

CERTIFICATION OF ENROLLMENT

**SECOND SUBSTITUTE HOUSE BILL 2251**

Chapter 120, Laws of 2014

(partial veto)

63rd Legislature  
2014 Regular Session

FISH BARRIER REMOVALS

EFFECTIVE DATE: 06/12/14

Passed by the House March 10, 2014  
Yeas 98 Nays 0

FRANK CHOPP

\_\_\_\_\_  
**Speaker of the House of Representatives**

Passed by the Senate March 7, 2014  
Yeas 49 Nays 0

BRAD OWEN

\_\_\_\_\_  
**President of the Senate**

Approved March 28, 2014, 2:31 p.m., with  
the exception of Section 5, which is  
vetoed.

JAY INSLEE

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of  
the House of Representatives of  
the State of Washington, do hereby  
certify that the attached is  
**SECOND SUBSTITUTE HOUSE BILL 2251**  
as passed by the House of  
Representatives and the Senate on  
the dates hereon set forth.

BARBARA BAKER

\_\_\_\_\_  
**Chief Clerk**

FILED

March 31, 2014

**Secretary of State  
State of Washington**

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SECOND SUBSTITUTE HOUSE BILL 2251

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AS AMENDED BY THE SENATE

Passed Legislature - 2014 Regular Session

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) No civil liability may be imposed by any court on the state or  
2 its officers and employees for any adverse impacts resulting from a  
3 fish enhancement project permitted by the department under the criteria  
4 of this section except upon proof of gross negligence or willful or  
5 wanton misconduct.

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

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

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

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

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

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

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

1       (2) The department (~~(of transportation)~~) shall also provide  
2 engineering and other technical services to assist (~~(regional fisheries~~  
3 ~~enhancement groups)~~) nonstate barrier owners with fish passage barrier  
4 removal projects, provided that the barrier removal projects have been  
5 identified as a priority by the department (~~(of fish and wildlife)~~) and  
6 the department (~~(of transportation)~~) has received an appropriation to  
7 continue (~~(the)~~) that component of a fish barrier removal program.

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

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

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

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

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

1 (a) Salmonid-related corrective projects, inventory, assessment,  
2 and prioritization efforts;

3 (b) Salmonid projects subject to a competitive application process;  
4 and

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

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

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

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

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

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

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

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

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

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

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

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

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

37       (iii) The recreation and conservation office to ensure that barrier



1 removal methodologies are consistent with, and maximizing the value of,  
2 other salmon recovery efforts and habitat improvements that are not  
3 primarily based on the removal of barriers.

4 (d) Recommendations (~~shall~~) must include ((a)) proposed funding  
5 mechanisms and other necessary mechanisms and methodologies to  
6 coordinate (~~and prioritize~~) state, tribal, local, and volunteer  
7 barrier removal efforts within each water resource inventory area and  
8 satisfy the principles of RCW 77.95.180. To the degree practicable,  
9 the board must utilize the database created in RCW 77.95.170 and  
10 information on fish barriers developed by conservation districts to  
11 guide methodology development. The board may consider recommendations  
12 by interested entities from the private sector and regional fisheries  
13 enhancement groups.

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

16 (i) Projects benefiting depressed, threatened, and endangered  
17 stocks;

18 (ii) Projects providing access to available and high quality  
19 spawning and rearing habitat;

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

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

22 (v) Projects that are coordinated with other adjacent barrier  
23 removal projects; and

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

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

34 ***\*NEW SECTION. Sec. 5. A new section is added to chapter 77.95 RCW***  
35 ***to read as follows:***

36 ***The department must implement RCW 77.95.160 and 77.95.180 within***  
37 ***existing funds.***

*\*Sec. 5 was vetoed. See message at end of chapter.*

1        NEW SECTION.    **Sec. 6.**    A new section is added to chapter 77.95 RCW  
2 to read as follows:

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

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

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

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

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

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

23        A fish habitat enhancement project meeting the criteria of RCW  
24 (~~((77.55.290(1)))~~) 77.55.181 is not subject to grading permits,  
25 inspections, or fees and shall be reviewed according to the provisions  
26 of RCW (~~((77.55.290))~~) 77.55.181.

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

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

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

1 A permit required under this chapter for a watershed restoration  
2 project as defined in RCW 89.08.460 shall be processed in compliance  
3 with RCW 89.08.450 through 89.08.510. A fish habitat enhancement  
4 project meeting the criteria of RCW (~~(77.55.290(1))~~) 77.55.181 shall be  
5 reviewed and approved according to the provisions of RCW (~~(77.55.290)~~)  
6 77.55.181.

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

9 A code city 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. 12.** RCW 35A.63.250 and 2003 c 39 s 17 are each amended to  
14 read 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. 13.** RCW 36.70.982 and 2003 c 39 s 19 are each amended to read  
22 as follows:

23 A county is not liable for adverse impacts resulting from a fish  
24 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. 14.** RCW 36.70.992 and 2003 c 39 s 20 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. 15.** RCW 36.70A.460 and 2003 c 39 s 21 are each amended to  
2 read 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. 16.** RCW 43.21C.0382 and 2003 c 39 s 23 are each amended to  
10 read as follows:

11       (1) Decisions pertaining to watershed restoration projects as  
12 defined in RCW 89.08.460 are not subject to the requirements of RCW  
13 43.21C.030(2)(c).

14       (2) Decisions pertaining to fish habitat enhancement projects  
15 meeting the criteria of RCW (~~77.55.290(1)~~) 77.55.181 and being  
16 reviewed and approved according to the provisions of RCW (~~77.55.290~~)  
17 77.55.181 are not subject to the requirements of RCW 43.21C.030(2)(c).

Passed by the House March 10, 2014.  
Passed by the Senate March 7, 2014.  
Approved by the Governor March 28, 2014, with the exception of  
certain items that were vetoed.  
Filed in Office of Secretary of State March 31, 2014.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Section 5, Second  
Substitute House Bill No. 2251 entitled:

"AN ACT Relating to fish barrier removals."

Section 5 of Second Substitute House Bill 2251 directs the Department  
of Fish and Wildlife to accomplish significant portions of the bill  
within existing funds. The Department will likely incur additional  
costs in future biennium as a result of this bill that it cannot  
absorb without undue hardship on existing programs. For this reason I  
am vetoing Section 5.

For these reasons I have vetoed Section 5 of Second Substitute House  
Bill No. 2251.

With the exception of Section 5, Second Substitute House Bill No. 2251  
is approved."