

2SHB 2251 - S COMM AMD

By Committee on Natural Resources & Parks

ADOPTED 03/07/2014

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 77.55.181 and 2010 c 210 s 29 are each amended to  
4 read as follows:

5 (1)(a) In order to receive the permit review and approval process  
6 created in this section, a fish habitat enhancement project must meet  
7 the criteria under (~~((a) and (b) of~~) this (~~(subsection-~~

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

10 (i) Elimination of human-made or caused fish passage barriers,  
11 including culvert repair and replacement;

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

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

19 (b) The department shall develop size or scale threshold tests to  
20 determine if projects accomplishing any of these tasks should be  
21 evaluated under the process created in this section or under other  
22 project review and approval processes. A project proposal shall not be  
23 reviewed under the process created in this section if the department  
24 determines that the scale of the project raises concerns regarding  
25 public health and safety(~~(+and)~~).

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

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

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

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

5 (iv) Through the review and approval process for the jobs for the  
6 environment program;

7 (v) Through the review and approval process for conservation  
8 district-sponsored projects, where the project complies with design  
9 standards established by the conservation commission through  
10 interagency agreement with the United States fish and wildlife service  
11 and the natural resource conservation service;

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

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

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

20 (ix) By a city or county for a stand-alone fish passage barrier  
21 correction project funded by the city or county; and

22 (x) Through other formal review and approval processes established  
23 by the legislature.

24 (2) Fish habitat enhancement projects meeting the criteria of  
25 subsection (1) of this section are expected to result in beneficial  
26 impacts to the environment. Decisions pertaining to fish habitat  
27 enhancement projects meeting the criteria of subsection (1) of this  
28 section and being reviewed and approved according to the provisions of  
29 this section are not subject to the requirements of RCW  
30 43.21C.030(2)(c).

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

1       **(b)** Local governments shall accept the application as notice of the  
2 proposed project. The department shall provide a fifteen-day comment  
3 period during which it will receive comments regarding environmental  
4 impacts.

5       **(c)** Within forty-five days, the department shall either issue a  
6 permit, with or without conditions, deny approval, or make a  
7 determination that the review and approval process created by this  
8 section is not appropriate for the proposed project. The department  
9 shall base this determination on identification during the comment  
10 period of adverse impacts that cannot be mitigated by the conditioning  
11 of a permit.

12       **(d)** If the department determines that the review and approval  
13 process created by this section is not appropriate for the proposed  
14 project, the department shall notify the applicant and the appropriate  
15 local governments of its determination. The applicant may reapply for  
16 approval of the project under other review and approval processes.

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

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

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

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

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

35       (b) The partnership between the department and the department of  
36 transportation must be based on the principle of maximizing habitat  
37 recovery through a coordinated investment strategy that, to the maximum

1 extent practical and allowable, prioritizes opportunities: To correct  
2 multiple fish barriers in whole streams rather than through individual,  
3 isolated projects; to coordinate with other entities sponsoring barrier  
4 removals, such as regional fisheries enhancement groups incorporated  
5 under this chapter, in a manner that achieves the greatest cost savings  
6 to all parties; and to correct barriers located furthest downstream in  
7 a stream system. Examples of this principle include:

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

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

15 (iii) Recognizing that many of the barriers owned by the state are  
16 located in the same stream systems as barriers that are owned by cities  
17 and counties with limited financial resources for correction and that  
18 state-local partnership opportunities should be sought to address these  
19 barriers; and

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

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

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

32 (a) Alter the process and prioritization methods used in the  
33 implementation of the forest practices rules, as that term is defined  
34 in RCW 76.09.020, or the family forest fish passage program, created  
35 pursuant to RCW 76.13.150, that provides public cost assistance to  
36 small forest landowners associated with the road maintenance and  
37 abandonment processes; or

1       (b) Prohibit or delay fish barrier projects undertaken by the  
2 department of transportation or another state agency that are a  
3 component of an overall transportation improvement project or that are  
4 being undertaken as a direct result of state law, federal law, or a  
5 court order. However, the department of transportation or another  
6 state agency is required to work in partnership with the fish passage  
7 barrier removal board created in RCW 77.95.160 to ensure that the  
8 scheduling, staging, and implementation of these projects are, to  
9 maximum extent practicable, consistent with the coordinated and  
10 prioritized approach adopted by the fish passage barrier removal board.

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

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

24       (a) Salmonid-related corrective projects, inventory, assessment,  
25 and prioritization efforts;

26       (b) Salmonid projects subject to a competitive application process;  
27 and

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

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

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

6           (4) Other agencies that administer natural resource-based grant  
7 programs ~~((that may include fish passage barrier removal projects))~~  
8 shall use fish passage selection criteria that are consistent with this  
9 section when those programs are addressing fish passage barrier removal  
10 projects.

