

HOUSE BILL REPORT

HB 2902

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to ensuring that Washington aggressively acts to open fish habitat by removing barriers under all forms of ownership.

Brief Description: Ensuring that Washington aggressively acts to open fish habitat by removing barriers under all forms of ownership.

Sponsors: Representatives Wilcox, Blake, Chandler, Barkis, Griffey, DeBolt, Tharinger, Walsh, Chapman, Orcutt and Stokesbary.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/25/18, 2/1/18 [DPS].

Brief Summary of Substitute Bill

- Directs the Department of Fish and Wildlife (WDFW) to provide funding for fish passage barrier removal projects in a manner determined by the Fish Passage Barrier Removal Board (Board).
- Appropriates \$50 million for the fiscal year ending June 30, 2019, from the State General Fund to the WDFW for fish passage barrier removal projects.
- Establishes four categories of fish passage barrier removal projects to receive priority funding by the Board.
- Creates the Fish Passage Barrier Removal Account (Account) in the State Treasury.
- Directs the State Treasurer to transfer \$50 million into the Account beginning in fiscal year 2020 and continuing each fiscal year thereafter, subject to an annual increase equal to the percentage rate of annual growth in state general fund revenues.
- Requires the WDFW, with the oversight of the Board, to submit a report to the Legislature each year that documents the WDFW's progress toward removing fish passage barriers.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Blake, Chair; Chapman, Vice Chair; Buys, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Chandler, Fitzgibbon, Kretz, Orcutt, Pettigrew, Schmick, Springer, Stanford and Walsh.

Minority Report: Do not pass. Signed by 2 members: Representatives Lytton and Robinson.

Staff: Robert Hatfield (786-7117).

Background:

Fish Passage Barrier Removal Board.

The Washington Department of Fish and Wildlife (WDFW) maintains a Fish Passage Barrier Removal Board (Board), composed of representatives from various state agencies, cities, counties, and tribal governments. The duty of the Board is to identify and expedite the removal of human-made or caused impediments to anadromous fish passage in the most efficient manner practical through the development of a coordinated approach and schedule that identifies and prioritizes the projects necessary to eliminate fish passage barriers caused by state and local roads and highways, and barriers owned by private parties.

Family Forest Fish Passage Program.

The Forests and Fish Law was enacted in 1999. Among other requirements, the Forests and Fish Law required forest landowners to file a road maintenance and abandonment plan (RMAP). The RMAP must contain, among other things, a schedule to complete necessary road work within 15 years and a storm maintenance strategy. On each anniversary date of an RMAP submission, the forest landowner must file with the Department of Natural Resources (DNR) a description of the work accomplished during the previous year and the work scheduled for the upcoming year.

A cost-sharing program for RMAP projects is administered by the Small Forest Landowner Office within the DNR and is available to small forest landowners. The DNR is required to establish a prioritized list for the funding of fish passage barrier removal projects on land owned by small forest landowners.

To qualify as a small forest landowner, a person must be an owner of forestland who has harvested no more than an average timber volume of 2 million board feet per year in the three years preceding application to the DNR and does not expect to harvest more than that amount in the 10 years following application to the DNR.

The Puget Sound Partnership.

The Puget Sound Partnership (Partnership) oversees the restoration of the environmental health of Puget Sound. As part of its work, the Partnership produces an Action Agenda, which must be updated every two years. Among other elements, the Action Agenda addresses all geographic areas of Puget Sound, describes problems affecting Puget Sound's health, identifies implementation strategies to restore and protect Puget Sound, and

incorporates appropriate actions to carry out the Biennial Science Work Plan. Biennial updates to the Action Agenda include revised implementation strategies, benchmarks for near-term actions, and prioritized actions.

Summary of Substitute Bill:

The Fish Passage Barrier Removal Board (Board) must provide funding for fish barrier removal projects, with priority given to the following four classes of projects: transportation projects consistent with the Fish Passage Barrier Removal Program and with other state projects; local projects; projects included in the small forest landowner fish passage program, also known as the Family Forest Fish Passage Program; and other projects, regardless of ownership, identified by the Board as necessary to restore access continuity within a watershed. For investments in Puget Sound watersheds, the Board should coordinate with the Puget Sound Partnership to capture the priorities set forth in the Action Agenda.

