
ENGROSSED SENATE BILL 6096

State of Washington 52nd Legislature 1992 Regular Session

By Senators Bailey, Anderson, L. Smith and Barr

Read first time 01/15/92. Referred to Committee on Agriculture & Water Resources.

1 AN ACT Relating to wetland regulation; amending RCW 36.70A.040,
2 36.70A.050, 36.70A.060, and 36.70A.170; and adding a new chapter to
3 Title 90 RCW.

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

5 NEW SECTION. **Sec. 1.** It is the purpose of this act to:

6 (1) Provide additional direction to local governments regarding the
7 required contents of locally adopted regulations to protect wetlands
8 while maintaining a degree of flexibility at the local level to respond
9 to local needs and conditions;

10 (2) Establish a greater degree of consistency between local
11 jurisdictions within the state as to the contents of wetland protection
12 ordinances; and

1 (3) Provide a higher degree of consistency and compatibility
2 between locally adopted wetland protection ordinances and the federal
3 wetland regulatory program.

4 NEW SECTION. **Sec. 2.** Development regulations adopted by local
5 governments to protect wetlands shall be consistent with the
6 requirements of this chapter. Local governments shall adopt
7 development regulations or revise existing development regulations to
8 be consistent with this chapter for the protection of wetlands on or
9 before September 1, 1992.

10 NEW SECTION. **Sec. 3.** To settle disputes between the landowner
11 and the local jurisdiction as to what are the boundaries of wetlands,
12 local governments shall use the same delineation manual that is
13 currently used by the United States army corps of engineers for the
14 federal wetland regulatory program.

15 NEW SECTION. **Sec. 4.** (1) Local governments shall include in
16 their development regulations a wetland rating system consistent with
17 the rating system regulations adopted by the department of community
18 development. The rating system shall be based upon criteria which
19 distinguish among wetlands of exceptional resource value, intermediate
20 resource value, and ordinary resource value. Local governments shall
21 have the option to adopt either a three-tiered or a four-tiered system.

22 (2) The department of community development shall establish an
23 advisory committee to assist in the development of the rating system.
24 The advisory committee shall consist of the following representatives:

25 (a) One person selected by the Washington association of counties;

26 (b) One person selected by the Washington association of cities;

1 (c) One person nominated by the business community to represent
2 business interests;

3 (d) One person nominated by environmental organizations to
4 represent environmental interests;

5 (e) One person nominated by agricultural organizations to represent
6 agricultural interests; and

7 (f) An appointee from the department of community development
8 designated by the director of community development, who shall serve as
9 chairperson.

10 The advisory committee shall review and evaluate the wetland rating
11 systems that exist in other states prior to making their
12 recommendations to the director.

13 NEW SECTION. **Sec. 5.** (1) There shall be transition areas
14 adjacent to wetlands of exceptional resource value and intermediate
15 resource value. The width of the transition area shall be determined
16 by local governments within the following ranges:

17 (a) For wetlands of exceptional resource value (class I wetlands),
18 no greater than one hundred feet and no less than fifty feet; and

19 (b) For wetlands of intermediate resource value (class II
20 wetlands), no greater than fifty feet and no less than twenty-five
21 feet.

22 (2) There shall be no transition areas adjacent to wetlands of
23 ordinary resource value (class III and IV wetlands).

24 NEW SECTION. **Sec. 6.** (1) Local governments shall develop a
25 permit system to fulfill the requirements to protect wetlands in RCW
26 36.70A.060. The requirement for a permit system can be satisfied by
27 establishing a new permit or by utilizing an established permit. Local
28 governments shall provide that adverse effects to wetlands be mitigated

1 through the permitting process. The permit requirement shall apply to
2 the following activities unless otherwise exempt under section 7 of
3 this act:

4 (a) Placement of more than fifty cubic yards of fill material into
5 a wetland;

6 (b) Removal of more than fifty cubic feet of material from a
7 wetland;

8 (c) Alteration of more than fifty cubic yards of substrate
9 material.

