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SECOND ENGROSSED SUBSTITUTE HOUSE BILL 1309

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State of Washington

53rd Legislature

1993 Regular Session

By House Committee on Fisheries & Wildlife (originally sponsored by Representatives King, Orr, Scott, G. Cole, Basich, Lemmon, Morris, Jones, Rust, Holm, R. Meyers, Johanson, J. Kohl, Jacobsen and Leonard)

Read first time 03/01/93.

1 AN ACT Relating to fish and wildlife management; amending RCW  
2 43.20.230, 90.03.360, and 90.42.010; adding a new section to chapter  
3 75.28 RCW; adding a new section to chapter 79.01 RCW; adding a new  
4 section to chapter 77.12 RCW; adding a new section to chapter 43.20  
5 RCW; adding a new section to chapter 90.54 RCW; adding a new section to  
6 chapter 90.22 RCW; adding a new chapter to Title 28A RCW; and creating  
7 new sections.

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

9 NEW SECTION. **Sec. 1.** The legislature finds that many wild stocks  
10 of salmonids in the state of Washington are in a state of decline.  
11 Stocks of salmon on the Columbia and Snake rivers have been listed  
12 under the federal endangered species act, and the bull trout has been  
13 petitioned for listing. Some scientists believe that numerous other  
14 stocks of salmonids in the Pacific Northwest are in decline or possibly  
15 extinct. The legislature declares that to lose wild stocks is  
16 detrimental to the genetic diversity of the fisheries resource and the  
17 economy, and will represent the loss of a vital component of  
18 Washington's aquatic ecosystems. The legislature further finds that  
19 there is a continuing loss of habitat for fish and wildlife. The

1 legislature declares that steps must be taken in the areas of wildlife  
2 and fish habitat management, water conservation, wild salmonid stock  
3 protection, and education to prevent further losses of Washington's  
4 fish and wildlife heritage from a number of causes including urban and  
5 rural subdivisions, shopping centers, industrial park, and other land  
6 use activities.

7 The legislature finds that the maintenance and restoration of  
8 Washington's rangelands and shrub-steppe vegetation is vital to the  
9 long-term benefit of the people of the state. The legislature finds  
10 that approximately one-fourth of the state is open range or open-  
11 canopied grazable woodland. The legislature finds that these lands  
12 provide forage for livestock, habitat for wildlife, and innumerable  
13 recreational opportunities including hunting, hiking, and fishing.

14 The legislature finds that the development of coordinated resource  
15 management plans, that take into consideration the needs of wildlife,  
16 fish, livestock, timber production, water quality protection, and  
17 rangeland conservation on all state-owned grazing lands will improve  
18 the stewardship of these lands and allow for the increased development  
19 and maintenance of fish and wildlife habitat and other multipurpose  
20 benefits the public derives from these lands.

21 The legislature finds that the state currently provides  
22 insufficient technical support for coordinated resource management  
23 plans to be developed for all state-owned lands and for many of the  
24 private lands desiring to develop such plans. As a consequence of this  
25 lack of technical assistance, our state grazing lands, including fish  
26 and wildlife habitat and other resources provided by these lands, are  
27 not achieving their potential. The legislature also finds that with  
28 many state lands being intermixed with private grazing lands,  
29 development of coordinated resource management plans on state-owned and  
30 managed lands provides an opportunity to improve the management and  
31 enhance the conditions of adjacent private lands.

32 A purpose of this act is to establish state grazing lands as the  
33 model in the state for the development and implementation of standards  
34 that can be used in coordinated resource management plans and to  
35 thereby assist the timely development of coordinated resource  
36 management plans for all state-owned grazing lands. Every lessee of  
37 state lands who wishes to participate in the development and  
38 implementation of a coordinated resource management plan shall have the  
39 opportunity to do so.

1        NEW SECTION.    **Sec. 2.**    By July 1, 1994, the departments of  
2 fisheries and wildlife jointly with the appropriate Indian tribes,  
3 shall each establish a wild salmonid policy. The policy shall ensure  
4 that department actions and programs are consistent with the goals of  
5 rebuilding wild stock populations to levels that permit commercial and  
6 recreational fishing opportunities.

7        NEW SECTION.    **Sec. 3.**    By July 1, 1994, the department of fisheries  
8 and the department of wildlife shall jointly, with input from the  
9 Indian tribes and after coordination with California, Oregon, Idaho,  
10 Montana, Alaska, British Columbia, and appropriate federal agencies,  
11 report to the appropriate legislative committees on the feasibility of  
12 implementing selective marking techniques that can be used to minimize  
13 impacts of fishing on wild or natural stocks of salmonids. The report  
14 shall address costs, benefits, and risks associated with marking.