The sum of \$50 million is appropriated for the fiscal year ending June 30, 2019, from the State General Fund to the Washington Department of Fish and Wildlife (WDFW) for fish passage barrier removal projects.

The Fish Passage Barrier Removal Account (Account) is created. The Account must receive a \$50 million transfer from the State General Fund each fiscal year (FY) starting in FY 2020, increased annually by the rate of annual growth in State General Fund revenues. The Account may only be used for fish passage barrier removal as described in this act.

The WDFW, with the oversight of the Board, must submit a report to the Legislature each year that documents the WDFW's progress toward removing fish passage barriers.

The WDFW, in its biennial and supplemental operating budget requests to the Office of Financial Management, must include information on how appropriations from the Account are anticipated to be spent.

Substitute Bill Compared to Original Bill:

A section is removed that would have required the estimated amounts of 10 percent of State General Fund revenue exceeding 2017 revenue and 10 percent of budget surpluses identified by the Economic and Revenue Forecast Council to be included in the Governor's budget for the purposes of fish barrier removal as described in this act.

The Fish Passage Barrier Removal Account (Account) is created. The State Treasurer is directed to transfer \$50 million from the State General Fund each fiscal year (FY) starting in FY 2020, and increasing annually by the rate of annual growth in state general fund revenues. The Account may only be used for fish passage barrier removal.

Several references to the Fish Passage Barrier Removal Board (Board) are amended, such that the Board determines how the Department of Fish and Wildlife (WDFW) provides fish

barrier removal funding, and the Board has oversight of WDFW's report to the Legislature. A fourth class is added to a list of priority fish barrier removal projects, defined as other projects, regardless of ownership, identified by the Board as necessary to restore access continuity within a watershed. The list of priority projects is added to the Board's authorizing statute.

The WDFW is required, in its budget requests, to include information on how current and requested appropriations out of the Account are anticipated to be spent, as determined by the Board.

Appropriation: The sum of \$50 million is appropriated for the fiscal year ending June 30, 2019 from the State General Fund to the Department of Fish and Wildlife for fish passage barrier removal projects.

Fiscal Note: Available. New fiscal note requested on February 2, 2018.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Southern Puget Sound salmon runs are dying faster than anywhere else. The fastest way to restore fish habitat is to remove barriers to fish passage, but the state has not generally put much money toward barrier removals. This bill would also help local governments remove barriers, and local government property tends to be located in the downstream portion of rivers, which has an even greater impact on providing access to habitat when private forest landowners upstream have removed barriers. There was a promise to fund fish passage barrier removals for small landowners many years ago, and that promise has never been really funded. This bill will increase funding available to address the backlog of fish passage barrier removals.

There is a backlog of about 1,000 fish passage barrier removal projects on the Family Forest Fish Passage list, for a total value of approximately \$90 million. This bill prioritizes fish passage barrier removal projects that provide the greatest benefit. Small forest landowners are grateful for the help they have received under the Family Forest Fish Passage Program; they are proud of knowing fish are being helped, but there is also some embarrassment at how expensive and over-engineered fish passage projects can be. In one instance, a stream crossing was built over a fish-bearing stream for \$10,000, and then a second stream crossing was built 200 yards away at a cost of \$250,000. There is sometimes not a lot of common sense to some of the engineering requirements.

Forest landowners, both private as well as the Department of Natural Resources, have spent significant sums to improve or abandon roads and fix barriers. This bill would help salmon get through the barriers to passage that are down low in the watersheds, and be able to access the habitat and riparian buffers that have been opened up for them in the upper watersheds.

Forest landowners have built great homes for salmon in the upper watersheds, and it would be good to see them being used.

