
HOUSE BILL 2919

State of Washington

54th Legislature

1996 Regular Session

By Representatives Jacobsen and Regala

Read first time 01/26/96. Referred to Committee on Natural Resources.

1 AN ACT Relating to protection and restoration of streamside buffers
2 to provide for water quality and salmonid and shellfish habitat; adding
3 a new chapter to Title 90 RCW; prescribing penalties; and declaring an
4 emergency.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature declares that it has a
7 responsibility to the citizens of this state and future generations to
8 protect its public resources, in particular the salmon resource and
9 water quality;

10 (2) The legislature finds that: (a) Streamside buffers are
11 essential for the protection and restoration of salmonid and shellfish
12 habitat, fisheries resources, and water quality; (b) in their natural
13 state, streamside buffers provide many valuable social and ecological
14 services, including: Controlling erosion, flooding, and storm water
15 runoff, protecting water resources by filtering pollutants, providing
16 for ground water recharge, and providing for habitat for many species
17 of fish, shellfish, and wildlife; (c) streamside protection is
18 currently provided on forestry and urban lands through the forest
19 practices act, chapter 76.09 RCW, and the growth management act,

1 chapter 36.70A RCW, whereas, past and current farm and agricultural
2 land use practices continue to destroy or severely impact natural
3 streamside buffers, salmon habitat, water quality, and fisheries
4 resources; and (d) buffers surrounding all waters of the state are
5 essential to protect and restore the productive capacity of salmonid
6 and shellfish habitat and survival of the fisheries resources;

7 (3) The legislature further finds and declares it to be in the
8 public interest of this state to create and maintain through the
9 adoption of this chapter a comprehensive state-wide system of laws and
10 rules that will protect and restore streamside buffers and salmon
11 habitat;

12 (4) The legislature further finds and declares it to be in the
13 public interest of this state to strongly encourage and promote
14 voluntary and cooperative restoration and enhancement of streamside
15 buffers; and

16 (5) The legislature further finds and declares that it is in the
17 public interest that the applicants for streamside permits should pay
18 for the cost of review and permitting necessary for the environmental
19 protection of these resources.

20 NEW SECTION. **Sec. 2.** Unless the context clearly requires
21 otherwise, the definitions in this section apply throughout this
22 chapter.

23 (1) "Applicant" means a person who files an application for a
24 permit under this chapter and who is either the owner of the land on
25 which that proposed activity would be located, a contract vendee, a
26 lessee of the land, the person who actually controls and directs the
27 proposed activity, or the authorized agent of such a person.

28 (2) "Department" means the department of ecology.

29 (3) "Director" means the director of the department of ecology.

30 (4) "Farm and agricultural lands" has the same meaning as defined
31 under RCW 84.34.020(2).

32 (5) "Person" means an individual, partnership, private, public, or
33 municipal corporation, county, the department or other state or local
34 governmental entity, or association of individuals of whatever nature.

35 (6) "Streamside buffer" means the area adjacent to aquatic systems
36 with flowing water, that contains both aquatic and terrestrial
37 ecosystems that mutually influence each other.

1 NEW SECTION. **Sec. 3.** (1) It is not intended that this chapter
2 repeal, abrogate, or impair an existing rule, easement, covenant, or
3 deed restriction. However, where this chapter imposes greater
4 restriction, the provisions of this chapter prevail.

5 (2) The provisions of this chapter shall be held to be minimum
6 requirements in their interpretation and application and shall be
7 liberally construed to serve the purposes of this chapter.

8 NEW SECTION. **Sec. 4.** (1) When a provision of another state or
9 local statute or ordinance conflicts with this chapter, that which
10 provides more protection to streamside buffers applies unless
11 specifically provided otherwise in this chapter.

12 (2) The department is authorized to adopt rules for the purposes of
13 carrying out the provisions of this chapter. Prior to fulfilling the
14 requirements of this chapter, state agencies or general purpose local
15 governments may not grant approval or permission to conduct a regulated
16 activity in a streamside buffer. In addition, other nonregulated
17 activities as described in section 5(1) of this act are prohibited
18 without a permit.

19 (3) Where streamside boundaries are altered from those defined in
20 section 8(4) of this act, the exact location of the streamside boundary
21 must be determined by the applicant through the performance of a field
22 investigation by a qualified fish or wildlife biologist with
23 appropriate technical expertise. The applicant is required to show the
24 location of the streamside boundary, and other reasonable requirements
25 requested by the department, on a scaled drawing as part of the permit
26 application.