15        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 75.28 RCW  
16 to read as follows:

17        The department of fisheries shall evaluate and recommend, in  
18 consultation with the Indian tribes, salmon fishery management  
19 strategies and gear types, as well as a schedule for implementation,  
20 that will minimize the impact of commercial and recreational fishing in  
21 the mixed stock fishery on critical and depressed wild stocks of  
22 salmonids. As part of this evaluation, the department, in conjunction  
23 with the commercial and recreational fishing industries, shall evaluate  
24 commercial and recreational salmon fishing gear types developed by  
25 these industries. The department of fisheries shall present status  
26 reports to the appropriate committees of the legislature by December 31  
27 of each year in 1993, 1994, and 1995, and shall present the final  
28 evaluation and recommendations by December 31, 1996.

29        NEW SECTION.    **Sec. 5.**    A new section is added to chapter 79.01 RCW  
30 to read as follows:

31        (1) By December 31, 1993, the department of wildlife and the  
32 department of fisheries shall each develop goals for the wildlife and  
33 fish that these agencies respectively manage, to preserve, protect, and  
34 perpetuate wildlife and fish on shrub steppe habitat or on lands that  
35 are presently agricultural lands, rangelands, or grazable woodlands.

1 These goals shall be consistent with the maintenance of a healthy  
2 ecosystem.

3 (2) By July 31, 1993, the conservation commission shall appoint a  
4 technical advisory committee to develop standards that achieve the  
5 goals developed in subsection (1) of this section. The committee  
6 members shall include but not be limited to technical experts  
7 representing the following interests: Agriculture, academia, range  
8 management, utilities, environmental groups, commercial and  
9 recreational fishing interests, the Washington rangelands committee,  
10 Indian tribes, the department of wildlife, the department of fisheries,  
11 the department of natural resources, the department of ecology,  
12 conservation districts, and the department of agriculture. A member of  
13 the conservation commission shall chair the committee.

14 (3) By December 31, 1994, the committee shall develop standards to  
15 meet the goals developed under subsection (1) of this section. These  
16 standards shall not conflict with the recovery of wildlife or fish  
17 species that are listed or proposed for listing under the federal  
18 endangered species act. These standards shall be utilized to the  
19 extent possible in development of coordinated resource management plans  
20 to provide a level of management that sustains and perpetuates  
21 renewable resources, including fish and wildlife, riparian areas, soil,  
22 water, timber, and forage for livestock and wildlife. Furthermore, the  
23 standards are recommended for application to model watersheds  
24 designated by the Northwest power planning council in conjunction with  
25 the conservation commission. The maintenance and restoration of  
26 sufficient habitat to preserve, protect, and perpetuate wildlife and  
27 fish shall be a major component included in the standards and  
28 coordinated resource management plans. Application of standards to  
29 privately owned lands is voluntary and may be dependent on funds to  
30 provide technical assistance through conservation districts.

31 (4) The conservation commission shall approve the standards and  
32 shall provide them to the departments of natural resources and  
33 wildlife, each of the conservation districts, Washington State  
34 University cooperative extension service, and the appropriate  
35 committees of the legislature. The conservation districts shall make  
36 these standards available to the public and for coordinated resource  
37 management planning. Application to private lands is voluntary.

38 (5) The department of natural resources shall implement practices  
39 necessary to meet the standards developed pursuant to this section on

1 department managed agricultural and grazing lands, consistent with the  
2 trust mandate of the Washington state Constitution and Title 79 RCW.  
3 The standards may be modified on a site-specific basis as needed to  
4 achieve the fish and wildlife goals, and as determined by the  
5 department of fisheries or wildlife, and the department of natural  
6 resources. Existing lessees shall be provided an opportunity to  
7 participate in any site-specific field review. Department agricultural  
8 and grazing leases issued after December 31, 1994, shall be subject to  
9 practices to achieve the standards that meet those developed pursuant  
10 to this section.

11 NEW SECTION. **Sec. 6.** A new section is added to chapter 77.12 RCW  
12 to read as follows:

13 The department of wildlife shall implement practices necessary to  
14 meet the standards developed under section 5 of this act on agency-  
15 owned and managed agricultural and grazing lands. The standards may be  
16 modified on a site-specific basis as necessary and as determined by the  
17 department of fisheries or wildlife, for species that these agencies  
18 respectively manage, to achieve the goals established under section  
19 5(1) of this act. Existing lessees shall be provided an opportunity to  
20 participate in any site-specific field review. Department agricultural  
21 and grazing leases issued after December 31, 1994, shall be subject to  
22 practices to achieve the standards that meet those developed pursuant  
23 to section 5 of this act.

