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SENATE BILL 6246

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State of Washington

55th Legislature

1998 Regular Session

By Senator Swecker

Read first time . Referred to Committee on .

1 AN ACT Relating to permits for the enhancement of riparian habitat  
2 adjacent to cropped or pastured areas; amending RCW 90.58.030 and  
3 36.70A.060; adding a new section to chapter 89.08 RCW; adding a new  
4 section to chapter 75.20 RCW; adding a new section to chapter 90.48  
5 RCW; creating a new section; and making an appropriation.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature recognizes that  
8 restoration and enhancement of pasture and crop land adjacent to  
9 riparian areas is a high priority for the state to improve fish habitat  
10 for fish species that have been or may be listed under the federal  
11 endangered species act and to improve the quality and temperature of  
12 water that does not currently meet water quality standards.

13 (2) The legislature also finds that landowners wishing to restore  
14 or enhance riparian areas may be deterred by the permitting  
15 requirements from both state and local governments.

16 (3) It is the intent of the legislature to ensure technically and  
17 environmentally sound projects for the restoration or enhancement of  
18 riparian areas while minimizing the permitting requirements for  
19 individual landowners. It is therefore the intent to establish state-

1 wide technical standards for riparian area restoration and enhancement  
2 that will replace existing permit requirements.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 89.08 RCW  
4 to read as follows:

5 (1) By June 30, 1999, the commission shall develop rules to govern  
6 the restoration or enhancement of riparian areas adjacent to pasture or  
7 crop lands. The commission shall convene an advisory group including  
8 representatives of the department of fish and wildlife, the department  
9 of ecology, city governments, county governments, tribal governments,  
10 environmental organizations, and agricultural organizations. This  
11 advisory group shall identify the riparian restoration and enhancement  
12 projects to be covered under the rules and develop technical standards  
13 to be included in the rules and used for the design and installation of  
14 these projects.

15 (2) Following the adoption of rules, the commission shall produce  
16 a pamphlet describing the technical standards governing the riparian  
17 restoration and enhancement projects as defined by the rules. The  
18 pamphlet shall serve as approval under the shoreline management act,  
19 chapter 90.58 RCW, the hydraulic code, chapter 75.20 RCW, the water  
20 pollution control act, chapter 90.48 RCW, and any local critical area  
21 regulations adopted under the growth management act, chapter 36.70A  
22 RCW. No further permit is required for activities covered by the  
23 pamphlet. No fee may be required for activities covered by the  
24 pamphlet.

25 (3) The commission shall give the pamphlet to any person entering  
26 into a voluntary agreement with the state or federal government to  
27 restore and enhance riparian areas adjacent to pasture or crop land.  
28 Design and implementation of activities to restore or enhance riparian  
29 areas adjacent to pasture or crop land shall meet the technical  
30 standards in the pamphlet.

31 NEW SECTION. **Sec. 3.** A new section is added to chapter 75.20 RCW  
32 to read as follows:

33 No permit or approval is required under this chapter for the  
34 restoration or enhancement of riparian areas adjacent to pasture or  
35 crop land that is conducted according to the pamphlet in section 2(2)  
36 of this act.

1        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 90.48 RCW  
2 to read as follows:

3        No permit or approval is required under this chapter for the  
4 restoration or enhancement of riparian areas adjacent to pasture or  
5 crop land that is conducted according to the pamphlet in section 2(2)  
6 of this act.

7        **Sec. 5.**    RCW 90.58.030 and 1996 c 265 s 1 are each amended to read  
8 as follows:

9        As used in this chapter, unless the context otherwise requires, the  
10 following definitions and concepts apply:

11        (1) Administration:

12        (a) "Department" means the department of ecology;

13        (b) "Director" means the director of the department of ecology;

14        (c) "Local government" means any county, incorporated city, or town  
15 which contains within its boundaries any lands or waters subject to  
16 this chapter;

17        (d) "Person" means an individual, partnership, corporation,  
18 association, organization, cooperative, public or municipal  
19 corporation, or agency of the state or local governmental unit however  
20 designated;

21        (e) "Hearing board" means the shoreline hearings board established  
22 by this chapter.

