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HOUSE BILL 2720

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State of Washington

64th Legislature

2016 Regular Session

By Representatives Scott, Taylor, Schmick, Dent, Van Werven, Buys, Griffey, McCaslin, Holy, Manweller, and Shea

Read first time 01/19/16. Referred to Committee on Environment.

1 AN ACT Relating to protecting private property rights by aligning  
2 the jurisdictional scope of the state water pollution control act  
3 with the jurisdictional scope of the federal clean water act;  
4 amending RCW 90.48.010, 90.48.020, 90.48.030, and 90.48.150; and  
5 creating a new section.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that  
8 Washington's policy of maintaining the highest possible standards of  
9 protecting the quality of waters of the state attempts to strike a  
10 delicate balance with the state's policies of respecting private  
11 property rights and providing economic development opportunities.

12 (2) The legislature finds that whereas the federal government is  
13 a government of enumerated powers only, the state of Washington has  
14 broader powers to legislate in furtherance of the general health,  
15 safety, and welfare of Washington citizens. Therefore, the state must  
16 be especially vigilant of how its laws and rules affect private  
17 property rights.

18 (3) The legislature finds that the jurisdictional scope of the  
19 state water pollution control act, chapter 90.48 RCW, is broader than  
20 the jurisdictional scope of the federal clean water act, 33 U.S.C.  
21 Sec. 1251 et seq., which applies to waters of the United States, as

1 chapter 90.48 RCW regulates waters beyond those waters that qualify  
2 as waters of the United States.

3 (4) The legislature finds that relative to other states that have  
4 water pollution control laws with scopes of jurisdiction matching the  
5 federal clean water act, Washington is at a competitive disadvantage  
6 regarding economic development opportunities because Washington  
7 overregulates isolated waters that are not integral to waters used in  
8 commerce.

9 (5) The legislature finds that the scope of regulation under the  
10 federal clean water act represents a better balance between  
11 protecting water quality, respecting private property rights, and  
12 providing economic development opportunities than does the scope of  
13 regulation under chapter 90.48 RCW, the state water pollution control  
14 act. It is in Washington's best interest to amend the jurisdiction of  
15 chapter 90.48 RCW, the state water pollution control act, to  
16 correspond to the jurisdiction of the federal clean water act, as  
17 articulated by the United States supreme court in *Rapanos v. United*  
18 *States*, 547 U.S. 715 (2006).

19 (6) The legislature finds that the United States environmental  
20 protection agency and the United States army corps of engineers,  
21 acting under the color of the authority of congress to regulate  
22 interstate commerce, recently proposed a new administrative rule that  
23 defines the use of the term "waters of the United States" as it  
24 appears in the federal clean water act. This proposed rule purports  
25 to be reflective of statutory language, science, public comment,  
26 agency expertise, and specific holdings of the United States supreme  
27 court. However, the legislature finds that the proposed new  
28 administrative rule likely conflicts with United States supreme court  
29 decisions and is beyond the scope of the agencies' authority to  
30 promulgate and, therefore, has no applicability to the regulation of  
31 water quality in Washington. It is the legislature's intent that the  
32 scope of the waters subject to regulation under chapter 90.48 RCW,  
33 the state water pollution control act, correspond to the scope of the  
34 waters subject to regulation under the federal clean water act before  
35 the adoption of this new rule, as set out in 33 C.F.R. Sec. 328.3  
36 (2006) and articulated by the United States supreme court in *Rapanos*  
37 *v. United States*, 547 U.S. 715 (2006).

38 **Sec. 2.** RCW 90.48.010 and 1973 c 155 s 1 are each amended to  
39 read as follows:

1       (1) It is declared to be the public policy of the state of  
2 Washington to maintain the highest possible standards to (~~insure~~)  
3 ensure the purity of all waters of the state consistent with public  
4 health and public enjoyment thereof, the propagation and protection  
5 of wild life, birds, game, fish and other aquatic life, and the  
6 industrial development of the state, and to that end require the use  
7 of all known available and reasonable methods by industries and  
8 others to prevent and control the pollution of the waters of the  
9 state of Washington. Consistent with this policy, the state of  
10 Washington will exercise its powers, as fully and as effectively as  
11 possible, while respecting private property rights, to retain and  
12 secure high quality for all waters of the state.

