
SENATE BILL 6096

State of Washington 52nd Legislature 1992 Regular Session

By Senators Bailey, Anderson, L. Smith and Barr

Read first time 01/15/92. Referred to Committee on Agriculture & Water Resources.

1 AN ACT Relating to wetland regulation; amending RCW 36.70A.050,
2 36.70A.060, and 36.70A.170; and adding a new chapter to Title 90 RCW.

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

4 NEW SECTION. **Sec. 1.** It is the purpose of this act to:

5 (1) Provide additional direction to local governments regarding the
6 required contents of locally adopted regulations to protect wetlands
7 while maintaining a degree of flexibility at the local level to respond
8 to local needs and conditions;

9 (2) Establish a greater degree of consistency between local
10 jurisdictions within the state as to the contents of wetland protection
11 ordinances; and

12 (3) Provide a higher degree of consistency and compatibility
13 between locally adopted wetland protection ordinances and the federal
14 wetland regulatory program.

1 NEW SECTION. **Sec. 2.** Development regulations adopted by local
2 governments to protect wetlands shall be consistent with the
3 requirements of this chapter. Local governments shall adopt
4 development regulations or revise existing development regulations to
5 be consistent with this chapter for the protection of wetlands on or
6 before September 1, 1992.

7 NEW SECTION. **Sec. 3.** To settle disputes between the landowner
8 and the local jurisdiction as to what are the boundaries of wetlands,
9 local governments shall use the same delineation manual that is
10 currently used by the United States army corps of engineers for the
11 federal wetland regulatory program.

12 NEW SECTION. **Sec. 4.** (1) Local governments shall include in
13 their development regulations a wetland rating system consistent with
14 the rating system regulations adopted by the department of community
15 development. The rating system shall be based upon criteria which
16 distinguish among wetlands of exceptional resource value, intermediate
17 resource value, and ordinary resource value. Local governments shall
18 have the option to adopt either a three-tiered or a four-tiered system.

19 (2) The department of community development shall establish an
20 advisory committee to assist in the development of the rating system.
21 The advisory committee shall consist of the following representatives:

22 (a) One person selected by the Washington association of counties;

23 (b) One person selected by the Washington association of cities;

24 (c) One person nominated by the business community to represent
25 business interests;

26 (d) One person nominated by environmental organizations to
27 represent environmental interests;

1 (e) One person nominated by agricultural organizations to represent
2 agricultural interests; and

3 (f) An appointee from the department of community development
4 designated by the director of community development, who shall serve as
5 chairperson.

6 The advisory committee shall review and evaluate the wetland rating
7 systems that exist in other states prior to making their
8 recommendations to the director.

9 NEW SECTION. **Sec. 5.** (1) There shall be transition areas
10 adjacent to wetlands of exceptional resource value and intermediate
11 resource value. The width of the transition area shall be determined
12 by local governments within the following ranges:

13 (a) For wetlands of exceptional resource value (class I wetlands),
14 no greater than one hundred feet and no less than fifty feet; and

15 (b) For wetlands of intermediate resource value (class II
16 wetlands), no greater than fifty feet and no less than twenty-five
17 feet.

18 (2) There shall be no transition areas adjacent to wetlands of
19 ordinary resource value (class III and IV wetlands).

20 NEW SECTION. **Sec. 6.** (1) Local governments shall develop a
21 permit system to fulfill the requirements to protect wetlands in RCW
22 36.70A.060. The requirement for a permit system can be satisfied by
23 establishing a new permit or by utilizing an established permit. Local
24 governments shall provide that adverse effects to wetlands be mitigated
25 through the permitting process. The permit requirement shall apply to
26 the following activities unless otherwise exempt under section 7 of
27 this act:

1 (a) Placement of more than fifty cubic yards of fill material into
2 a wetland;

3 (b) Removal of more than fifty cubic feet of material from a
4 wetland;

5 (c) Alteration of more than fifty cubic yards of substrate
6 material.

7 (2) For the purposes of this section, "material" means rock,
8 gravel, sand, silt, and other inorganic substances removed from
9 wetlands and any materials, organic or inorganic, used to fill
10 wetlands.

11 (3) The adverse effects of a proposed project shall be mitigated by
12 considering, in the following order:

13 (a) Avoiding the impacts altogether by not taking a certain action
14 or parts of an action;

15 (b) Minimizing the impacts by limiting the degree or magnitude of
16 the action and its implementation;

17 (c) Rectifying the impacts by limiting the degree or magnitude of
18 the action and its mitigation;

19 (d) Reducing or eliminating the impacts over time by preservation
20 and maintenance operations during the life of the action and by
21 monitoring and taking appropriate corrective measures; and

22 (e) Compensating for the impacts by replacing or providing
23 comparable substitute wetland resources.