27 NEW SECTION. **Sec. 5.** (1) A permit must be obtained from the
28 department, or local government if authorized by the department, prior
29 to undertaking the following activities in a regulated streamside
30 buffer on farm and agricultural lands, unless authorized by section
31 5(2) of this act:

- 32 (a) The removal, excavation, grading, or dredging of soil, sand,
33 gravel, minerals, organic matter, or material of any kind;
34 (b) The dumping, discharging, or filling with any material;
35 (c) The driving of pilings or placing of obstructions;
36 (d) The construction, reconstruction, demolition, or expansion of
37 a structure, including roads;

1 (e) The destruction or alteration of streamside vegetation through
2 clearing, harvesting, shading, intentional burning, or planting of
3 vegetation that would alter the character of a regulated streamside
4 buffer or water course therein, provided that these activities are not
5 part of a forest practice governed under chapter 76.09 RCW;

6 (f) Activities that result in a change of water temperature,
7 physical or biological changes to salmon habitat, or introduction of
8 pollutants; or

9 (g) Existing and ongoing agriculture activities, including but not
10 limited to the production of crops or livestock, farming, horticulture,
11 irrigation, ranching, or grazing of animals.

12 (2) The following activities are allowed, and may be performed
13 without a permit:

14 (a) Conservation or preservation of soil, water, vegetation, fish,
15 shellfish, and other wildlife;

16 (b) Outdoor recreational activities, including fishing,
17 birdwatching, hiking, boating, horseback riding, swimming, canoeing,
18 and bicycling;

19 (c) The harvesting of wild crops in a manner that is not injurious
20 to natural reproduction of the crops and provided that the harvesting
21 does not require tilling of soil, planting of crops, or alteration of
22 the streamside buffer by changing existing topography, water
23 conditions, or water resources;

24 (d) Forest practices governed under chapter 76.09 RCW and its
25 rules, except for those practices that convert forest land to another
26 use;

27 (e) The maintenance, but not construction, of drainage ditches,
28 provided they do not contain salmon;

29 (f) Education, scientific research, and use of natural trails;

30 (g) Navigation aids and boundary markers;

31 (h) Boat mooring buoys;

32 (i) Site investigative work necessary for land use application
33 submittals;

34 (j) Normal maintenance, repair, or operation of existing
35 serviceable structures, buildings, or facilities provided that written
36 notice is submitted to the department at least ten days prior to the
37 commencement of the work, and the impacts of the work are minimized;

38 (k) Minor modification of existing serviceable structures within a
39 buffer zone where modification does not adversely impact streamside

1 buffer functions, provided that written notice is submitted to the
2 department at least ten days prior to the commencement of the work and
3 the impacts of the work are minimized;

4 (l) Noncommercial lawn care and maintenance; or

5 (m) Maintenance and operation of existing orchards.

6 NEW SECTION. **Sec. 6.** (1) Each applicant must pay a fee at the
7 time an application or notification is submitted under this chapter.
8 All moneys must be deposited in the state general fund.

9 (2) The department must establish by rule a schedule of fees that
10 will pay for the cost of administration and enforcement of this chapter
11 by the department.

12 (3) An application fee under subsection (1) of this section must be
13 refunded or credited to the applicant if either the application is
14 disapproved by the department or the application is withdrawn by the
15 applicant due to restrictions imposed by the department.

16 NEW SECTION. **Sec. 7.** (1) The department must prescribe the form
17 and contents of the notification and application, including temporary
18 emergency permits.

19 (2) Except as specifically provided in section 5(2) of this act, no
20 activity described under section 5(1) of this act may occur or be
21 permitted to occur within a regulated streamside buffer without a
22 written permit from the department. An alteration approved by a
23 written permit must comply fully with the requirements and purposes of
24 this chapter, other applicable regulations, and the terms or conditions
25 of the permit. All activities that are not allowed or permitted are
26 prohibited.

27 NEW SECTION. **Sec. 8.** (1) A permit may only be granted if the
28 permit, as conditioned, is consistent with the provisions of this
29 chapter. Additionally, permits may only be granted if:

30 (a) A proposed action prevents or avoids adverse impacts to
31 regulated streamside buffers or takes affirmative and appropriate
32 measures to minimize and compensate for unavoidable impacts; or

33 (b) Denial of a permit would cause an extraordinary hardship on the
34 applicant.

35 (2) Streamside buffer permits are not effective and no activity
36 thereunder is allowed during the time provided to file a permit appeal.

1 Regulated activities are prohibited until all appeals have been
2 exhausted.

3 (3) Maintenance and restoration of streamside buffer functions is
4 required on all waters of the state. The intent of a streamside buffer
5 is to protect and restore five basic streamside forest functions that
6 influence instream and near-stream habitat quality. These include:

7 (a) Recruitment of large woody debris to the stream. Large woody
8 debris recruitment creates habitat structures necessary to maintain the
9 productive capacity and species diversity of salmonids;

10 (b) Shade. Shading by the forest canopy maintains cooler water
11 temperatures and influences the availability of oxygen for salmonids;

12 (c) Bank integrity and root reinforcement. Bank integrity helps
13 maintain habitat quality and water quality by reducing bank erosion and
14 creating habitat structure and instream hiding cover for salmonids;

15 (d) Runoff filtration. Filtration of nutrients and sediments in
16 runoff, surface and shallow subsurface flows, helps maintain water
17 quality; and

18 (e) Wildlife habitat. Functional wildlife habitat for streamside
19 dependent species is based on sufficient amounts of streamside
20 vegetation.

