

SENATE BILL REPORT

HB 1775

As Reported by Senate Committee On:
Agriculture, Water, Natural Resources & Parks, March 23, 2023

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

Committee Activity: Agriculture, Water, Natural Resources & Parks: 3/13/23, 3/23/23
[DPA, DNP, w/oRec].

Brief Summary of Amended Bill

- Provides that a Regional Fisheries Enhancement Group performing certain habitat restoration activities may not be held civilly liable for any property damages resulting from the project, unless the damage is due to acts or omissions constituting gross negligence or willful or wanton misconduct.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Majority Report: Do pass as amended.

Signed by Senators Van De Wege, Chair; Salomon, Vice Chair; Rolfes, Shewmake and Stanford.

Minority Report: Do not pass.

Signed by Senators Muzzall, Ranking Member; Short and Wagoner.

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.

Minority Report: That it be referred without recommendation.

Signed by Senator Warnick.

Staff: Jeff Olsen (786-7428)

Background: Salmon Recovery Habitat Project Lists. In 1998, the Washington State Legislature created a framework for salmon recovery that supported the creation of 25 watershed-based organizations, known as lead entities, which are agreed upon by the cities, counties, and tribes within a geographic area. Lead entities develop local watershed strategies, make funding recommendations to the state's Salmon Recovery Funding Board (SRFB), and coordinate funding and implementation of habitat projects in their areas. The SRFB, consisting of five, voting Governor appointees and five state officials serving as ex officio nonvoting members, determines which projects receive funding.

Projects eligible for the list include restoration projects, protection projects, projects that improve water quality, projects that protect water quality, habitat-related mitigation projects, and 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.

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 SRFB, if the landowner 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 ten 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.

Regional Fisheries Enhancement Groups. The Washington State Legislature created the Regional Fisheries Enhancement Group Program (RFEG) on a nonprofit basis to maximize the efforts of volunteers and private donations to improve the salmon resources of the state. There are 14 RFEGs, and each work within a geographic region based on watershed boundaries. RFEGs create partnerships with landowners, tribes, local businesses, volunteers, agencies, and other non-governmental organizations in their communities for restoration, education, and monitoring projects. RFEGs receive partial funding for the program from a portion of commercial and recreational fishing license fees.

Summary of Amended Bill: A RFEG performing habitat restoration activities for a project on a habitat project list may not be held civilly liable for any property damages resulting from the project, subject to certain conditions, unless the damage is due to acts or omissions constituting gross negligence or willful or wanton misconduct. The conditions include:

- that 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 ten 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.

EFFECT OF AGRICULTURE, WATER, NATURAL RESOURCES & PARKS COMMITTEE AMENDMENT(S):

- Provides that an RFEG performing certain habitat restoration activities may not be held civilly liable for any property damage resulting from a habitat project performed, subject to certain conditions, unless the damage is due to acts or omissions constituting gross negligence or willful or wanton misconduct.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: RFEGs are nonprofits created by the state to partner with local communities and other stakeholders to perform salmon recovery projects. RFEGs have implemented over 4500 projects over the years, leverage funding from a number of sources, and create jobs. If RFEGs are not able to operate this work will shift to other organizations. RFEGs need insurance to implement salmon habitat projects. The bill is narrowly drafted to only include projects that are developed by lead entities and reviewed by the Salmon Recovery Funding Board.

CON: This is not a good approach to the problem. If RFEGs are having trouble getting insurance it may be due to too much risk. RFEGs have expanded from doing smaller scale

work to more complex projects. There are examples of projects where tidegates and levees have failed, causing property damage. Waiving liability is not the answer, there needs to be accountability. A builder or designer is liable if there are issues with a project, and habitat project contractors should have liability. Projects may impact fisheries resources so it is important that they are done correctly. This bill will undermine landowner support for salmon restoration and habitat projects by discouraging them to participate in projects. Large infrastructure projects should be the responsibility of local governments.

Persons Testifying: PRO: Nicole Czarnomski, WDFW; Brynn Brady, Regional Fisheries Coalition; LANCE WINECKA, South Puget Sound Salmon Enhancement Group; Jeffrey R Bohman, Peninsula Trails Coalition.

CON: Jenna Friebel, Skagit Drainage and Irrigation Districts Consortium LLC; David Hawkins, Upper Skagit Indian Tribe; Ron Wesen, Skagit County Commissioner; Dave Hallock; Peter Browning, Skagit County Commissioner.

Persons Signed In To Testify But Not Testifying: No one.