

HOUSE BILL REPORT

2SHB 2251

As Amended by the Senate

Title: An act relating to fish barrier removals.

Brief Description: Concerning fish barrier removals.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Wilcox, Blake, Orcutt and Clibborn).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/17/14, 1/24/14 [DPS];
Appropriations: 2/10/14 [DP2S(w/o sub AGNR)].

Floor Activity:

Passed House: 2/17/14, 98-0.
Senate Amended.
Passed Senate: 3/7/14, 49-0.

Brief Summary of Second Substitute Bill

- Adds new categories of fish barrier removal projects to the list of projects that are eligible for streamlined permitting under the hydraulic project approval process.
- Reconvenes and makes structural changes to the Fish Passage Barrier Removal Task Force.
- Provides direction as to how fish passage barriers are to be addressed, including the establishment of fish passage barrier removal principles.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Blake, Chair; Lytton, Vice Chair; Buys, Ranking Minority Member; Dunshee, Haigh, Orcutt, Pettigrew, Schmick, Stanford, Van De Wege and Warnick.

Staff: Jason Callahan (786-7117).

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 APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Agriculture & Natural Resources. Signed by 30 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Chandler, Ranking Minority Member; Ross, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Carlyle, Christian, Cody, Dunshee, Fagan, Green, Haigh, Haler, Harris, Hudgins, G. Hunt, S. Hunt, Jinkins, Kagi, Lytton, Morrell, Parker, Pettigrew, Schmick, Seaquist, Springer, Sullivan, Taylor and Tharinger.

Staff: Dan Jones (786-7118).

Background:

Regulatory Streamlining.

A person must obtain a hydraulic project approval (HPA) prior to commencing any construction project that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. Hydraulic project approvals are issued by the Washington Department of Fish and Wildlife (WDFW) to ensure the proper protection of fish life.

To receive a HPA, the applicant must provide certain information to the WDFW. This information includes general plans for the overall project, complete plans and specifications for any construction that is proposed to occur within the mean higher high water line (saltwater) or ordinary high water line (freshwater), and complete plans for the proper protection of fish life.

Certain fish enhancement projects may qualify for streamlined administrative review by the WDFW. These projects are expected to result in beneficial impacts to the environment and, if they qualify for streamlined review, receive a decision regarding the associated HPA in 45 days and are exempt from any local government permitting or fees.

This streamlined review is available for projects of an adequate size or scale that either eliminate human-made fish passage barriers, restore eroded or unstable stream banks, or involve the placement of woody debris into the water. However, not all of these projects are eligible for a streamlined review. To be eligible, the projects must also be approved for specific and limited purposes by the WDFW, a conservation district, or other formal review and approval processes.

Management of Fish Enhancement Projects.

The WDFW and the Washington State Department of Transportation (WSDOT) both have the authority to administer and coordinate grant programs that involve the removal of impediments to fish passage. All grant programs must be consistent with prioritization efforts, competitive application processes, and minimum dollar match criteria. Priority must be given to projects that immediately increase access to spawning and rearing habitat for

depressed or endangered fish stocks or that are otherwise coordinated with other projects in a watershed.

Both the WDFW and the WSDOT must establish a centralized database directory of all fish passage barrier information. The two agencies must also work in partnership to identify cooperative projects that eliminate fish passage barriers caused by state roads and highways.

Coordination between the WDFW and the WSDOT was initially developed through a jointly convened Fish Passage Barrier Removal Task Force (task force). The task force was made up of state agencies, and representatives of tribal governments, state agencies, local government, and other interested parties. The statutory direction to convene the task force is still codified; however, the task force is no longer active.

Summary of Second Substitute Bill:

Regulatory Streamlining.

Three new categories of fish barrier removal projects are added to the list of projects that are eligible for streamlined permitting under the HPA approval process. The first is stand-alone fish barrier removal projects conducted through the WSDOT's environmental retrofit program. The second addition is fish passage barrier corrections funded through local, state, or federally approved grant programs designed to assist local governments. Finally, stand-alone projects conducted by a city or a county are made eligible for streamlined review. The state is excused from liability for all projects subject to the streamlined review.