23        (2) Geographical:

24        (a) "Extreme low tide" means the lowest line on the land reached by  
25 a receding tide;

26        (b) "Ordinary high water mark" on all lakes, streams, and tidal  
27 water is that mark that will be found by examining the bed and banks  
28 and ascertaining where the presence and action of waters are so common  
29 and usual, and so long continued in all ordinary years, as to mark upon  
30 the soil a character distinct from that of the abutting upland, in  
31 respect to vegetation as that condition exists on June 1, 1971, as it  
32 may naturally change thereafter, or as it may change thereafter in  
33 accordance with permits issued by a local government or the department:  
34 PROVIDED, That in any area where the ordinary high water mark cannot be  
35 found, the ordinary high water mark adjoining salt water shall be the  
36 line of mean higher high tide and the ordinary high water mark  
37 adjoining fresh water shall be the line of mean high water;

1 (c) "Shorelines of the state" are the total of all "shorelines" and  
2 "shorelines of state-wide significance" within the state;

3 (d) "Shorelines" means all of the water areas of the state,  
4 including reservoirs, and their associated shorelands, together with  
5 the lands underlying them; except (i) shorelines of state-wide  
6 significance; (ii) shorelines on segments of streams upstream of a  
7 point where the mean annual flow is twenty cubic feet per second or  
8 less and the wetlands associated with such upstream segments; and (iii)  
9 shorelines on lakes less than twenty acres in size and wetlands  
10 associated with such small lakes;

11 (e) "Shorelines of state-wide significance" means the following  
12 shorelines of the state:

13 (i) The area between the ordinary high water mark and the western  
14 boundary of the state from Cape Disappointment on the south to Cape  
15 Flattery on the north, including harbors, bays, estuaries, and inlets;

16 (ii) Those areas of Puget Sound and adjacent salt waters and the  
17 Strait of Juan de Fuca between the ordinary high water mark and the  
18 line of extreme low tide as follows:

19 (A) Nisqually Delta--from DeWolf Bight to Tatsolo Point,

20 (B) Birch Bay--from Point Whitehorn to Birch Point,

21 (C) Hood Canal--from Tala Point to Foulweather Bluff,

22 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,  
23 and

24 (E) Padilla Bay--from March Point to William Point;

25 (iii) Those areas of Puget Sound and the Strait of Juan de Fuca and  
26 adjacent salt waters north to the Canadian line and lying seaward from  
27 the line of extreme low tide;

28 (iv) Those lakes, whether natural, artificial, or a combination  
29 thereof, with a surface acreage of one thousand acres or more measured  
30 at the ordinary high water mark;

31 (v) Those natural rivers or segments thereof as follows:

32 (A) Any west of the crest of the Cascade range downstream of a  
33 point where the mean annual flow is measured at one thousand cubic feet  
34 per second or more,

35 (B) Any east of the crest of the Cascade range downstream of a  
36 point where the annual flow is measured at two hundred cubic feet per  
37 second or more, or those portions of rivers east of the crest of the  
38 Cascade range downstream from the first three hundred square miles of  
39 drainage area, whichever is longer;

1 (vi) Those shorelands associated with (i), (ii), (iv), and (v) of  
2 this subsection (2)(e);

3 (f) "Shorelands" or "shoreland areas" means those lands extending  
4 landward for two hundred feet in all directions as measured on a  
5 horizontal plane from the ordinary high water mark; floodways and  
6 contiguous floodplain areas landward two hundred feet from such  
7 floodways; and all wetlands and river deltas associated with the  
8 streams, lakes, and tidal waters which are subject to the provisions of  
9 this chapter; the same to be designated as to location by the  
10 department of ecology. Any county or city may determine that portion  
11 of a one-hundred-year-flood plain to be included in its master program  
12 as long as such portion includes, as a minimum, the floodway and the  
13 adjacent land extending landward two hundred feet therefrom;

14 (g) "Floodway" means those portions of the area of a river valley  
15 lying streamward from the outer limits of a watercourse upon which  
16 flood waters are carried during periods of flooding that occur with  
17 reasonable regularity, although not necessarily annually, said floodway  
18 being identified, under normal condition, by changes in surface soil  
19 conditions or changes in types or quality of vegetative ground cover  
20 condition. The floodway shall not include those lands that can  
21 reasonably be expected to be protected from flood waters by flood  
22 control devices maintained by or maintained under license from the  
23 federal government, the state, or a political subdivision of the state;

24 (h) "Wetlands" means areas that are inundated or saturated by  
25 surface water or ground water at a frequency and duration sufficient to  
26 support, and that under normal circumstances do support, a prevalence  
27 of vegetation typically adapted for life in saturated soil conditions.  
28 Wetlands generally include swamps, marshes, bogs, and similar areas.  
29 Wetlands do not include those artificial wetlands intentionally created  
30 from nonwetland sites, including, but not limited to, irrigation and  
31 drainage ditches, grass-lined swales, canals, detention facilities,  
32 wastewater treatment facilities, farm ponds, and landscape amenities,  
33 or those wetlands created after July 1, 1990, that were unintentionally  
34 created as a result of the construction of a road, street, or highway.  
35 Wetlands may include those artificial wetlands intentionally created  
36 from nonwetland areas to mitigate the conversion of wetlands.

