

SENATE BILL REPORT

SB 5145

**AS REPORTED BY COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES,
FEBRUARY 21, 1991**

Brief Description: Making changes to storm water regulations.

SPONSORS: Senators Metcalf, Skratek and Bailey.

SENATE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES

Majority Report: That Substitute Senate Bill No. 5145 be substituted therefor, and the substitute bill do pass.

Signed by Senators Metcalf, Chairman; Oke, Vice Chairman; Barr, Conner, Owen, Patterson, Snyder, and Sutherland.

Staff: Gary Wilburn (786-7453)

Hearing Dates: February 11, 1991; February 21, 1991

BACKGROUND:

In many areas of Washington high rainfall frequently exceeds the capacity of natural watercourses to drain the resulting surface water. Land use activities often impact natural drainage capacities, including increasing impervious surfaces which impact the volume and rate of runoff. Vegetation and soil compaction from heavy equipment reduces the absorption ability of soils leading to accelerated stormwater runoff. The storage and absorption potential is further reduced with impervious materials in the construction of rooftops, driveways, parking lots, sidewalks and roadways.

Modifying natural drainage systems also may impact the system's capacity to drain stormwaters. If land development activities are not accompanied by proper use of natural drainage ways or construction of artificial drainage systems, downgradient owners may suffer property damage or be burdened by increased costs of protecting their lands from damage.

In property damage actions, Washington courts have adopted rules followed in only a minority of courts today. This rule regards diffuse surface waters as the "common enemy" which a landowner may divert from his or her lands to another's land without liability. The upper landowner may augment the flow of natural watercourses and cast a greater volume onto the lower land, and may discharge water at a different point from its natural flow. The upper owner may raise the land level or increase the impervious surfaces of the land without regard for the effect upon surface water flow. The "common enemy" rule has been criticized as being unfair to downgradient landowners and lacking in clarity.

Stormwaters also contain a variety of pollutants which in most cases are not removed or treated prior to discharge into state waters. These pollutants include oil and grease, nutrients, oxygen demanding organics, toxic organics, and heavy metals. Land development activities that increase impervious surfaces increase the runoff of these pollutants.

There are a variety of methods to manage the volume and quality of stormwaters. These methods include three broad categories: (1) the construction of artificial drainage and treatment systems such as storm sewers and culverts; (2) use of natural features for retention and/or treatment, such as grassy low-lying areas and wetlands; and (3) planning and regulatory restrictions upon land use activities impacting stormwaters.

SUMMARY:

A person may not substantially increase the flow of a natural watercourse where the flow exceeds the capacity of the watercourse that existed prior to the person's action. "Watercourse" is defined as a channel, depression or swale, that in its natural condition, acts to drain waters flowing intermittently or perennially. The standard is not applicable to certain activities, including irrigation, drainage within flowage easements, or drainage in compliance with stormwater conditions in state or local permits.

The Puget Sound Water Quality Authority shall adopt a stormwater element within its management plan. Cities and counties preparing comprehensive plans under the 1990 Growth Management Act are to include stormwater provisions within the plans. The provisions are to include level of service standards and must be consistent with applicable provisions of the Puget Sound Water Quality Management Plan. Such cities and counties are to identify lands useful for stormwater retention. They also shall adopt ordinances requiring the provision of stormwater facilities concurrently with development approval and that meet the level of service standards included in the comprehensive land use plan.

Stormwater facilities are public facilities for which cities and counties may impose impact fees. Each board of county commissioners and each city legislative authority shall adopt procedures allowing residents to petition for the preparation of drainage plans for areas in which substantial development is planned or anticipated within the next five years. Elements to be included within the plans are specified. Funding may be provided to local governments from the flood control assistance account to assist with plan preparation.

Each forest practices permit shall contain conditions to ensure that the stormwater runoff limitations specified in the act are met.

EFFECT OF PROPOSED SUBSTITUTE:

The substitute replaces the original bill. A person may not substantially increase the flow of a natural watercourse in a manner that damages the property of another. A person violating this standard is liable for property damages. Such person shall not be liable where the action was taken in compliance with a permit having stormwater requirements. The standard does not apply to diversion, collection and discharge of water for irrigation purposes.

Stormwater facilities are public facilities for which cities and counties may impose impact fees. Cities and counties preparing plans under the 1990 Growth Management Act are to identify lands useful for storm water retention in such plans. Such cities and counties are to adopt ordinances requiring that storm water facilities be provided concurrently with development approval.

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR:

Will be prevent or mitigate damage from stormwater flows increased due to upstream activities.

TESTIMONY AGAINST:

The standard preventing alterations in natural watercourses is an unwarranted limitation upon land development activities. Forest practices are not a principal source of accelerated storm water flows.

TESTIFIED: W. D. Faith; Mary Trunkhill; Stephen J. Kolcsey (pro); Charles Faith; Susan Markey, State Fisheries; Vern Wagar, County Road Admin. Board; Laura Eckert, Dept. of Natural Resources; Terry W. Huntley; Kathleen Sullivan, Weyerhaeuser Company; Dawn P. Vyvyan, Yakima Indian Nation (pro); Mark Triplett, Building Industry Assn., WA Aggregate & Concrete Assn.; Bob Gustavson, WFPA; Kathleen Collins, AWC