21 (4) All streamside buffers must be horizontally measured from the
22 ordinary high water mark on each bank of the water body. Salmonid-
23 bearing waters, where fish are either seasonally or always present, or
24 it is either fish spawning or migration habitat, must have one-hundred
25 foot buffers. Those waters within one thousand feet where salmon are
26 either seasonally or always present must have seventy-five foot
27 buffers. Nonfish bearing waters must have twenty-five foot buffers.
28 Streamside buffers must not exceed more than twenty percent of the land
29 controlled or owned by a person who is affected by this chapter.

30 (a) The department must require increased standard buffer zone
31 widths on a case-by-case basis when a larger buffer is necessary to
32 protect streamside functions and values based on local conditions, or
33 when requested by the director of the department of fish and wildlife
34 to provide protection for priority fish, wildlife, and their habitats.
35 This determination must be supported by appropriate documentation.

36 (b) The department must reduce the standard streamside buffer
37 widths on a case-by-case basis where it can be demonstrated that:

38 (i) The project is consistent with an approved and enforceable
39 watershed analysis or includes a buffer enhancement plan using native

1 vegetation that substantiates that an enhanced buffer will meet the
2 following performance standards:

3 (A) For salmonid bearing waters or fish or migration habitat:
4 Maintain ninety-five percent of total large woody debris recruitment
5 expected from a mature conifer stand, eighty-five percent of trees
6 greater than twenty-four inch diameter at breast height, and an average
7 of seventy-five percent canopy cover;

8 (B) For waters within one thousand feet of salmonid bearing waters:
9 Maintain eighty-five percent of total large woody debris recruitment
10 expected from a mature conifer stand, eighty-five percent of trees
11 greater than eighteen inch diameter at breast height, and an average of
12 seventy-five percent canopy cover;

13 (C) For non-fish bearing waters: Maintain fifty percent of total
14 large woody debris recruitment expected from a mature conifer stand,
15 eighty-five percent of trees greater than twenty-four inch diameter at
16 breast height, and an average of seventy-five percent canopy cover; and

17 (ii) The buffer enhancement plan, including a monitoring component,
18 was developed with the department of fish and wildlife.

19 NEW SECTION. **Sec. 9.** (1) An act or omission that either damages,
20 injures, or endangers useable salmonid fish habitat or streamside
21 buffers is a public nuisance.

22 (2) This chapter or a rule adopted under it may be enforced by the
23 department or any other person against a governmental entity or person
24 that fails to comply with the provisions of this chapter, and is not
25 liable for attorneys' fees, damages, or other financial penalties
26 unless grounds for the suit have been determined to be of a frivolous
27 nature by the court of jurisdiction. A prevailing plaintiff is
28 entitled to recover the reasonable attorneys' fees, costs of
29 litigation, expert testimony, participation in administrative appeals
30 or administrative processes, and all other reasonable costs associated
31 with necessary legal actions, as determined by the court of
32 jurisdiction.

33 (3) The department or a local government is authorized to issue
34 violation notices and administrative orders, levy finds, or institute
35 legal actions in court.

36 NEW SECTION. **Sec. 10.** A duly authorized representative of the
37 department has the right to enter upon lands at any reasonable time to

1 inspect permitted practices as necessary to ensure compliance and
2 enforcement with this chapter and the rules adopted under it.

3 NEW SECTION. **Sec. 11.** (1) Every person who violates a provision
4 of this chapter or rules adopted under it is subject to a penalty in an
5 amount of not more than ten thousand dollars for every violation. Each
6 and every violation is a separate and distinct offense.

7 (2) The department must develop procedures and a penalty schedule
8 to determine appropriate amounts to be imposed under this section.

9 (3) If the amount of a penalty is not paid to the department within
10 thirty days after it becomes due and payable, any person may bring an
11 action or upon the request of the department, the attorney general must
12 bring an action in the name of the state of Washington in the superior
13 court of Thurston county to recover the penalty.

14 (4) Penalties imposed under this section for violations associated
15 with this chapter are a lien upon the real property of the person
16 assessed the penalty and the department may collect the amount in the
17 same manner provided in chapter 60.04 RCW for mechanics' liens.

18 NEW SECTION. **Sec. 12.** (1) The department must assist those
19 landowners who will voluntarily restore and enhance streamside
20 functions. The department must provide coordination for conservation
21 districts and regional fisheries enhancement and other local
22 conservation groups who will assist landowners with voluntary and
23 cooperative restoration and enhancement projects.

24 (2) The department, in cooperation with the department of
25 agriculture and the conservation commission, must develop
26 recommendations for the legislature that will provide additional tax
27 and other incentives for those landowners who will actively restore and
28 enhance streamside functions.

29 NEW SECTION. **Sec. 13.** This act shall be known as the streamside
30 protection act of 1996.

31 NEW SECTION. **Sec. 14.** Sections 1 through 15 of this act shall
32 constitute a new chapter in Title 90 RCW.

33 NEW SECTION. **Sec. 15.** If any provision of this act or its
34 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 16.** This act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of the
5 state government and its existing public institutions, and shall take
6 effect immediately.

--- END ---