

# HOUSE BILL REPORT

## ESSB 5347

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**As Reported by House Committee On:**  
Agriculture & Natural Resources  
General Government & Information Technology

**Title:** An act relating to creating demonstration projects for preserving agricultural land and public infrastructure in flood plains.

**Brief Description:** Creating demonstration projects for preserving agricultural land and public infrastructure in flood plains.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Hobbs, Hatfield, Warnick, Honeyford and Pearson).

**Brief History:**

**Committee Activity:**

Agriculture & Natural Resources: 3/25/15, 4/1/15 [DPA];  
General Government & Information Technology: 4/2/15 [DPA(GGIT w/o AGNR)].

**Brief Summary of Engrossed Substitute Bill  
(As Amended by Committee)**

- Requires the Washington State Conservation Commission, the Department of Natural Resources, the Department of Fish and Wildlife, the Department of Ecology, and the Department of Agriculture to jointly identify and assess three demonstration projects testing the effectiveness and costs of river management using various management strategies and techniques.

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### HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

**Majority Report:** Do pass as amended. Signed by 10 members: Representatives Blake, Chair; Buys, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Chandler, Dunshee, Hurst, Orcutt, Pettigrew, Schmick and Stanford.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Lytton, Vice Chair; Van De Wege.

**Staff:** Jason Callahan (786-7117).

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*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.*

## **Background:**

### Floodplain Management.

A floodplain is an area of relatively level land bordering a river, stream, or lake that becomes inundated occasionally with water. In Washington, the Department of Ecology (DOE) is required to establish minimum state requirements for floodplain management that are at least equivalent to the minimum standards set forth by the National Flood Insurance Program (NFIP). Local governments may expand upon the minimum standards by adopting Comprehensive Flood Management Plans which identify flood-prone areas, a system for flood control and protection, and establish floodplain land use regulations and construction restrictions.

The Legislature has a variety of floodplain management projects being completed throughout the state. In the 2013-15 Capital Budget, the Legislature devoted \$50 million for flood control grants, of which \$33 million was allocated to specific floodplain restoration projects, \$11.25 million was allocated to competitive flood hazard reduction project grants, and the remaining dollars went to local flood control projects. Preference for a competitive grant is given to those with Comprehensive Flood Management Plans.

### State Waters Management.

If a project is taking place on state-owned aquatic lands, the Department of Natural Resources (DNR) needs to provide authorization. In order to receive authorization, other agencies such as the Washington Department of Fish and Wildlife (WDFW) or the DOE may need to authorize permits.

The WDFW is responsible for providing Hydraulic Project Approval (HPA) permits for the construction of hydraulic projects that use, divert, obstruct, or change the natural bed or flow of state waters. The WDFW may issue a five-year maintenance permit agreement for a county with flood damage repair and reduction activities as long as those activities are consistent with Comprehensive Flood Control Management Plans. These maintenance permits allow work on public or private property for activities such as removal of sandbars and debris, channel maintenance, and other flood damage repair and reduction activities without having to receive a separate permit for each activity.

The Legislature has vested specific authority for the DNR to sell valuable resources from state lands. The DNR sells a variety of resources from state lands, including timber, stone, gravel, and geoducks. When a valuable material is removed from state-owned aquatic lands, the proceeds of the sale are split evenly between the DNR's aquatic lands program and the Aquatic Lands Enhancement Account.

### Fraser River Sediment Management Program.

The Fraser River is the longest river in British Columbia (BC), Canada, starting from the Rocky Mountains and draining into the Pacific Ocean just south of Vancouver, BC. Emergency Management BC is in charge of managing the Fraser River Sediment Management Program along with the Department of Fisheries and Oceans Canada, the BC

Ministry of Forests, Lands and Natural Resource Operations, Transport Canada, and the BC Ministry of Environment. Project sites are selected based on a variety of factors such as water flow, fish use, adjacent erosion, and minimal environmental impacts. Sediment equal to the influx or disposition of gravel is removed to maintain optimal river depth, flow, and to protect against flooding.

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### **Summary of Amended Bill:**

The State Conservation Commission (Commission), the DNR, the WDFW, the DOE, and the Department of Agriculture (implementing agencies) must jointly identify and assess three demonstration projects testing the effectiveness and costs of river management using various management strategies and techniques. The demonstration projects must be located in Whatcom, Snohomish, and Grays Harbor counties and have the goals of protecting agricultural lands, restoring or enhancing fish runs, and protecting and enhancing public infrastructure and recreational access.

Within those goals, the demonstration projects must examine a number of management strategies and techniques. These include setting back levees in areas above a river's delta, providing deeper and cooler holes for fish, removing excess sediment and gravel, providing off-channels for habitat during high river flows, ensuring management activities leave sufficient spawning gravel, providing stable riverbanks for riparian enhancement efforts, protecting existing mature riparian zones, restoring previously existing bank contours, and developing management practices that reduce the amount of gravel, sediment, and woody debris deposited into farm fields. The implementing agencies must also establish benchmarks and timetables for the implementation of the demonstration projects.