10 (2) For the purposes of this section, "material" means rock,
11 gravel, sand, silt, and other inorganic substances removed from
12 wetlands and any materials, organic or inorganic, used to fill
13 wetlands.

14 (3) The adverse effects of a proposed project shall be mitigated by
15 considering, in the following order:

16 (a) Avoiding the impacts altogether by not taking a certain action
17 or parts of an action;

18 (b) Minimizing the impacts by limiting the degree or magnitude of
19 the action and its implementation;

20 (c) Rectifying the impacts by limiting the degree or magnitude of
21 the action and its mitigation;

22 (d) Reducing or eliminating the impacts over time by preservation
23 and maintenance operations during the life of the action and by
24 monitoring and taking appropriate corrective measures; and

25 (e) Compensating for the impacts by replacing or providing
26 comparable substitute wetland resources.

27 NEW SECTION. **Sec. 7.** The following activities are exempt from
28 regulation by local governments when conducted on wetlands or their
29 transition areas regulated pursuant to this chapter:

- 1 (1) Fishing and hunting;
- 2 (2) Swimming and boating;
- 3 (3) Hiking and horseback riding;
- 4 (4) Grazing by animals;
- 5 (5) Normal farming and ranching activities such as plowing,
6 seeding, cultivating, minor drainage, harvesting, or upland soil and
7 water conservation practices consistent with and as provided in the
8 federal corps of engineers wetland regulatory program;
- 9 (6) Maintenance, including emergency reconstruction of recently
10 damaged parts of currently serviceable structures, such as dikes, dams,
11 levees, groins, riprap, breakwaters, causeways, bridge abutments or
12 approaches, and transportation structures consistent with and as
13 provided in the federal corps of engineers wetland regulatory program;
- 14 (7) Construction or maintenance of farm or stock ponds or
15 irrigation ditches, or maintenance of drainage ditches, consistent with
16 and as provided in the federal corps of engineers wetland regulatory
17 program;
- 18 (8) Construction or maintenance of farm roads, or temporary roads
19 for moving mining equipment, where such roads are constructed and
20 maintained in accordance with best management practices to assure that
21 flow and circulation patterns and chemical and biological
22 characteristics of wetlands are not impaired and that any adverse
23 effect on the aquatic environment will be otherwise minimized
24 consistent with and as provided in the federal corps of engineers
25 wetland regulatory program;
- 26 (9) Forest practices as regulated and conducted in accordance with
27 the provisions of chapter 76.09 RCW;
- 28 (10) Activities affecting regulated wetlands if the wetland is less
29 than fifteen thousand square feet and is a class III or IV wetland;
- 30 (11) Activities to control mosquitoes conducted by public agencies;

1 (12) Maintenance, operation, and reconstruction of existing private
2 and public roads, streets, railroads, utilities, and associated
3 structures, and serviceable freshwater and marine terminals that are
4 part of an existing and ongoing port facility;

5 (13) Maintenance or reconstruction of residential structures,
6 commercial structures, and farm structures;

7 (14) Storm water management facilities approved, constructed, and
8 managed for storm water management prior to the effective date of this
9 act;

10 (15) Surface coal mining activities licensed under P.L. 95-87 as of
11 the effective date of this act, for so long as the land is covered by
12 the permit issued pursuant to P.L. 95-87;

13 (16) Hard rock mineral extraction operations, not including sand
14 and gravel operations. No tailings or other materials may be placed on
15 class I or II wetlands. Best management practices and operating plan
16 submittal, as required by the department of natural resources, and
17 nonpoint source water quality protection provisions, as developed by
18 the department of natural resources, shall be followed;

19 (17) Sand or gravel removal operations that remove material from
20 rivers and streams and that maintain the flow capacity of the river or
21 stream to carry and prevent damage from flood waters;

22 (18) Activities and construction necessary on an emergency basis to
23 prevent threats to public health and safety, or to public or private
24 property, as determined by the local jurisdiction; and

25 (19) Activities of a temporary nature with a minimal effect on
26 wetlands, as described in local wetland ordinances, and activities
27 which represent ongoing uses.