24 This section shall in no way prevent the department of wildlife  
25 from managing its lands to accomplish its statutory mandate pursuant to  
26 RCW 77.12.010, nor shall it prevent the department from managing its  
27 lands according to the provisions of RCW 77.12.210 or rules adopted  
28 pursuant to this chapter.

29 NEW SECTION. **Sec. 7.** Washington State University shall report to  
30 the appropriate legislative committees by December 31, 1993, on how to  
31 best integrate fish and wildlife considerations with the existing  
32 curriculum in the university's agriculture department and with the  
33 university cooperative extension service. The university shall also  
34 report on the feasibility and cost of creating a rotational assignment  
35 with the department of wildlife to accomplish cross-training in  
36 wildlife and fish habitat management and farm and grazing management.

1        NEW SECTION.    **Sec. 8.**    By July 1, 1993, the departments of  
2 fisheries and wildlife shall provide information on salmonid stock  
3 status, by individual stock, to the department of ecology, the  
4 Washington association of cities, the Washington state association of  
5 counties, and water purveyors.

6        **Sec. 9.**    RCW 43.20.230 and 1989 c 348 s 12 are each amended to read  
7 as follows:

8        Consistent with the water resource planning process of the  
9 department of ecology, the department of ~~((social and))~~ health  
10 ~~((services))~~ shall ~~((, contingent on the availability of funds))~~:

11        (1) Develop procedures and guidelines relating to water use  
12 efficiency, as defined in section 4(3) ~~((of this act))~~, chapter 348,  
13 Laws of 1989, to be included in the development and approval of cost-  
14 efficient water system plans required under RCW 43.20.050;

15        (2) Develop criteria, with input from technical experts, with the  
16 objective of encouraging the cost-effective reuse of greywater and  
17 other water recycling practices, consistent with protection of public  
18 health and water quality; ~~((and))~~

19        (3) Provide advice and technical assistance upon request in the  
20 development of water use efficiency plans; and

21        (4) Provide advice and technical assistance on request for  
22 development of model ~~((rate setting formulas))~~ conservation rate  
23 structures for public water systems. Subsections (1), (2), and (3) of  
24 this section are subject to the availability of funding.

25        NEW SECTION.    **Sec. 10.**    A new section is added to chapter 43.20 RCW  
26 to read as follows:

27        Water purveyors required to develop a water system plan pursuant to  
28 RCW 43.20.230 shall evaluate the feasibility of adopting and  
29 implementing water delivery rate structures that encourage water  
30 conservation. This information shall be included in water system plans  
31 submitted to the department of health for approval after July 1, 1993.  
32 The department shall evaluate the following:

33        (1) Rate structures currently used by public water systems in  
34 Washington; and

35        (2) Economic and institutional constraints to implementing  
36 conservation rate structures.

1 The department shall provide its findings to the appropriate committees  
2 of the legislature no later than December 31, 1995.

3 NEW SECTION. **Sec. 11.** A new section is added to chapter 90.54 RCW  
4 to read as follows:

5 The department, in cooperation with the Washington state water  
6 resources association, shall accomplish the following:

7 (1) Determine and evaluate rate structures currently used by  
8 irrigation districts in the state of Washington;

9 (2) Identify economic and institutional constraints to implementing  
10 conservation rate structures; and

11 (3) Develop model conservation rate structures for consideration by  
12 irrigation districts.

13 The department shall provide its findings to the appropriate committees  
14 of the legislature no later than December 31, 1993.

15 **Sec. 12.** RCW 90.03.360 and 1989 c 348 s 6 are each amended to read  
16 as follows:

17 (1) The owner or owners of any ~~((ditch or canal))~~ water diversion  
18 shall maintain, to the satisfaction of the department of ecology,  
19 substantial controlling works~~((,))~~ and a measuring device ~~((at the~~  
20 ~~point where the water is diverted, and these shall be so))~~ constructed  
21 and maintained ~~((as))~~ to permit accurate measurement and practical  
22 regulation of the flow of water diverted ~~((into said ditch or canal))~~.  
23 Every owner or manager of a reservoir for the storage of water shall  
24 construct and maintain, when required by the department, any measuring  
25 device necessary to ascertain the natural flow into and out of said  
26 reservoir.

27 Metering of diversions or measurement by other approved methods  
28 shall be required as a condition for all new surface water right  
29 permits, and except as provided in subsection (2) of this section, may  
30 be required as a condition for all ((new)) previously existing surface  
31 water ((right permits)) rights. The department may also require, as a  
32 condition for ~~((such permits))~~ all water rights, metering of  
33 diversions, and reports regarding such metered diversions as to the  
34 amount of water being diverted. Such reports shall be in a form  
35 prescribed by the department.

