions on fish passage standards or
9 categorize as impassible culverts or other infrastructure developments
10 that have been deemed passable by the department.

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

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

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

23 (2) The departments of transportation and fish and wildlife must
24 report back to the legislature, consistent with RCW 43.01.036, by
25 October 31, 2016, summarizing the information gathered and any progress
26 made towards using the bundling concept to streamline permitting for
27 transportation-related fish barrier removal projects.

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

29 Sec. 7. RCW 19.27.490 and 2003 c 39 s 11 are each amended to read
30 as follows:

31 A fish habitat enhancement project meeting the criteria of RCW
32 ((77.55.290(1))) 77.55.181 is not subject to grading permits,
33 inspections, or fees and shall be reviewed according to the provisions
34 of RCW ((77.55.290)) 77.55.181.

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

3 A city or town is not liable for adverse impacts resulting from a
4 fish 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. 9.** RCW 35.63.230 and 2003 c 39 s 15 are each amended to read
8 as follows:

9 A permit required under this chapter for a watershed restoration
10 project as defined in RCW 89.08.460 shall be processed in compliance
11 with RCW 89.08.450 through 89.08.510. A fish habitat enhancement
12 project meeting the criteria of RCW (~~((77.55.290(1)))~~) 77.55.181 shall be
13 reviewed and approved according to the provisions of RCW (~~((77.55.290))~~)
14 77.55.181.

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

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

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

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

26 (2) A fish habitat enhancement project meeting the criteria of RCW
27 (~~((77.55.290(1)))~~) 77.55.181 shall be reviewed and approved according to
28 the provisions of RCW (~~((77.55.290))~~) 77.55.181.

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

31 A county is not liable for adverse impacts resulting from a fish
32 enhancement project that meets the criteria of RCW (~~((77.55.290))~~)
33 77.55.181 and has been permitted by the department of fish and
34 wildlife.

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

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

6 (2) A fish habitat enhancement project meeting the criteria of RCW
7 (~~(77.55.290(1))~~) 77.55.181 shall be reviewed and approved according to
8 the provisions of RCW (~~(77.55.290)~~) 77.55.181.

9 **Sec. 14.** RCW 36.70A.460 and 2003 c 39 s 21 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. 15.** RCW 43.21C.0382 and 2003 c 39 s 23 are each amended to
18 read as follows:

19 (1) Decisions pertaining to watershed restoration projects as
20 defined in RCW 89.08.460 are not subject to the requirements of RCW
21 43.21C.030(2)(c).

22 (2) Decisions pertaining to fish habitat enhancement projects
23 meeting the criteria of RCW (~~(77.55.290(1))~~) 77.55.181 and being
24 reviewed and approved according to the provisions of RCW (~~(77.55.290)~~)
25 77.55.181 are not subject to the requirements of RCW 43.21C.030(2)(c).

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