24 NEW SECTION. **Sec. 7.** The following activities are exempt from
25 regulation by local governments when conducted on wetlands or their
26 transition areas regulated pursuant to this chapter:

27 (1) Fishing and hunting;

28 (2) Swimming and boating;

29 (3) Hiking and horseback riding;

1 (4) Grazing by animals;

2 (5) Normal farming and ranching activities such as plowing,
3 seeding, cultivating, minor drainage, harvesting, or upland soil and
4 water conservation practices consistent with and as provided in the
5 federal corps of engineers wetland regulatory program;

6 (6) Maintenance, including emergency reconstruction of recently
7 damaged parts of currently serviceable structures, such as dikes, dams,
8 levees, groins, riprap, breakwaters, causeways, bridge abutments or
9 approaches, and transportation structures consistent with and as
10 provided in the federal corps of engineers wetland regulatory program;

11 (7) Construction or maintenance of farm or stock ponds or
12 irrigation ditches, or maintenance of drainage ditches, consistent with
13 and as provided in the federal corps of engineers wetland regulatory
14 program;

15 (8) Construction or maintenance of farm roads, or temporary roads
16 for moving mining equipment, where such roads are constructed and
17 maintained in accordance with best management practices to assure that
18 flow and circulation patterns and chemical and biological
19 characteristics of wetlands are not impaired and that any adverse
20 effect on the aquatic environment will be otherwise minimized
21 consistent with and as provided in the federal corps of engineers
22 wetland regulatory program;

23 (9) Forest practices as regulated and conducted in accordance with
24 the provisions of chapter 76.09 RCW;

25 (10) Activities affecting regulated wetlands if the wetland is less
26 than fifteen thousand square feet and is a class III or IV wetland;

27 (11) Activities to control mosquitoes conducted by public agencies;

28 (12) Maintenance, operation, and reconstruction of existing private
29 and public roads, streets, railroads, utilities, and associated

1 structures, and serviceable freshwater and marine terminals that are
2 part of an existing and ongoing port facility;

3 (13) Maintenance or reconstruction of residential structures,
4 commercial structures, and farm structures;

5 (14) Storm water management facilities approved, constructed, and
6 managed for storm water management prior to the effective date of this
7 act;

8 (15) Surface coal mining activities licensed under P.L. 95-87 as of
9 the effective date of this act, for so long as the land is covered by
10 the permit issued pursuant to P.L. 95-87;

11 (16) Hard rock mineral extraction operations, not including sand
12 and gravel operations. No tailings or other materials may be placed on
13 class I or II wetlands. Best management practices and operating plan
14 submittal, as required by the department of natural resources, and
15 nonpoint source water quality protection provisions, as developed by
16 the department of natural resources, shall be followed;

17 (17) Sand or gravel removal operations that remove material from
18 rivers and streams and that maintain the flow capacity of the river or
19 stream to carry and prevent damage from flood waters;

20 (18) Activities and construction necessary on an emergency basis to
21 prevent threats to public health and safety, or to public or private
22 property, as determined by the local jurisdiction; and

23 (19) Activities of a temporary nature with a minimal effect on
24 wetlands, as described in local wetland ordinances, and activities
25 which represent ongoing uses.

26 NEW SECTION. **Sec. 8.** Wetlands that are currently subject to
27 regulation pursuant to the shorelines management act of 1971 are exempt
28 from regulation under this chapter.

1 NEW SECTION. **Sec. 9.** State agency actions shall be consistent
2 with the policies and intent of this chapter unless explicit provisions
3 of the law require otherwise.

4 **Sec. 10.** RCW 36.70A.050 and 1990 1st ex.s. c 17 s 5 are each
5 amended to read as follows:

6 (1) Subject to the definitions provided in RCW 36.70A.030, the
7 department shall adopt guidelines, under chapter 34.05 RCW, no later
8 than September 1, 1990, to guide the classification of: (a)
9 Agricultural lands; (b) forest lands; (c) mineral resource lands; and
10 (d) critical areas. The department shall consult with the department
11 of agriculture regarding guidelines for agricultural lands, the
12 department of natural resources regarding forest lands and mineral
13 resource lands, and the department of ecology regarding critical areas.