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

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

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

26           (1) The department ~~((and the department of transportation))~~ shall  
27 ~~((convene))~~ maintain a fish passage barrier removal ~~((task force))~~  
28 board. ~~((The task force shall consist of one representative each from~~  
29 ~~the department, the department of transportation, the department of~~  
30 ~~ecology, tribes, cities, counties, a business organization, an~~  
31 ~~environmental organization, regional fisheries enhancement groups, and~~  
32 ~~other interested entities as deemed appropriate by the cochairs. The~~  
33 ~~persons representing the department and the department of~~  
34 ~~transportation shall serve as cochairs of the task force and shall~~  
35 ~~appoint members to the task force. The task force shall make~~  
36 ~~recommendations to expand the program in RCW 77.95.180))~~ The board must  
37 be composed of a representative from the department, the department of

1 transportation, cities, counties, the governor's salmon recovery  
2 office, tribal governments, and the department of natural resources.  
3 The representative of the department must serve as chair of the board  
4 and may expand the membership of the board to representatives of other  
5 governments, stakeholders, and interested entities.

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

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

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

18 (i) Other fish passage correction programs, including local salmon  
19 recovery plan implementation efforts through the governor's salmon  
20 recovery office;

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

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

27 (d) Recommendations (~~(shall)~~) must include (~~(a)~~) proposed funding  
28 mechanisms and other necessary mechanisms and methodologies to  
29 coordinate (~~(and prioritize)~~) state, tribal, local, and volunteer  
30 barrier removal efforts within each water resource inventory area and  
31 satisfy the principles of RCW 77.95.180. To the degree practicable,  
32 the board must utilize the database created in RCW 77.95.170 and  
33 information on fish barriers developed by conservation districts to  
34 guide methodology development. The board may consider recommendations  
35 by interested entities from the private sector and regional fisheries  
36 enhancement groups.

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





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

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

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

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

11 A fish habitat enhancement project meeting the criteria of RCW  
12 (~~((77.55.290(1)))~~) 77.55.181 is not subject to grading permits,  
13 inspections, or fees and shall be reviewed according to the provisions  
14 of RCW (~~((77.55.290))~~) 77.55.181.

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

17 A city or town is not liable for adverse impacts resulting from a  
18 fish 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 35.63.230 and 2003 c 39 s 15 are each amended to read  
22 as follows:

23 A permit required under this chapter for a watershed restoration  
24 project as defined in RCW 89.08.460 shall be processed in compliance  
25 with RCW 89.08.450 through 89.08.510. A fish habitat enhancement  
26 project meeting the criteria of RCW (~~((77.55.290(1)))~~) 77.55.181 shall be  
27 reviewed and approved according to the provisions of RCW (~~((77.55.290))~~)  
28 77.55.181.

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

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

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

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

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

20       (2) A fish habitat enhancement project meeting the criteria of RCW  
21 (~~(77.55.290(1))~~) 77.55.181 shall be reviewed and approved according to  
22 the provisions of RCW (~~(77.55.290)~~) 77.55.181.

23       **Sec. 15.** RCW 36.70A.460 and 2003 c 39 s 21 are each amended to  
24 read as follows:

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

28       (2) A fish habitat enhancement project meeting the criteria of RCW  
29 (~~(77.55.290(1))~~) 77.55.181 shall be reviewed and approved according to  
30 the provisions of RCW (~~(77.55.290)~~) 77.55.181.

31       **Sec. 16.** RCW 43.21C.0382 and 2003 c 39 s 23 are each amended to  
32 read as follows:

33       (1) Decisions pertaining to watershed restoration projects as

1 defined in RCW 89.08.460 are not subject to the requirements of RCW  
2 43.21C.030(2)(c).

3 (2) Decisions pertaining to fish habitat enhancement projects  
4 meeting the criteria of RCW (~~((77.55.290(1)))~~) 77.55.181 and being  
5 reviewed and approved according to the provisions of RCW (~~((77.55.290))~~)  
6 77.55.181 are not subject to the requirements of RCW 43.21C.030(2)(c)."

**2SHB 2251** - S COMM AMD

By Committee on Natural Resources & Parks

**ADOPTED 03/07/2014**

7 On page 1, line 1 of the title, after "removals;" strike the  
8 remainder of the title and insert "amending RCW 77.55.181, 77.95.180,  
9 77.95.170, 77.95.160, 19.27.490, 35.21.404, 35.63.230, 35A.21.290,  
10 35A.63.250, 36.70.982, 36.70.992, 36.70A.460, and 43.21C.0382; adding  
11 new sections to chapter 77.95 RCW; creating a new section; and  
12 providing an expiration date."

EFFECT: Provides immunity from civil liability for the state or  
its officers and employees for harm caused by fish enhancement projects  
permitted under the streamlined hydraulic project approval process  
unless the harm is caused by gross negligence or willful or wanton  
misconduct. Encourages the board to consider recommendations by  
interested entities from the private sector and regional fisheries  
enhancement groups.

--- END ---