There are three reasons why this bill is important. First, state, tribal, and local governments have made significant investments in salmon recovery, but are currently spending at only about half the rate needed to restore salmon stocks. Second, a lot of the best remaining habitat is behind barriers, so the state is not realizing its highest capacity for recovery until the barriers are removed. Third, some forest landowners have had zero road blowouts and lower infrastructure maintenance obligations, as a result of stream crossing upgrades.

Culvert removal is one of the holy grails of restoration: it is so important, and so expensive. A funding source for culvert removals would be a wonderful thing. Culvert replacement is important for two reasons: stream morphology and flooding; and the quality of the habitat. While juvenile salmonids are living in stream, they need to be able to move around for foraging and for refuge, and culvert removal expands the habitat available to them.

Cities and counties own three to four times as many times culverts as the state in some parts of Washington. The Fish Passage Barrier Removal Board (Board) has been working well and the process it follows is good, but it needs more funding.

The state has a responsibility to ensure that salmon survive into future generations. Fish passage barrier removal is a critical element of salmon recovery. Acquisition of altered or degraded habitat is also important. Salmon restoration provides a benefit to treaty and non-treaty fishers. The state has a responsibility to work toward a better future for salmon. The funding in this bill will give a lot of little people help to do the right thing.

Historically, natural resource funding has happened last, which means that many things that needed to get done, did not get done. Salmon are resilient, so that if opportunities are opened up, the salmon will be there in a year or two. Areas lower in watersheds are very valuable for habitat, and it is very valuable to open up access to these areas. There should be improvements made to the engineering of fish passage barrier removals in order to make it more cost effective, such as replicability or standardization of projects. State agencies should talk to tribes and others for a streamlined permitting process.

The bill is a good start, but there needs to be a little more funding than what is provided. There are 40,000 miles of county roads. The state has made a significant commitment for state highway culvert removal, and now needs to address county, city, and private barriers in order to get the full value out of the investment. Counties do not have funding resources to address the barrier removal issue. Having a program focused in one area allows for planning on a long-term basis. Litigation concerning culvert removals has focused on the state so far, but it may eventually aim at counties and cities. It makes more sense to spend money on barrier removals than on attorneys.

(Opposed) None.

(Other) The Puget Sound Partnership is the designated salmon recovery organization for Puget Sound. There have been many millions of dollars invested in salmon habitat restoration. Private forest landowners have spent hundreds of millions dollars of their own

funds, which has resulted in the opening of more than 4,400 miles of habitat. However, there are still many downstream barriers that prevent fish from being able to access this habitat. These barriers also contribute to flooding. The lack of salmon are contributing to the decline in orca population. There may be up to 40,000 fish passage barriers remaining.

Barrier removal is the surest way to get salmon more habitat. The Board requested \$54 million for fish passage barrier removal projects, but the Legislature funded only \$19 million in the Capital Budget. The Recreation and Conservation Office helps to administer the Family Forest Fish Passage Program.

There are concerns regarding the language in the bill. There is appreciation for creative ways to fund culvert removal. The money appropriated under this bill should not supplant the state's obligation as fishery co-managers to recover salmon populations. It is important that fish passage projects actually get done. Private small forest landowners were inadequately funded in the Capital Budget. They asked for \$10 million but got only \$5 million. There is concern regarding the bill's use of the term "time immemorial."

Persons Testifying: (In support) Representative Wilcox, prime sponsor; Ken Miller and Dick Alescio, Washington Farm Forestry Association; Jason Callahan, Washington Forest Protection Association; Court Stanley, Port Blakely; Jacques White, Long Live the Kings; Mark Phillips, City of Lake Forest Park; Logan Bahr, Association of Washington Cities; Tom Jameson, Washington Department of Fish and Wildlife; Jim Wilcox, Wilcox Farms; Jim Waldo; JW Foster, Nisqually River Council; and Gary Rowe, Washington State Association of Counties.

(Other) Jeff Parsons, Puget Sound Partnership; Wendy Brown, Recreation and Conservation Office; and Dawn Vyvyan, Yakama Nation, Sauk-Seattle Tribe, and Puyallup Tribe.

Persons Signed In To Testify But Not Testifying: None.