

AMENDED IN ASSEMBLY APRIL 28, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1189

Introduced by Assembly Member Skinner
(Coauthors: Assembly Members Chesbro, Huffman, Krekorian, and
Salas)

February 27, 2009

An act to amend Sections 156 and 156.1 of, and to add Sections 156.5 and 156.6 to, to repeal Section 156.4 of, and to repeal and add Section 156.3 of, the Streets and Highways Code, relating to fish passages.

LEGISLATIVE COUNSEL’S DIGEST

AB 1189, as amended, Skinner. Fish passages.

Existing law provides that the Department of Transportation has full possession and control of all state highways. Existing law requires the department to prepare an annual report to the Legislature describing the status of the department’s progress in locating, assessing, and remediating barriers to fish passage, as defined. Existing law requires the department to complete assessments of potential barriers to the passage of anadromous fish prior to commencing project design for any project using state or federal transportation funds that affects certain stream crossings. Existing law requires the department to submit the assessment to the Department of Fish and Game and to add it to the CALFISH database. Existing law requires new projects to be constructed without presenting barriers to fish passage. Existing law also requires the department to complete an assessment for any repair or construction project using those funds that affects those stream crossings.

This bill would define the terms “barrier” and “project” for purposes of these provisions and would require the annual report submitted to the Legislature by the department to include the precise location of past, current, or future remediation projects and a schedule for the remediation of existing barriers to anadromous fish passage. The bill would repeal the provisions requiring the department to perform an assessment for repair or construction projects using state or federal transportation funds that affect those stream crossings. The bill would recast provisions that require the department to complete an assessment of potential barriers to the passage of anadromous fish prior to commencing the project design for any project, as defined, that affects a stream crossing and would require the assessment to include the status of barriers, as specified. The bill would require this assessment to be presented to the Department of Fish and Game and added to the California Fish Passage Assessment Database. The bill would require the department to remediate any barriers to fish passage associated with any project using state or federal transportation funds if the project affects a stream crossing on a stream where anadromous fish are, or historically were, found. The bill would require remediation costs for these projects to be programmed into the state transportation improvement program or the state highway operation and protection program. The bill would require the department to provide notice to the Department of Fish and Game at least 6 month prior to initiating project design of any project and to post the notice in a conspicuous location on its Internet Web site. *The bill would require the department to prioritize transportation projects that complement planned or active streambed remediation or restoration efforts.* The bill would require the department and the Department of Fish and Game, by July 1, 2010, and annually thereafter, to jointly identify high-priority barriers in each district, as specified, and post a list of high-priority barriers in a conspicuous location on its Internet Web site. The bill would require the department to remediate barriers to fish passage using any federal funds received pursuant to the federal American Recovery and Reinvestment Act of 2009, to the extent permitted by federal law.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 156 of the Streets and Highways Code
2 is amended to read:

3 156. For purposes of this article, the following definitions shall
4 apply:

5 (a) “Fish passage” means the ability of an anadromous fish to
6 access appropriate habitat at all points in its life cycle, including
7 spawning and rearing.

8 (b) “Department” means the Department of Transportation.

9 (c) “Barrier” means a complete, partial, or temporal obstruction
10 or impediment to fish passage, including physical conditions
11 associated with infrastructure that may impede passage.

12 (d) “Project” means any construction action that is state or
13 federally funded, including, but not limited to, new construction,
14 rehabilitations, repairs, retrofits, alterations, or maintenance
15 projects—*eligible programmed* under the state transportation
16 improvement program—and or the state highway operation and
17 protection program, pursuant to Sections 14529 and 14526.5 of
18 the Government Code, respectively.

19 SEC. 2. Section 156.1 of the Streets and Highways Code is
20 amended to read:

21 156.1. The Director of Transportation shall prepare an annual
22 report describing the status of the department’s progress in locating,
23 assessing, and remediating barriers to fish passage on anadromous
24 streams. The report shall include the precise location of past,
25 current, or future remediation projects and a schedule for the
26 remediation of existing fish barriers identified pursuant to Section
27 156.3. The report shall be given to the Legislature by October 31
28 of each year through the year 2020.

29 SEC. 3. Section 156.3 of the Streets and Highways Code is
30 repealed.

31 SEC. 4. Section 156.3 is added to the Streets and Highways
32 Code, to read:

33 156.3. (a) The department shall assess potential barriers to fish
34 passage prior to commencing project design for any project
35 programmed after January 1, 2006, if the project affects a stream
36 crossing on a stream where anadromous fish are, or historically
37 were, found, as determined by the department in consultation with
38 the Department of Fish and Game. The department shall use the

1 Department of Fish and Game's assessment protocol and shall
2 include the status of each barrier, as follows:

- 3 (1) Not a barrier.
- 4 (2) Partial.
- 5 (3) Temporal.
- 6 (4) Temporal and partial.
- 7 (5) Temporal and total.
- 8 (6) Total.
- 9 (7) Unknown.

10 (b) The department shall submit the results of the assessment
11 required in subdivision (a) to the Department of Fish and Game
12 and add them to the California Fish Passage Assessment Database.

13 (c) (1) The department shall remediate any barriers to fish
14 passage associated with any project if the project affects a stream
15 crossing on a stream where anadromous fish are, or historically
16 were, found, as determined by the department in consultation with
17 the Department of Fish and Game. Remediation shall be designed
18 into the project and the costs of the remediation shall be
19 programmed into the state transportation improvement program
20 or the state highway operation and protection program. The
21 department shall construct new projects so that they do not present
22 a barrier to fish passage.

23 (2) The department shall provide notice to the Department of
24 Fish and Game at least six months prior to initiating design of any
25 project and post this notice in a conspicuous location on its Internet
26 Web site.

27 (3) *The department shall prioritize transportation projects that*
28 *complement planned or active streambed remediation or*
29 *restoration efforts, based upon streambed restoration needs as*
30 *prioritized by the Department of Fish and Game.*

31 ~~(3)~~

32 (4) Remediation plans shall be developed in consultation with
33 the Department of Fish and Game. The department shall provide
34 notice to the Department of Fish and Game of each remediated
35 barrier and include a description of each remediated project on the
36 California Fish Passage Assessment Database no less than 30 days
37 after completion of the project.

38 SEC. 5. Section 156.4 of the Streets and Highways Code is
39 repealed.

1 SEC. 6. Section 156.5 is added to the Streets and Highways
2 Code, to read:

3 156.5. The department and the Department of Fish and Game
4 shall, by July 1, 2010, and annually thereafter, jointly identify
5 high-priority barriers in each district, based on the quality or
6 quantity of fish habitat above or below a barrier, and other
7 applicable factors, including whether there are planned or proposed
8 anadromous fisheries restoration projects in the same watershed.
9 The department shall post a list of these high-priority barriers,
10 including any annual updates, in a conspicuous location on its
11 Internet Web site.

12 SEC. 7. Section 156.6 is added to the Streets and Highways
13 Code, to read:

14 156.6. The department shall remediate barriers to fish passage
15 using any federal funds received pursuant to the federal American
16 Recovery and Reinvestment Act of 2009, to the extent permitted
17 by federal law.