

SENATE BILL REPORT

SB 5693

As of February 13, 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: Senators Van De Wege and Lovelett.

Brief History:

Committee Activity: Agriculture, Water, Natural Resources & Parks: 2/13/23.

Brief Summary of Bill

- Eliminates civil liability for any property damage resulting from salmon habitat projects performed by Regional Fisheries Enhancement Groups under certain conditions.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

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.

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.

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 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 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 (RFEG) Program on a nonprofit basis to maximize the efforts of volunteers and private donations to improve the salmon resource 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. RFEG's receive partial funding for the program from a portion of commercial and recreational fishing license fees.

Summary of 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, regardless of whether or not the project was funded by the SRFB, subject to certain conditions. 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.

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: PRO: RFEGs need to have access to insurance to continue serving as a key part of the state's salmon recovery and restoration program. RFEG's leverage federal, state and other funding sources along with volunteers to get \$8 for every \$1 they receive in funding. Restoration projects are becoming more complex, and it has been difficult for RFEGs to get and keep insurance to continue their important work. RFEGs receive support from the Department of Fish and Wildlife, and use professional engineers and contractors that are insured. Most of the projects receive funding through the lead entity process and receive state and federal funding.

Persons Testifying: PRO: Senator Kevin Van De Wege, Prime Sponsor; Margen Carlson, WDFW; Brynn Brady, Regional Fisheries Coalition; Lance Winecka, South Puget Sound Salmon Enhancement Group.

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