36 (2) Where water diversions are from waters in which the salmonid  
37 stock status is depressed or critical, as determined by the departments

1 of fisheries and wildlife, or where the volume of water being diverted  
2 exceeds one cubic foot per second, the department shall require  
3 metering or measurement by other approved methods as a condition for  
4 all new and previously existing water rights or claims. The department  
5 shall attempt to integrate the requirements of this subsection into its  
6 existing compliance workload priorities, but shall prioritize the  
7 requirements of this subsection ahead of the existing compliance  
8 workload where a delay may cause the decline of wild salmonids. The  
9 department shall notify the departments of fisheries and wildlife of  
10 the status of fish screens associated with these diversions.

11 This subsection (2) shall not apply to diversions for public or  
12 private hatcheries or fish rearing facilities if the diverted water is  
13 returned directly to the waters from which it was diverted.

14 NEW SECTION. Sec. 13. A new section is added to chapter 90.22 RCW  
15 to read as follows:

16 By December 31, 1993, the department of ecology shall, in  
17 cooperation with the Indian tribes, and the departments of fisheries  
18 and wildlife, establish a state-wide list of priorities for evaluation  
19 of instream flows. In establishing these priorities, the department  
20 shall consider the achievement of wild salmonid production as its  
21 primary goal.

22 The priority list shall be presented to the appropriate legislative  
23 committees and to the water resources forum by December 31, 1993.

24 Sec. 14. RCW 90.42.010 and 1991 c 347 s 5 are each amended to read  
25 as follows:

26 (1) The legislature finds that a need exists to develop and test a  
27 means to facilitate the voluntary transfer of water and water rights,  
28 including conserved water, to provide water for presently unmet needs  
29 and emerging needs. Further, the legislature finds that water  
30 conservation activities have the potential of affecting the quantity of  
31 return flow waters to which existing water right holders have a right  
32 to and rely upon. It is the intent of the legislature that persons  
33 holding rights to water, including return flows, not be adversely  
34 affected in the implementation of the provisions of this chapter.

35 The purpose of this chapter is to provide the mechanism for  
36 accomplishing this in a manner that will not impair existing rights to  
37 water and to test the mechanism in two pilot planning areas designated



1 pursuant to RCW 90.54.045(2) and in the water resource inventory areas  
2 designated under subsection (2) of this section.

3 (2) The department may designate up to four water resource  
4 inventory areas west of the crest of the Cascade mountains and up to  
5 four water resource inventory areas east of the crest of the Cascade  
6 mountains, as identified pursuant to chapter 90.54 RCW. The areas  
7 designated shall contain critical water supply problems and shall  
8 provide an opportunity to test and evaluate a variety of applications  
9 of RCW 90.42.010 through 90.42.090, including application to municipal,  
10 industrial, and agricultural use. The department shall seek advice  
11 from appropriate state agencies, Indian tribes, local governments,  
12 representatives of water right holders, and interested parties before  
13 identifying such water resource inventory areas.

14 (3) The department shall provide to the appropriate legislative  
15 committees by December 31, 1993, a written evaluation of the  
16 implementation of RCW 90.42.010 through 90.42.090 and recommendations  
17 for future application. Recommendations shall include methods of  
18 applying RCW 90.42.010 through 90.42.090 to the rivers that are  
19 designated as high priority by the department of ecology under section  
20 13 of this act in order to use net water savings to enhance stream  
21 flows.

22 NEW SECTION. **Sec. 15.** The governor's council on environmental  
23 education created in 1990 by executive order 90-06, shall accomplish  
24 the following:

25 (1) Raise and distribute public and private funds for the purpose  
26 of providing environmental education programs and projects in fish and  
27 wildlife preservation and management to public and private elementary  
28 and secondary schools, emphasizing the importance of species  
29 conservation and fish and wildlife as indicators of ecosystem health;  
30 and

31 (2) Support interdisciplinary programs that integrate fish and  
32 wildlife preservation and management with other areas of environmental  
33 education.

34 NEW SECTION. **Sec. 16.** Section 15 of this act shall constitute a  
35 new chapter in Title 28A RCW.

1        NEW SECTION.    **Sec. 17.**    (1) If specific funding for sections 1  
2 through 6 and 8 through 15 of this act, referencing this act by bill  
3 and section numbers, is not provided by June 30, 1993, in the omnibus  
4 appropriations act, sections 1 through 6 and 8 through 15 of this act  
5 are null and void.

6        (2) If specific funding for section 7 of this act, referencing this  
7 act by bill and section number, is not provided by June 30, 1993, in  
8 the omnibus appropriations act, section 7 of this act is null and void.

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