37 (3) Procedural terms:

38 (a) "Guidelines" means those standards adopted to implement the  
39 policy of this chapter for regulation of use of the shorelines of the

1 state prior to adoption of master programs. Such standards shall also  
2 provide criteria to local governments and the department in developing  
3 master programs;

4 (b) "Master program" shall mean the comprehensive use plan for a  
5 described area, and the use regulations together with maps, diagrams,  
6 charts, or other descriptive material and text, a statement of desired  
7 goals, and standards developed in accordance with the policies  
8 enunciated in RCW 90.58.020;

9 (c) "State master program" is the cumulative total of all master  
10 programs approved or adopted by the department of ecology;

11 (d) "Development" means a use consisting of the construction or  
12 exterior alteration of structures; dredging; drilling; dumping;  
13 filling; removal of any sand, gravel, or minerals; bulkheading; driving  
14 of piling; placing of obstructions; or any project of a permanent or  
15 temporary nature which interferes with the normal public use of the  
16 surface of the waters overlying lands subject to this chapter at any  
17 state of water level;

18 (e) "Substantial development" shall mean any development of which  
19 the total cost or fair market value exceeds two thousand five hundred  
20 dollars, or any development which materially interferes with the normal  
21 public use of the water or shorelines of the state; except that the  
22 following shall not be considered substantial developments for the  
23 purpose of this chapter:

24 (i) Normal maintenance or repair of existing structures or  
25 developments, including damage by accident, fire, or elements;

26 (ii) Construction of the normal protective bulkhead common to  
27 single family residences;

28 (iii) Emergency construction necessary to protect property from  
29 damage by the elements;

30 (iv) Construction and practices normal or necessary for farming,  
31 irrigation, and ranching activities, including agricultural service  
32 roads and utilities on shorelands, and the construction and maintenance  
33 of irrigation structures including but not limited to head gates,  
34 pumping facilities, and irrigation channels. A feedlot of any size,  
35 all processing plants, other activities of a commercial nature,  
36 alteration of the contour of the shorelands by leveling or filling  
37 other than that which results from normal cultivation, shall not be  
38 considered normal or necessary farming or ranching activities. A  
39 feedlot shall be an enclosure or facility used or capable of being used

1 for feeding livestock hay, grain, silage, or other livestock feed, but  
2 shall not include land for growing crops or vegetation for livestock  
3 feeding and/or grazing, nor shall it include normal livestock wintering  
4 operations;

5 (v) Construction or modification of navigational aids such as  
6 channel markers and anchor buoys;

7 (vi) Construction on shorelands by an owner, lessee, or contract  
8 purchaser of a single family residence for his own use or for the use  
9 of his family, which residence does not exceed a height of thirty-five  
10 feet above average grade level and which meets all requirements of the  
11 state agency or local government having jurisdiction thereof, other  
12 than requirements imposed pursuant to this chapter;

13 (vii) Construction of a dock, including a community dock, designed  
14 for pleasure craft only, for the private noncommercial use of the  
15 owner, lessee, or contract purchaser of single and multiple family  
16 residences. This exception applies if either: (A) In salt waters, the  
17 fair market value of the dock does not exceed two thousand five hundred  
18 dollars; or (B) in fresh waters, the fair market value of the dock does  
19 not exceed ten thousand dollars, but if subsequent construction having  
20 a fair market value exceeding two thousand five hundred dollars occurs  
21 within five years of completion of the prior construction, the  
22 subsequent construction shall be considered a substantial development  
23 for the purpose of this chapter;

24 (viii) Operation, maintenance, or construction of canals,  
25 waterways, drains, reservoirs, or other facilities that now exist or  
26 are hereafter created or developed as a part of an irrigation system  
27 for the primary purpose of making use of system waters, including  
28 return flow and artificially stored ground water for the irrigation of  
29 lands;

