

# HOUSE BILL REPORT

## HB 1775

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### As Amended by the Senate

**Title:** An act relating to limiting liability for salmon recovery projects performed by regional fisheries enhancement groups.

**Brief Description:** Limiting liability for salmon recovery projects performed by regional fisheries enhancement groups.

**Sponsors:** Representatives Lekanoff, Chapman, Ramel and Reed.

#### Brief History:

##### Committee Activity:

Agriculture and Natural Resources: 2/10/23, 2/15/23 [DP].

##### Floor Activity:

Passed House: 2/28/23, 95-2.

Senate Amended.

Passed Senate: 4/11/23, 31-18.

#### Brief Summary of Bill

- Eliminates civil liability for property damage resulting from habitat projects performed by a Regional Fishery Enhancement Group, as long as certain conditions have been met.

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### HOUSE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

**Majority Report:** Do pass. Signed by 9 members: Representatives Chapman, Chair; Morgan, Vice Chair; Reeves, Vice Chair; Dent, Ranking Minority Member; Kloba, Kretz, Lekanoff, Orcutt and Springer.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Chandler, Assistant Ranking Minority Member; Schmick.

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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 part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Rebecca Lewis (786-7339).

**Background:**

Salmon Habitat Projects.

The Governor's Salmon Recovery Office, located within the Recreation and Conservation Office, 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. The Salmon Recovery Funding Board (SRFB), consisting of five voting Governor appointees and five state officials serving as ex officio nonvoting members, determines which projects receive funding.

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, Upper Columbia River, and Washington Coast.

Within the eight Salmon Recovery Regions, the county, city, and tribal governments jointly designate areas for which a habitat project list is to be developed and designate a lead entity. 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 evaluations of the projects proposed for the habitat project list.

Projects eligible for the list include restoration projects, protection projects, water quality projects, habitat-related mitigation projects, project maintenance, and monitoring activities. No project included on a habitat project list is mandatory 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 the habitat project list to the SRFB.

Regional Fisheries Enhancement Groups.

The Legislature authorized the creation of Regional Fisheries Enhancement Groups (RFEG) in 1990. Each of the 14 current RFEG's are separate nonprofit organizations led by their own board of directors and supported by their members. The statutory goals of RFEGs are centered around enhancing the salmon and steelhead resources of the state, including developing projects designed to supplement fishery enhancement capability of the Department of Fish and Wildlife, and maximizing volunteer efforts and private donations to improve the salmon and steelhead resources for all citizens.

### Landowner Liability for Habitat Projects.

A landowner 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 regardless of whether the project was funded by the Salmon Recovery Funding Board, 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 1 foot in diameter must be visibly tagged with a unique numerical identifier that will withstand typical river conditions for at least three years.

### **Summary of Bill:**

A Regional Fishery Enhancement Group performing 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 regardless of whether the project was funded by the Salmon Recovery Funding Board, if 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 1 foot in diameter must be visibly tagged with a unique numerical identifier that will withstand typical river conditions for at least three years.

### **EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment provides that a Regional Fisheries Enhancement Group performing habitat restoration activities from a habitat project list may be held civilly liable for property damage resulting from a habitat project performed, subject to certain conditions, if the damage is due to acts or omissions constituting gross negligence or willful or wanton misconduct.

**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) Salmon habitat projects are very important for the Skagit and Nooksack areas to improve salmon recovery. Habitat project lists are developed through a community-based approach in partnership with the Department of Fish and Wildlife. Restoration projects have become more complex and Regional Fishery Enhancement Groups (RFEGs) are having trouble securing insurance without this exemption to civil liability. The RFEGs need to be able to access insurance in order to continue serving their important role in salmon recovery. Most RFEG habitat projects are funded through state, federal, or local grants. For every \$1 of federal or state funds provided for a habitat project, RFEGs return \$8 for salmon recovery. The Department of Fish and Wildlife is proud to partner with and provide technical support to RFEGs. Contractors and other professionals hired by RFEGs go through a rigorous hiring process and must provide insurance certification, but that does not fully address the problem that RFEGs are currently facing.

(Opposed) None.

**Persons Testifying:** Representative Debra Lekanoff, prime sponsor; Margen Carlson, Department of Fish and Wildlife; Lance Winecka, South Puget Sound Salmon Enhancement Group; James Peterson; and Brynn Brady, Regional Fisheries Coalition.

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