1 NEW SECTION. **Sec. 8.** Wetlands that are currently subject to
2 regulation pursuant to the shorelines management act of 1971 are exempt
3 from regulation under this chapter.

4 NEW SECTION. **Sec. 9.** State agency actions shall be consistent
5 with the policies and intent of this chapter unless explicit provisions
6 of the law require otherwise.

7 **Sec. 10.** RCW 36.70A.040 and 1990 1st ex.s. c 17 s 4 are each
8 amended to read as follows:

9 (1) Each county that has both a population of fifty thousand or
10 more and has had its population increase by more than ten percent in
11 the previous ten years, and the cities located within such county, and
12 any other county regardless of its population that has had its
13 population increase by more than twenty percent in the previous ten
14 years, and the cities located within such county, shall adopt
15 comprehensive land use plans and development regulations under this
16 chapter. However, ~~((the county legislative authority of such))~~ a
17 county with a population of less than ~~((fifty))~~ two hundred thousand
18 ~~((population))~~ may ~~((adopt a resolution removing the county, and the~~
19 ~~cities located within the county,))~~ remove itself from the requirements
20 of ~~((adopting comprehensive land use plans and development regulations~~
21 ~~under))~~ this chapter ~~((if this resolution is adopted and filed with the~~
22 ~~department by December 31, 1990))~~ pursuant to subsection (5) of this
23 section. Once a county meets either of these criteria, the requirement
24 to conform with RCW 36.70A.040 through 36.70A.160 remains in effect,
25 even if the county no longer meets one of these criteria.

26 (2) The county legislative authority of any county that does not
27 meet the requirements of subsection (1) of this section may adopt a
28 resolution indicating its intention to have subsection (1) of this

1 section apply to the county. Each city, located in a county that
2 chooses to plan under this subsection, shall adopt a comprehensive land
3 use plan in accordance with this chapter. Once such a resolution has
4 been adopted, the county cannot remove itself from the requirements of
5 this chapter except pursuant to subsection (5) of this section.

6 (3) Any county or city that is required to adopt a comprehensive
7 land use plan under subsection (1) of this section shall adopt the plan
8 on or before July 1, 1993. Any county or city that is required to
9 adopt a comprehensive land use plan under subsection (2) of this
10 section shall adopt the plan not later than three years from the date
11 the county legislative body takes action as required by subsection (2)
12 of this section.

13 (4) If the office of financial management certifies that the
14 population of a county has changed sufficiently to meet the
15 requirements of subsection (1) of this section, and the county
16 legislative authority has not adopted a resolution removing the county
17 from these requirements as provided in subsection (1) of this section,
18 the county and each city within such county shall adopt: (a)
19 Development regulations under RCW 36.70A.060 within one year of the
20 certification by the office of financial management; (b) a
21 comprehensive land use plan under this chapter within three years of
22 the certification by the office of financial management; and (c)
23 development regulations pursuant to this chapter within one year of
24 having adopted its comprehensive land use plan.

25 (5) A county with a population of less than two hundred thousand on
26 the effective date of this act that is required to or that has adopted
27 a resolution indicating an intent to adopt a comprehensive land use
28 plan under this chapter may remove itself from the requirements to
29 adopt a comprehensive land use plan under this chapter by adoption
30 prior to June 1, 1993, of a resolution indicating intent to remove the

1 county and cities within the county from the requirements of subsection
2 (1) of this section. Once a resolution has been adopted under this
3 subsection, a county that subsequently exceeds two hundred thousand in
4 population shall not be required to adopt a comprehensive land use plan
5 under this chapter.

6 **Sec. 11.** RCW 36.70A.050 and 1990 1st ex.s. c 17 s 5 are each
7 amended to read as follows:

8 (1) Subject to the definitions provided in RCW 36.70A.030, the
9 department shall adopt guidelines, under chapter 34.05 RCW, no later
10 than September 1, 1990, to guide the classification of: (a)
11 Agricultural lands; (b) forest lands; (c) mineral resource lands; and
12 (d) critical areas. The department shall consult with the department
13 of agriculture regarding guidelines for agricultural lands, the
14 department of natural resources regarding forest lands and mineral
15 resource lands, and the department of ecology regarding critical areas.