30 (ix) The marking of property lines or corners on state owned lands,  
31 when such marking does not significantly interfere with normal public  
32 use of the surface of the water;

33 (x) Operation and maintenance of any system of dikes, ditches,  
34 drains, or other facilities existing on September 8, 1975, which were  
35 created, developed, or utilized primarily as a part of an agricultural  
36 drainage or diking system;

37 (xi) Site exploration and investigation activities that are  
38 prerequisite to preparation of an application for development  
39 authorization under this chapter, if:

1 (A) The activity does not interfere with the normal public use of  
2 the surface waters;

3 (B) The activity will have no significant adverse impact on the  
4 environment including, but not limited to, fish, wildlife, fish or  
5 wildlife habitat, water quality, and aesthetic values;

6 (C) The activity does not involve the installation of a structure,  
7 and upon completion of the activity the vegetation and land  
8 configuration of the site are restored to conditions existing before  
9 the activity;

10 (D) A private entity seeking development authorization under this  
11 section first posts a performance bond or provides other evidence of  
12 financial responsibility to the local jurisdiction to ensure that the  
13 site is restored to preexisting conditions; and

14 (E) The activity is not subject to the permit requirements of RCW  
15 90.58.550;

16 (xii) The process of removing or controlling an aquatic noxious  
17 weed, as defined in RCW 17.26.020, through the use of an herbicide or  
18 other treatment methods applicable to weed control that are recommended  
19 by a final environmental impact statement published by the department  
20 of agriculture or the department jointly with other state agencies  
21 under chapter 43.21C RCW; and

22 (xiii) Restoration or enhancement of riparian areas adjacent to  
23 pasture or crop land, conducted according to the pamphlet in section  
24 2(2) of this act.

25 **Sec. 6.** RCW 36.70A.060 and 1991 sp.s. c 32 s 21 are each amended  
26 to read as follows:

27 (1) Each county that is required or chooses to plan under RCW  
28 36.70A.040, and each city within such county, shall adopt development  
29 regulations on or before September 1, 1991, to assure the conservation  
30 of agricultural, forest, and mineral resource lands designated under  
31 RCW 36.70A.170. Regulations adopted under this subsection may not  
32 prohibit uses legally existing on any parcel prior to their adoption  
33 and shall remain in effect until the county or city adopts development  
34 regulations pursuant to RCW 36.70A.120. Such regulations shall assure  
35 that the use of lands adjacent to agricultural, forest, or mineral  
36 resource lands shall not interfere with the continued use, in the  
37 accustomed manner and in accordance with best management practices, of  
38 these designated lands for the production of food, agricultural



1 products, or timber, or for the extraction of minerals. Counties and  
2 cities shall require that all plats, short plats, development permits,  
3 and building permits issued for development activities on, or within  
4 three hundred feet of, lands designated as agricultural lands, forest  
5 lands, or mineral resource lands, contain a notice that the subject  
6 property is within or near designated agricultural lands, forest lands,  
7 or mineral resource lands on which a variety of commercial activities  
8 may occur that are not compatible with residential development for  
9 certain periods of limited duration.

10 (2) Each county and city shall adopt development regulations that  
11 protect critical areas that are required to be designated under RCW  
12 36.70A.170. For counties and cities that are required or choose to  
13 plan under RCW 36.70A.040, such development regulations shall be  
14 adopted on or before September 1, 1991. For the remainder of the  
15 counties and cities, such development regulations shall be adopted on  
16 or before March 1, 1992. Development regulations may not apply to the  
17 restoration or enhancement of riparian areas adjacent to pasture or  
18 crop land that is conducted according to the pamphlet in section 2(2)  
19 of this act.

20 (3) Such counties and cities shall review these designations and  
21 development regulations when adopting their comprehensive plans under  
22 RCW 36.70A.040 and implementing development regulations under RCW  
23 36.70A.120 and may alter such designations and development regulations  
24 to insure consistency.

25 (4) Forest land and agricultural land located within urban growth  
26 areas shall not be designated by a county or city as forest land or  
27 agricultural land of long-term commercial significance under RCW  
28 36.70A.170 unless the city or county has enacted a program authorizing  
29 transfer or purchase of development rights.

30 NEW SECTION. **Sec. 7.** The sum of one hundred fifty thousand  
31 dollars, or as much thereof as may be necessary, is appropriated for  
32 the biennium ending June 30, 1999, from the general fund to the  
33 conservation commission for the purposes of this act.

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