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HOUSE BILL 2765

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State of Washington

63rd Legislature

2014 Regular Session

By Representative Orcutt

Read first time 02/04/14. Referred to Committee on Environment.

1 AN ACT Relating to fish passage enhancement projects by the  
2 department of transportation; adding a new section to chapter 47.04  
3 RCW; adding a new section to chapter 43.21C RCW; adding a new section  
4 to chapter 77.55 RCW; adding a new section to chapter 90.58 RCW; adding  
5 a new section to chapter 35.21 RCW; adding a new section to chapter  
6 35A.21 RCW; adding a new section to chapter 36.70 RCW; and providing an  
7 effective date.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9 NEW SECTION. **Sec. 1.** A new section is added to chapter 47.04 RCW  
10 to read as follows:

11 (1) For purposes of this section, "fish habitat enhancement  
12 project" means a project designed according to the most recent  
13 standards approved by the department of fish and wildlife to accomplish  
14 one or more of the following tasks:

15 (a) Elimination of human-made fish passage barriers, including  
16 culvert repair and replacement;

17 (b) Restoration of an eroded or unstable stream bank employing the  
18 principle of bioengineering, including limited use of rock as a

1 stabilization only at the toe of the bank, and with primary emphasis on  
2 using native vegetation to control the erosive forces of flowing water;  
3 or

4 (c) Placement of woody debris or other instream structures that  
5 benefit naturally reproducing fish stocks.

6 (2) The department of transportation must provide notice of each  
7 fish habitat enhancement project to the department of fish and  
8 wildlife, which must provide notice to every appropriate tribe.

9 (3) A local government may not require permits, require mitigation,  
10 or charge fees for a fish habitat enhancement project that meets the  
11 definition in subsection (1) of this section and that is constructed  
12 pursuant to this section.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.21C RCW  
14 to read as follows:

15 (1) For purposes of this section, "fish habitat enhancement  
16 project" means a project designed according to the most recent  
17 standards approved by the department of fish and wildlife to accomplish  
18 one or more of the following tasks:

19 (a) Elimination of human-made fish passage barriers, including  
20 culvert repair and replacement;

21 (b) Restoration of an eroded or unstable stream bank employing the  
22 principle of bioengineering, including limited use of rock as a  
23 stabilization only at the toe of the bank, and with primary emphasis on  
24 using native vegetation to control the erosive forces of flowing water;  
25 or

26 (c) Placement of woody debris or other instream structures that  
27 benefit naturally reproducing fish stocks.

28 (2) A fish habitat enhancement project that meets the definition in  
29 subsection (1) of this section is expected to result in beneficial  
30 impacts to the environment. Decisions pertaining to a fish habitat  
31 enhancement project that meets the definition in subsection (1) of this  
32 section are not subject to the requirements in RCW 43.21C.030(2)(c).

33 (3) A local government or state agency may not require mitigation  
34 for a fish habitat enhancement project that meets the definition in  
35 subsection (1) of this section.

1        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 77.55 RCW  
2 to read as follows:

3        (1) For purposes of this section, "fish habitat enhancement  
4 project" means a project designed according to the most recent  
5 standards approved by the department of fish and wildlife to accomplish  
6 one or more of the following tasks:

7        (a) Elimination of human-made fish passage barriers, including  
8 culvert repair and replacement;

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

14        (c) Placement of woody debris or other instream structures that  
15 benefit naturally reproducing fish stocks.

16        (2) A fish habitat enhancement project conducted by or for the  
17 Washington state department of transportation that complies with  
18 applicable federal environmental review requirements or protection  
19 requirements, or both, does not require a permit under this chapter.

20        (3) A local government or state agency may not require mitigation  
21 for a fish habitat enhancement project that meets the definition in  
22 subsection (1) of this section.

23        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 90.58 RCW  
24 to read as follows:

25        (1) For purposes of this section, "fish habitat enhancement  
26 project" means a project designed according to the most recent  
27 standards approved by the department of fish and wildlife to accomplish  
28 one or more of the following tasks:

29        (a) Elimination of human-made fish passage barriers, including  
30 culvert repair and replacement;

31        (b) Restoration of an eroded or unstable stream bank employing the  
32 principle of bioengineering, including limited use of rock as a  
33 stabilization only at the toe of the bank, and with primary emphasis on  
34 using native vegetation to control the erosive forces of flowing water;  
35 or

36        (c) Placement of woody debris or other instream structures that  
37 benefit naturally reproducing fish stocks.

1 (2) Guidelines adopted by the department of ecology and master  
2 programs developed or amended by local governments in accordance with  
3 RCW 90.58.080 do not require modification of or limit a fish habitat  
4 enhancement project conducted by or for the Washington state department  
5 of transportation that complies with applicable federal environmental  
6 review requirements or protection requirements, or both.

7 (3) A local government or state agency may not require mitigation  
8 for a fish habitat enhancement project that meets the definition in  
9 subsection (1) of this section.

10 NEW SECTION. **Sec. 5.** A new section is added to chapter 35.21 RCW  
11 to read as follows:

12 A city or town is not liable for adverse impacts resulting from a  
13 fish habitat enhancement project that meets the criteria of section 1  
14 of this act and has been conducted by or for the department of  
15 transportation.

16 NEW SECTION. **Sec. 6.** A new section is added to chapter 35A.21 RCW  
17 to read as follows:

18 A code city is not liable for adverse impacts resulting from a fish  
19 habitat enhancement project that meets the criteria of section 1 of  
20 this act and has been conducted by or for the department of  
21 transportation.

22 NEW SECTION. **Sec. 7.** A new section is added to chapter 36.70 RCW  
23 to read as follows:

24 A county is not liable for adverse impacts resulting from a fish  
25 habitat enhancement project that meets the criteria of section 1 of  
26 this act and has been conducted by or for the department of  
27 transportation.

28 NEW SECTION. **Sec. 8.** This act takes effect July 1, 2014.

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