In addition, the WDFW must explore options with the appropriate federal agencies as to the feasibility of bundling multiple transportation-related fish passage barrier removal projects under any available nationwide federal permitting processes.

Management of Fish Enhancement Projects.

The WDFW is directed to reconvene and maintain the Fish Passage Barrier Removal Task Force; however, the character of the entity is changed from a task force to a management board (Board). The new Board is to be chaired by the WDFW and be composed of representatives of the WSDOT, cities, counties, the Governor's Salmon Recovery Office, tribal governments, and the Department of Natural Resources. The chair of the Board may also add additional participation as warranted. The Board is charged with identifying and expediting the removal of fish passage barriers, making recommendations about proposed funding mechanisms and methodologies, and ensuring that barrier removals are consistent with other state salmon recovery efforts.

The Board must also develop a coordinated approach that addresses fish passage barrier removals in all areas of the state in a manner that recognizes that scheduling and prioritization is necessary. During this process, the Board must coordinate and share information with other fish passage correction programs and with local conservation districts.

The prioritization process developed by the Board must consider projects that: benefit depressed or endangered stocks; provide immediate access to high quality habitat; are downstream from other blockages; and are coordinated with other adjacent barrier removals.

The WDFW is provided with direction to maintain the database of all fish passage barrier information. The WDFW is also directed to develop a barrier inventory training program to qualify participants to perform barrier inventories and develop data for the centralized database.

Fish passage prioritization principles are provided to be used by the WDFW and the WSDOT when addressing barrier removals. These principles must seek to prioritize opportunities to correct multiple barriers in a stream, create cost savings, and repair downstream barriers first. The principles also include coordinating with other governments, maximizing the habitat value gained by forest landowners, and recognizing partnerships with cities and counties.

EFFECT OF SENATE AMENDMENT(S):

Limits the state's immunity from civil liability associated with the streamlined hydraulic permit review process such that liability may still exist in cases of gross negligence or willful or wanton misconduct.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Agriculture & Natural Resources):

(In support) The basic idea is to get the most habitat restoration benefits possible with capital investments by starting downstream and removing blockages as you move upstream. There is no value to a watershed if the habitat is improved where there are still blockages to fish passage. An enhanced benefit can be obtained through a coordinated approach that streamlines projects and decreases costs. There are not enough resources to not take a coordinated approach.

The successes of habitat improvements brought about by the Forest and Fish Law are impressive and that success should be built upon. Private-forest landowners have done a lot of work on fish passage barriers.

(Other) It is not clear that the two programs identified in the bill for a streamlined HPA review fit the other categories of projects that currently enjoy this level of review.

(With concerns) The state's fish passage blockage removal process is complicated by compliance with an injunction handed down by a federal court. That lawsuit is being actively managed to get the most value from the state's investment.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill creates a strategy to make the best use of state resources for fish passage barriers. The state is under a court injunction to remove fish passage barriers, but cities and counties own fish passage barriers on either side of the state-owned barriers. Removing some barriers in a stream and not others doesn't make sense.

This bill has two components: first, removing fish passage barriers using a coordinated approach, and second, establishing a barrier prioritization method. Focusing on a single project does not achieve as many ecological benefits as focusing on a whole stream system.

The bill provides long-term cost savings, allows for streamlined permitting, and maximizes savings through economies of scale. The monetary investment decreases each year as the Fish Passage Barrier Removal Board gets set up.

(Opposed) None.

Persons Testifying (Agriculture & Natural Resources): (In support) Representative Wilcox, prime sponsor; Julie Henning, Washington Department of Fish and Wildlife; Chris Hanlon-Meyer, Washington Department of Natural Resources; Debora Munguia, Washington Forest Protection Association; Carl Schroeder, Association of Washington Cities; Nona Snell, Recreation and Conservation Office; Josh Weiss, Association of Counties; and Heather Hanson, Washington Farm Forestry Association.

(Other) Miguel Perez-Gibson, Colville Tribes Makala.

(With concerns) Megan White, Washington State Department of Transportation.

Persons Testifying (Appropriations): Carl Schroeder, Association of Washington Cities; and Julie Henning, Washington Department of Fish and Wildlife.

Persons Signed In To Testify But Not Testifying (Agriculture & Natural Resources): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.