

HOUSE BILL REPORT

HB 1194

As Amended by the Senate

Title: An act relating to limiting liability for habitat projects.

Brief Description: Limiting liability for habitat projects.

Sponsors: Representatives Stanford, Warnick, Lytton, Goodman, Wilcox, Tharinger, Chandler, Blake, Nealey, Orcutt, Hansen, Kirby, Ryu, Fagan and McCoy.

Brief History:

Committee Activity:

Judiciary: 1/31/13, 2/5/13 [DP].

Floor Activity:

Passed House: 3/7/13, 75-22.

Senate Amended.

Passed Senate: 4/17/13, 48-0.

Brief Summary of Bill

- Eliminates civil liability for any property damage resulting from habitat projects for landowners whose land is used for such habitat projects regardless of whether the project was funded by the Salmon Recovery Funding Board.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 11 members: Representatives Pedersen, Chair; Hansen, Vice Chair; O'Ban, Assistant Ranking Minority Member; Goodman, Hope, Jinkins, Kirby, Klippert, Nealey, Orwall and Roberts.

Minority Report: Do not pass. Signed by 2 members: Representatives Rodne, Ranking Minority Member; Shea.

Staff: Sara Campbell (786-7119) and Cece Clynch (786-7195).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Governor's Salmon Recovery Office, located within the Recreation and Conservation Office (RCO), is responsible for coordinating the state strategy to allow for salmon recovery to healthy, sustainable population levels. Part of that responsibility is to coordinate and assist in the development, implementation, and revision of regional salmon recovery plans as part of the statewide strategy for salmon recovery.

Washington's system of watersheds is divided into eight Salmon Recovery Regions: Hood Canal, Lower Columbia River, Middle Columbia River, Northeast Washington, Puget Sound, Snake River, Southwest Washington, Upper Columbia River, and Washington Coast.

Within those eight regions, the counties, cities, and tribal governments jointly designate areas for which a "habitat project list" is to be developed, and designate the lead entity that will be responsible for submitting the habitat project list. The lead entity may be a county, city, conservation district, special district, tribal government, regional recovery organization, or other entity.

Once selected, a lead entity must establish a committee to provide citizen-based evaluation of the projects proposed for the habitat project list.

Projects eligible for the list include habitat restoration projects, habitat protection projects, habitat projects that improve water quality, habitat projects that protect water quality, habitat-related mitigation projects, and habitat project maintenance and monitoring activities. No project included on a habitat project list is mandatory, however, and no private landowner may be forced to participate in any project. All areas covered by a project must be based on a water resource inventory area (WRIA), a combination of WRIsAs, or be an area agreed to by the counties, cities, and tribes.

Together, the lead entity and the committee evaluate the suggested projects, prioritize them, define the sequence for project implementation, and submit this as the habitat project list to the Salmon Recovery Funding Board (SRFB). During this process, the committee is also required to identify potential federal, state, local, and private funding sources for projects on the habitat project list.

The SRFB consists of 10 members: five are voting members who are appointed by the Governor, and five are state officials serving as ex officio nonvoting members. Of the 139 projects submitted by lead entities in 2012, the SRFB fully or partially funded 116 of them. The RCO is responsible for administering the funding to support the functions of lead entities.

Summary of Bill:

Landowners whose land is used for a habitat project that is included on a habitat project list may not be held civilly liable for property damage resulting from the habitat project whether or not the project was funded by the Salmon Recovery Funding Board.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment provides that a landowner is immune from civil liability for property damages resulting from a habitat project (regardless of whether the project was funded by the Salmon Recovery Funding Board) only if the landowner has received notice from the project sponsor that the following conditions have been met:

- the project was designed by a licensed professional engineer or a licensed geologist with experience in riverine restoration;
- the project is designed to withstand 100-year floods;
- the project is not located within one-quarter mile of an established downstream boat launch;
- the project is designed to allow adequate response time for in-river boaters to safely evade in-stream structures; and
- if the project includes large wood placement, each individual root wad and each log larger than 10 feet long and one foot in diameter must be visibly tagged with a unique numerical identifier that will withstand typical river conditions for at least three years.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The success of salmon recovery projects in Washington is dependent on partnerships with private landowners. There are many projects that have funding and are ready to be implemented, but are stalled because the private landowner has concerns about potential liability. This bill addresses those concerns by holding landowners harmless, but does not eliminate civil liability. Liability will instead go to the organization or individuals who design and build the projects.

Wild fish need wild rivers in Washington. Restoring natural river functions requires coordination and cooperation with private landowners. Salmon habitat restoration projects go through an extensive scientific evaluation and risk assessment process that takes at minimum three years to complete. Despite this rigorous process, in the Upper Columbia region, the single most important hindrance to salmon habitat restoration projects is the wariness of private landowners. Landowner permission is increasingly difficult to obtain because of liability risks.

Salmon recovery is doubtful without this kind of support, and this bill will create a much better working environment for individual landowners willing to participate in salmon habitat restoration.

(Opposed) None.

Persons Testifying: Representative Stanford, prime sponsor; Dawn Vyvyan, Yakama Nation; Steve Parker, Yakama Nation Fisheries; Derek VanMarter, Upper Columbia Salmon

Recovery Board; Brian Abbott, Recreation Conservation Office; David Price, Washington Department of Fish and Wildlife; and Jack Field, Washington Cattlemen's Association.

Persons Signed In To Testify But Not Testifying: None.