13       (2) The state of Washington in recognition of the federal  
14 government's interest in the quality of the navigable waters of the  
15 United States, of which certain portions thereof are within the  
16 jurisdictional limits of this state, proclaims a public policy of  
17 working cooperatively with the federal government in a joint effort  
18 to extinguish the sources of water quality degradation of waters of  
19 the United States, while at the same time preserving and vigorously  
20 exercising state powers to (~~insure~~) ensure that present and future  
21 standards of water quality within the state shall be determined by  
22 the citizenry, through and by the efforts of state government, of the  
23 state of Washington.

24       **Sec. 3.** RCW 90.48.020 and 2002 c 161 s 4 are each amended to  
25 read as follows:

26       (1) Whenever the word "person" is used in this chapter, it shall  
27 be construed to include any political subdivision, government agency,  
28 municipality, industry, public or private corporation, copartnership,  
29 association, firm, individual or any other entity whatsoever.

30       (2) Wherever the words "waters of the state" shall be used in  
31 this chapter, they shall be construed to include only those lakes,  
32 rivers, ponds, streams, inland waters, (~~underground waters,~~) salt  
33 waters, and (~~all~~) other surface waters and watercourses within the  
34 jurisdiction of the state of Washington that are "waters of the  
35 United States" as that term is defined in the federal clean water  
36 act, 33 U.S.C. Sec. 1251 et seq. (2006) and 33 C.F.R. Sec. 328.3  
37 (2006), as that definition existed and was interpreted by the United  
38 States supreme court in its decision in *Rapanos v. United States*, 547  
39 U.S. 715 (2006).

1       (3) Whenever the word "pollution" is used in this chapter, it  
2 shall be construed to mean such contamination, or other alteration of  
3 the physical, chemical or biological properties, of any waters of the  
4 state, including change in temperature, taste, color, turbidity, or  
5 odor of the waters, or such discharge of any liquid, gaseous, solid,  
6 radioactive, or other substance into any waters of the state as will  
7 or is likely to create a nuisance or render such waters harmful,  
8 detrimental or injurious to the public health, safety or welfare, or  
9 to domestic, commercial, industrial, agricultural, recreational, or  
10 other legitimate beneficial uses, or to livestock, wild animals,  
11 birds, fish or other aquatic life.

12       (4) Wherever the word "department" is used in this chapter it  
13 shall mean the department of ecology.

14       (5) Whenever the word "director" is used in this chapter it shall  
15 mean the director of ecology.

16       (6) Whenever the words "aquatic noxious weed" are used in this  
17 chapter, they have the meaning prescribed under RCW 17.26.020.

18       (7) Whenever the words "general sewer plan" are used in this  
19 chapter they shall be construed to include all sewerage general  
20 plans, sewer general comprehensive plans, plans for a system of  
21 sewerage, and other plans for sewer systems adopted by a local  
22 government entity including but not limited to cities, towns, public  
23 utility districts, and water-sewer districts.

24       **Sec. 4.** RCW 90.48.030 and 1987 c 109 s 123 are each amended to  
25 read as follows:

26       (1) Subject to subsection (2) of this section, the department  
27 ((shall have)) has the jurisdiction to control and prevent the  
28 pollution of streams, lakes, rivers, ponds, inland waters, salt  
29 waters, water courses, and other surface ((and underground)) waters  
30 of the state of Washington.

31       (2) The department's jurisdiction to control and prevent  
32 pollution under this chapter extends only over those waters that are  
33 "waters of the United States" as that term is defined in the federal  
34 clean water act, 33 U.S.C. Sec. 1251 et seq. (2006) and 33 C.F.R.  
35 Sec. 328.3 (2006), as that definition existed and was interpreted by  
36 the United States supreme court in its decision in *Rapanos v. United*  
37 *States*, 547 U.S. 715 (2006).

1       **Sec. 5.** RCW 90.48.150 and 1945 c 216 s 21 are each amended to  
2 read as follows:

3       (1) This chapter shall not be construed as repealing any of the  
4 laws governing the pollution of the waters of the state, but shall be  
5 held and construed as ancillary to and supplementing the same and an  
6 addition to the laws now in force, except as the same may be in  
7 direct conflict herewith.

8       (2) This chapter may not be construed as authorizing the  
9 department to regulate waters that are not "waters of the United  
10 States" as that term is defined in the federal clean water act, 33  
11 U.S.C. Sec. 1251 et seq. (2006) and 33 C.F.R. Sec. 328.3 (2006), as  
12 that definition existed and was interpreted by the United States  
13 supreme court in its decision in *Rapanos v. United States*, 547 U.S.  
14 715 (2006).

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