14 (2) In carrying out its duties under this section, the department
15 shall consult with interested parties, including but not limited to:
16 (a) Representatives of cities; (b) representatives of counties; (c)
17 representatives of developers; (d) representatives of builders; (e)
18 representatives of owners of agricultural lands, forest lands, and
19 mining lands; (f) representatives of local economic development
20 officials; (g) representatives of environmental organizations; (h)
21 representatives of special districts; (i) representatives of the
22 governor's office and federal and state agencies; and (j)
23 representatives of Indian tribes. In addition to the consultation
24 required under this subsection, the department shall conduct public
25 hearings in the various regions of the state. The department shall
26 consider the public input obtained at such public hearings when
27 adopting the guidelines.

28 (3) The guidelines under subsection (1) of this section shall be
29 minimum guidelines that apply to all jurisdictions, but also shall

1 allow for regional differences that exist in Washington state. The
2 intent of these guidelines is to assist counties and cities in
3 designating the classification of agricultural lands, forest lands,
4 mineral resource lands, and critical areas under RCW 36.70A.170.

5 (4) The guidelines established by the department under this section
6 regarding classification of forest lands shall not be inconsistent with
7 guidelines adopted by the department of natural resources.

8 (5) The guidelines established by the department under this section
9 regarding classification of wetlands as critical areas shall be
10 consistent with chapter 90.-- RCW (sections 1 through 9 of this act).

11 **Sec. 11.** RCW 36.70A.060 and 1991 sp.s. c 32 s 21 are each amended
12 to read as follows:

13 (1) Each county that is required or chooses to plan under RCW
14 36.70A.040, and each city within such county, shall adopt development
15 regulations on or before September 1, 1991, to assure the conservation
16 of agricultural, forest, and mineral resource lands designated under
17 RCW 36.70A.170. Regulations adopted under this subsection may not
18 prohibit uses legally existing on any parcel prior to their adoption
19 and shall remain in effect until the county or city adopts development
20 regulations pursuant to RCW 36.70A.120. Such regulations shall assure
21 that the use of lands adjacent to agricultural, forest, or mineral
22 resource lands shall not interfere with the continued use, in the
23 accustomed manner and in accordance with best management practices, of
24 these designated lands for the production of food, agricultural
25 products, or timber, or for the extraction of minerals. Counties and
26 cities shall require that all plats, short plats, development permits,
27 and building permits issued for development activities on, or within
28 three hundred feet of, lands designated as agricultural lands, forest
29 lands, or mineral resource lands, contain a notice that the subject

1 property is within or near designated agricultural lands, forest lands,
2 or mineral resource lands on which a variety of commercial activities
3 may occur that are not compatible with residential development for
4 certain periods of limited duration.

5 (2) Each county and city shall adopt development regulations that
6 protect critical areas that are required to be designated under RCW
7 36.70A.170. Development regulations respecting wetlands as critical
8 areas shall be consistent with chapter 90.-- RCW (sections 1 through 9
9 of this act). For counties and cities that are required or choose to
10 plan under RCW 36.70A.040, such development regulations shall be
11 adopted on or before September 1, 1991. For the remainder of the
12 counties and cities, such development regulations shall be adopted on
13 or before March 1, 1992.

14 (3) Such counties and cities shall review these designations and
15 development regulations when adopting their comprehensive plans under
16 RCW 36.70A.040 and implementing development regulations under RCW
17 36.70A.120 and may alter such designations and development regulations
18 to insure consistency.

19 (4) Forest land and agricultural land located within urban growth
20 areas shall not be designated by a county or city as forest land or
21 agricultural land of long-term commercial significance under RCW
22 36.70A.170 unless the city or county has enacted a program authorizing
23 transfer or purchase of development rights.

24 **Sec. 12.** RCW 36.70A.170 and 1990 1st ex.s. c 17 s 17 are each
25 amended to read as follows:

26 (1) On or before September 1, 1991, each county, and each city,
27 shall designate where appropriate:

1 (a) Agricultural lands that are not already characterized by urban
2 growth and that have long-term significance for the commercial
3 production of food or other agricultural products;

4 (b) Forest lands that are not already characterized by urban growth
5 and that have long-term significance for the commercial production of
6 timber;

7 (c) Mineral resource lands that are not already characterized by
8 urban growth and that have long-term significance for the extraction of
9 minerals; and

10 (d) Critical areas.

11 (2) In making the designations required by this section, counties
12 and cities shall consider the guidelines established pursuant to RCW
13 36.70A.050.

14 (3) Counties and cities shall designate wetlands as critical areas
15 consistent with chapter 90.-- RCW (sections 1 through 9 of this act).

16 NEW SECTION. **Sec. 13.** Sections 1 through 9 of this act shall
17 constitute a new chapter in Title 90 RCW.