The implementing agencies must, in designing and assessing the demonstration projects, examine the sediment management conducted on the Fraser River in British Columbia. If any of the Fraser River practices are applicable, they must be included in the demonstration projects.

A stakeholder group, lead by the Commission, must be convened to develop and assess the demonstration projects. The stakeholder group must include representatives of the implementing agencies along with local and statewide agricultural organizations, local conservation organizations, and local governments with experience in floodplain management techniques. The costs of the stakeholder group must be shared by the implementing agencies and managed through an interagency agreement implemented by the Commission. The implementing agencies must also consult with any federally recognized Indian tribes affected by the demonstration projects.

The implementing agencies must issue a report to the Legislature on the status of the demonstration projects. The report, due by October 31, 2016, must report on the examination of the Fraser River experience, progress towards setting benchmarks, any decisions made in assessing demonstration projects, recommendations for moving into the implementation phase, and funding recommendations for the state capital budget.

The proposed use of any state-owned gravel resources removed as part of the demonstration projects must be part of the report. The resources must be used according to the existing statutes on the sale of valuable materials from aquatic lands. Within that structure, the gravel resources may be used at the discretion of the implementing agencies for fish programs in the area of the project or by property owners adjacent to the project or sold to fund the demonstration projects. The resources may also be made available to local Indian tribes for their use.

The implementing agencies must move into the implementation stage for the demonstration projects if non-state funding is available and the projects are within the authority of the implementing agencies. The implementing agencies are expected to cooperate in the expeditious issuance of permits.

### **Amended Bill Compared to Engrossed Substitute Bill:**

The committee amendment includes the preservation of all agricultural lands into the goals of the demonstration projects (as opposed to only "viable" agriculture), limits the river management strategies to be explored relating to the movement of levees to those levees above the river delta, adds the enhancement of recreational access to the goals of the demonstration projects, specifies that the project developers may rely on studies and reports related to the Fraser river, adds legislative intent for the demonstration projects to be implemented if non-state funding is assured, clarifies that members of the stakeholder group may be reimbursed for travel expenses, specifies how the costs for the advisory committee will be paid (through the State Conservation Commission with interagency agreements to allow contributions by the other agencies), changes the reporting date from December 2015 to October 2016, adds an expiration date, and makes technical and organizational changes.

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**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on April 1, 2015.

**Effective Date of Amended Bill:** 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 issues of floods and flooding are important, yet complicated, and finding solutions can be very challenging. It is important to address though, as floods cause great damage and many farmers are losing their land to rivers. The bill presents a menu of options for the state to explore and a path towards long-term solutions.

There are two ways to go about issues. One is a contentious model that features all of the participants looking out for their own interests. This model leads to a lack of trust, disagreement, and litigation. The other pathway, embodied by this bill, allows everyone to come together and take ownership of each other's issues. This is a better way to address complex problems.

The islands in river deltas demonstrate the enormous sediment carrying capacity of Washington's rivers. This sediment deprives fish of their needed habitat and makes flood control difficult for landowners. The Fraser River in BC provides a model to consider that included the participation of stakeholders and ended up with useful solutions. There are also other successes that can be built upon to get to the goals of the bill and opportunities in areas such as the Satsop River where helping the river back into its channel will avoid the loss of more farmland.

(Opposed) None.

**Persons Testifying:** Senator Hobbs, prime sponsor; Jeff Davis, Washington Department of Fish and Wildlife; Ed Moats, Snohomish County Farm Bureau; and Jay Gordon, Washington State Dairy Federation.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON GENERAL GOVERNMENT & INFORMATION TECHNOLOGY

**Majority Report:** Do pass as amended by Committee on General Government & Information Technology and without amendment by Committee on Agriculture & Natural Resources. Signed by 7 members: Representatives Hudgins, Chair; Senn, Vice Chair; MacEwen, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; McCabe, Morris and Takko.

**Staff:** Dan Jones (786-7118).

### **Summary of Recommendation of Committee On General Government & Information Technology Compared to Recommendation of Committee On Agriculture & Natural Resources:**

The committee amendment provides that the bill is null and void if specific funding is not provided in the budget.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on April 1, 2015.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

### **Staff Summary of Public Testimony:**

(In support) Flooding in this state is caused by many things, not only the weather but also land use or the placement of levees. There are many possible ways to deal with flooding, such as moving sediment or moving back levees. The pilot projects under this bill would be

based on a successful program for the Fraser River that has included tribes, cities, counties, businesses, and farmers. The language in the bill has been developed in consultation with the agencies that it affects.

The Washington State Conservation Commission (Commission) is ready and willing to help facilitate the requirements of the bill. The Commission will also help bring forward existing watershed and salmon recovery plans from the three counties identified in the bill.

(Opposed) None.

**Persons Testifying:** Senator Hobbs, prime sponsor; and Ron Shultz, Washington State Conservation Commission.

**Persons Signed In To Testify But Not Testifying:** None.