

Senate Bill No. 857

CHAPTER 589

An act to amend Section 5901 of the Fish and Game Code, and to add Article 3.5 (commencing with Section 156) to Chapter 1 of Division 1 of, the Streets and Highways Code, relating to fish passages.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

SB 857, Kuehl. Fish passages.

Existing law provides that the Department of Transportation has full possession and control of all state highways.

This bill would require 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. The bill would require the department also to complete assessments of potential barriers to anadromous fish prior to commencing any project using state or federal transportation funds. The bill would require the department to submit these assessments to the Department of Fish and Game to be added to the CALFISH database. The bill would also require projects to be constructed without presenting barriers to fish passage.

Existing law prohibits the construction or maintenance, in certain fish and game districts, of any device or contrivance that prevents, impedes, or tends to prevent or impede, the passing of fish up and down stream.

This bill would revise the fish and game districts in which this prohibition applies.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The decline of naturally spawning salmon and steelhead trout is primarily a result of the loss of appropriate stream habitat and the inability of fish to get access to habitat, according to recent reports to the Fish and Game Commission and by the Department of Fish and Game.

(b) Increasing the naturally spawning salmon and steelhead trout populations in California would provide a valuable public resource, employment opportunities, and substantial economic benefits to the state.

(c) Federal, state and local governments and nonprofit organizations are spending hundreds of millions of public dollars in California protecting and restoring habitat for salmon and steelhead trout through watershed and fishery restoration programs, with the state alone spending over two

hundred million dollars (\$200,000,000) for these purposes in the past five years.

(d) The California Department of Transportation has maintenance, construction, and oversight responsibility for the state's roads, including approximately 5,000 stream crossings on coastal streams.

(e) Stream crossings on roads frequently present barriers to the migration of fish, and there is an extensive lack of information regarding the number and extent of existing barriers to fish migration at state road stream crossings.

(f) Having this information would enable the department to better predict the time and funding required to complete transportation projects.

(g) Substantial savings to the state would result from improved ability to deliver transportation projects within their budgets and on time, and substantial benefit to the state's salmon and steelhead trout populations would result from remediation of barriers to fish passage at stream crossings.

SEC. 2. Section 5901 of the Fish and Game Code is amended to read:

5901. Except as otherwise provided in this code, it is unlawful to construct or maintain in any stream in Districts 1, $1\frac{3}{8}$, $1\frac{1}{2}$, $1\frac{7}{8}$, 2, $2\frac{1}{4}$, $2\frac{1}{2}$, $2\frac{3}{4}$, 3, $3\frac{1}{2}$, 4, $4\frac{1}{8}$, $4\frac{1}{2}$, $4\frac{3}{4}$, 11, 12, 13, 23, and 25, any device or contrivance that prevents, impedes, or tends to prevent or impede, the passing of fish up and down stream.

SEC. 3. Article 3.5 (commencing with Section 156) is added to Chapter 1 of Division 1 of the Streets and Highways Code, to read:

Article 3.5. Barriers to Fish Passage

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

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

(b) "Department" means the Department of Transportation.

156.1. The Director of Transportation shall prepare an annual report describing the status of the department's progress in locating, assessing, and remediating barriers to fish passage. This report shall be given to the Legislature by October 31 of each year through the year 2020.

156.2. The department shall pursue development of a programmatic environmental review process with appropriate state and federal regulatory agencies for remediating barriers to fish passage that will streamline the permitting process for projects. The department shall include a description of its progress on this review process in the report specified in Section 156.1.

156.3. For any project using state or federal transportation funds programmed after January 1, 2006, the department shall insure that, if the project affects a stream crossing on a stream where anadromous fish are, or historically were, found, an assessment of potential barriers to fish

passage is done prior to commencing project design. The department shall submit the assessment to the Department of Fish and Game and add it to the CALFISH database. If any structural barrier to passage exists, remediation of the problem shall be designed into the project by the implementing agency. New projects shall be constructed so that they do not present a barrier to fish passage. When barriers to fish passage are being addressed, plans and projects shall be developed in consultation with the Department of Fish and Game.

156.4. For any repair or construction project using state or federal transportation funds that affects a stream crossing on a stream where anadromous fish are, or historically were, found, the department shall perform an assessment of the site for potential barriers to fish passage and submit the assessment to the Department of Fish and Game.