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**SUBSTITUTE HOUSE BILL 2251**

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**State of Washington**

**63rd Legislature**

**2014 Regular Session**

**By** House Agriculture & Natural Resources (originally sponsored by Representatives Wilcox, Blake, Orcutt, and Clibborn)

READ FIRST TIME 01/29/14.

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

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

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

7       (b) The partnership between the department and the department of  
8 transportation must be based on the principle of maximizing habitat  
9 recovery through a coordinated investment strategy that, to the maximum  
10 extent practical and allowable, prioritizes opportunities: To correct  
11 multiple fish barriers in whole streams rather than through individual,  
12 isolated projects; and to correct barriers located furthest downstream  
13 in a stream system. Examples of this principle include:

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

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

21       (iii) Recognizing that many of the barriers owned by the state are  
22 located in the same stream systems as barriers that are the  
23 responsibility of cities and counties with potentially limited  
24 financial resources for correction and that state-local partnership  
25 opportunities may exist to address these barriers; and

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

30       (2) The department (~~(of transportation)~~) shall also provide  
31 engineering and other technical services to assist (~~(regional fisheries~~  
32 ~~enhancement groups)~~) nonstate barrier owners with fish passage barrier  
33 removal projects, provided that the barrier removal projects have been  
34 identified as a priority by the department (~~(of fish and wildlife)~~) and  
35 the department (~~(of transportation)~~) has received an appropriation to  
36 continue (~~(the)~~) that component of a fish barrier removal program.

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

1 (a) Alter the process and prioritization methods used in the  
2 implementation of the forest practices rules, as that term is defined  
3 in RCW 76.09.020, or the family forest fish passage program, created  
4 pursuant to RCW 76.13.150, that provides public cost assistance to  
5 small forest landowners associated with the road maintenance and  
6 abandonment processes; or

7 (b) Prohibit, delay, or otherwise involve fish barrier projects  
8 undertaken by the department of transportation or another state agency  
9 that are a component of an overall transportation improvement project  
10 or that are being undertaken as a direct result of state law, federal  
11 law, or a court order. However, the department of transportation or  
12 another state agency is required to work in partnership with the fish  
13 passage barrier removal board created in RCW 77.95.160 in the  
14 scheduling, staging, and implementation of these projects.

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

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

28 (a) Salmonid-related corrective projects, inventory, assessment,  
29 and prioritization efforts;

30 (b) Salmonid projects subject to a competitive application process;  
31 and

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

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

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

11 (4) Other agencies that administer natural resource-based grant  
12 programs (~~that may include fish passage barrier removal projects~~)  
13 shall use fish passage selection criteria that are consistent with this  
14 section when those programs are addressing fish passage barrier removal  
15 projects.

16 (5)(a) The (~~departments of transportation and fish and wildlife~~)  
17 department shall establish a centralized database directory of all fish  
18 passage barrier information. The database directory must include, but  
19 is not limited to, existing fish passage inventories, fish passage  
20 projects, grant program applications, and other databases. These data  
21 must be used to coordinate and assist in habitat recovery and project  
22 mitigation projects.

23 (b) The department must develop a barrier inventory training  
24 program that qualifies participants to perform barrier inventories and  
25 develop data that enhance the centralized database. The department may  
26 decide the qualifications for participation. However, employees and  
27 volunteers of conservation districts and regional salmon recovery  
28 groups must be given priority consideration.

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

31 (1) The department (~~and the department of transportation~~) shall  
32 (~~convene~~) maintain a fish passage barrier removal (~~task force~~)  
33 board. (~~The task force shall consist of one representative each from~~  
34 ~~the department, the department of transportation, the department of~~  
35 ~~ecology, tribes, cities, counties, a business organization, an~~  
36 ~~environmental organization, regional fisheries enhancement groups, and~~  
37 ~~other interested entities as deemed appropriate by the cochairs. The~~

1 persons representing the department and the department of  
2 transportation shall serve as cochairs of the task force and shall  
3 appoint members to the task force. The task force shall make  
4 recommendations to expand the program in RCW 77.95.180)) The board must  
5 be composed of a representative from the department, the department of  
6 transportation, cities, counties, the governor's salmon recovery  
7 office, tribal governments, and the department of natural resources.  
8 The representative of the department must serve as chair of the board  
9 and may expand the membership of the board to representatives of other  
10 governments, stakeholders, and interested entities.

