
SENATE BILL 6509

State of Washington

63rd Legislature

2014 Regular Session

By Senators Liias, Pearson, Hargrove, Dansel, Ranker, McCoy, and Rolfes

Read first time 01/30/14. Referred to Committee on Natural Resources & Parks.

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (iv) Through the review and approval process for the jobs for the
19 environment program;

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

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

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

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

33 (ix) Through other formal review and approval processes established
34 by the legislature.

35 (2) Fish habitat enhancement projects meeting the criteria of
36 subsection (1) of this section are expected to result in beneficial
37 impacts to the environment. Decisions pertaining to fish habitat
38 enhancement projects meeting the criteria of subsection (1) of this

1 section and being reviewed and approved according to the provisions of
2 this section are not subject to the requirements of RCW
3 43.21C.030(2)(c).

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

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

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

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

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

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

34 NEW SECTION. **Sec. 2.** A new section is added to chapter 77.95 RCW
35 to read as follows:

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

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

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

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

15 **Sec. 4.** RCW 19.27.490 and 2003 c 39 s 11 are each amended to read
16 as follows:

17 A fish habitat enhancement project meeting the criteria of RCW
18 ((~~77.55.290(1)~~)) 77.55.181 is not subject to grading permits,
19 inspections, or fees and shall be reviewed according to the provisions
20 of RCW ((~~77.55.290~~)) 77.55.181.

21 **Sec. 5.** RCW 35.21.404 and 2003 c 39 s 14 are each amended to read
22 as follows:

23 A city or town is not liable for adverse impacts resulting from a
24 fish 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. 6.** RCW 35.63.230 and 2003 c 39 s 15 are each amended to read
28 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. 7.** RCW 35A.21.290 and 2003 c 39 s 16 are each amended to read
2 as follows:

3 A code city 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. 8.** RCW 35A.63.250 and 2003 c 39 s 17 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. 9.** RCW 36.70.982 and 2003 c 39 s 19 are each amended to read
16 as follows:

17 A county 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. 10.** RCW 36.70.992 and 2003 c 39 s 20 are each amended to read
22 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. 11.** RCW 36.70A.460 and 2003 c 39 s 21 are each amended to
30 read as follows:

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

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

4 **Sec. 12.** RCW 43.21C.0382 and 2003 c 39 s 23 are each amended to
5 read as follows:

6 (1) Decisions pertaining to watershed restoration projects as
7 defined in RCW 89.08.460 are not subject to the requirements of RCW
8 43.21C.030(2)(c).

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

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