11 (2)(a) The duty of the board is to identify and expedite the  
12 removal of human-made or caused impediments to anadromous fish passage  
13 in the most efficient manner practical((.---Program)) through the  
14 development of a coordinated approach and schedule that identifies and  
15 prioritizes the projects necessary to eliminate fish passage barriers  
16 caused by state and local roads and highways and barriers owned by  
17 private parties.

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

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

23 (i) Other fish passage correction programs, including local salmon  
24 recovery plan implementation efforts through the governor's salmon  
25 recovery office;

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

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

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

1 information on fish barriers developed by conservation districts to  
2 guide methodology development.

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

5 (i) Projects benefiting depressed, threatened, and endangered  
6 stocks;

7 (ii) Projects providing access to available and high quality  
8 spawning and rearing habitat;

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

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

11 (v) Projects that are coordinated with other adjacent barrier  
12 removal projects; and

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

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

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

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

27 NEW SECTION. Sec. 6. (1) The department of fish and wildlife must  
28 initiate contact with the United States army corps of engineers, the  
29 national oceanic and atmospheric administration, and, if necessary,  
30 the United States fish and wildlife service to explore the feasibility  
31 of bundling multiple transportation-related fish barrier removal  
32 projects under any available nationwide permits for the purpose of  
33 achieving streamlined federal permitting with a reduced processing  
34 time.

35 (2) The department of fish and wildlife must report back to the  
36 legislature, consistent with RCW 43.01.036, by October 31, 2016,



1 summarizing the information gathered and any progress made towards  
2 using the bundling concept to streamline permitting for transportation-  
3 related fish barrier removal projects.

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

5 **Sec. 7.** RCW 19.27.490 and 2003 c 39 s 11 are each amended to read  
6 as follows:

7 A fish habitat enhancement project meeting the criteria of RCW  
8 (~~77.55.290(1)~~) 77.55.181 is not subject to grading permits,  
9 inspections, or fees and shall be reviewed according to the provisions  
10 of RCW (~~77.55.290~~) 77.55.181.

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

13 A city or town is not liable for adverse impacts resulting from a  
14 fish enhancement project that meets the criteria of RCW (~~77.55.290~~)  
15 77.55.181 and has been permitted by the department of fish and  
16 wildlife.

17 **Sec. 9.** RCW 35.63.230 and 2003 c 39 s 15 are each amended to read  
18 as follows:

19 A permit required under this chapter for a watershed restoration  
20 project as defined in RCW 89.08.460 shall be processed in compliance  
21 with RCW 89.08.450 through 89.08.510. A fish habitat enhancement  
22 project meeting the criteria of RCW (~~77.55.290(1)~~) 77.55.181 shall be  
23 reviewed and approved according to the provisions of RCW (~~77.55.290~~)  
24 77.55.181.

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

27 A code city is not liable for adverse impacts resulting from a fish  
28 enhancement project that meets the criteria of RCW (~~77.55.290~~)  
29 77.55.181 and has been permitted by the department of fish and  
30 wildlife.

31 **Sec. 11.** RCW 35A.63.250 and 2003 c 39 s 17 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. 12.** RCW 36.70.982 and 2003 c 39 s 19 are each amended to read  
8 as follows:

9       A county is not liable for adverse impacts resulting from a fish  
10 enhancement project that meets the criteria of RCW (~~(77.55.290)~~)  
11 77.55.181 and has been permitted by the department of fish and  
12 wildlife.

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

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

18       (2) A fish habitat enhancement project meeting the criteria of RCW  
19 (~~(77.55.290(1))~~) 77.55.181 shall be reviewed and approved according to  
20 the provisions of RCW (~~(77.55.290)~~) 77.55.181.

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

31       (1) Decisions pertaining to watershed restoration projects as  
32 defined in RCW 89.08.460 are not subject to the requirements of RCW  
33 43.21C.030(2)(c).

1        (2) Decisions pertaining to fish habitat enhancement projects  
2 meeting the criteria of RCW (~~((77.55.290(1)))~~) 77.55.181 and being  
3 reviewed and approved according to the provisions of RCW (~~((77.55.290))~~)  
4 77.55.181 are not subject to the requirements of RCW 43.21C.030(2)(c).

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