16 (2) In carrying out its duties under this section, the department
17 shall consult with interested parties, including but not limited to:
18 (a) Representatives of cities; (b) representatives of counties; (c)
19 representatives of developers; (d) representatives of builders; (e)
20 representatives of owners of agricultural lands, forest lands, and
21 mining lands; (f) representatives of local economic development
22 officials; (g) representatives of environmental organizations; (h)
23 representatives of special districts; (i) representatives of the
24 governor's office and federal and state agencies; and (j)
25 representatives of Indian tribes. In addition to the consultation
26 required under this subsection, the department shall conduct public
27 hearings in the various regions of the state. The department shall
28 consider the public input obtained at such public hearings when
29 adopting the guidelines.

1 (3) The guidelines under subsection (1) of this section shall be
2 minimum guidelines that apply to all jurisdictions, but also shall
3 allow for regional differences that exist in Washington state. The
4 intent of these guidelines is to assist counties and cities in
5 designating the classification of agricultural lands, forest lands,
6 mineral resource lands, and critical areas under RCW 36.70A.170.

7 (4) The guidelines established by the department under this section
8 regarding classification of forest lands shall not be inconsistent with
9 guidelines adopted by the department of natural resources.

10 (5) The guidelines established by the department under this section
11 regarding classification of wetlands as critical areas shall be
12 consistent with chapter 90.-- RCW (sections 1 through 9 of this act).

13 **Sec. 12.** RCW 36.70A.060 and 1991 sp.s. c 32 s 21 are each amended
14 to read as follows:

15 (1) Each county that is required or chooses to plan under RCW
16 36.70A.040, and each city within such county, shall adopt development
17 regulations on or before September 1, 1991, to assure the conservation
18 of agricultural, forest, and mineral resource lands designated under
19 RCW 36.70A.170. Regulations adopted under this subsection may not
20 prohibit uses legally existing on any parcel prior to their adoption
21 and shall remain in effect until the county or city adopts development
22 regulations pursuant to RCW 36.70A.120. Such regulations shall assure
23 that the use of lands adjacent to agricultural, forest, or mineral
24 resource lands shall not interfere with the continued use, in the
25 accustomed manner and in accordance with best management practices, of
26 these designated lands for the production of food, agricultural
27 products, or timber, or for the extraction of minerals. Counties and
28 cities shall require that all plats, short plats, development permits,
29 and building permits issued for development activities on, or within

1 three hundred feet of, lands designated as agricultural lands, forest
2 lands, or mineral resource lands, contain a notice that the subject
3 property is within or near designated agricultural lands, forest lands,
4 or mineral resource lands on which a variety of commercial activities
5 may occur that are not compatible with residential development for
6 certain periods of limited duration.

7 (2) Each county and city shall adopt development regulations that
8 protect critical areas that are required to be designated under RCW
9 36.70A.170. Development regulations respecting wetlands as critical
10 areas shall be consistent with chapter 90.-- RCW (sections 1 through 9
11 of this act). For counties and cities that are required or choose to
12 plan under RCW 36.70A.040, such development regulations shall be
13 adopted on or before September 1, 1991. For the remainder of the
14 counties and cities, such development regulations shall be adopted on
15 or before March 1, 1992.

16 (3) Such counties and cities shall review these designations and
17 development regulations when adopting their comprehensive plans under
18 RCW 36.70A.040 and implementing development regulations under RCW
19 36.70A.120 and may alter such designations and development regulations
20 to insure consistency.

21 (4) Forest land and agricultural land located within urban growth
22 areas shall not be designated by a county or city as forest land or
23 agricultural land of long-term commercial significance under RCW
24 36.70A.170 unless the city or county has enacted a program authorizing
25 transfer or purchase of development rights.

26 **Sec. 13.** RCW 36.70A.170 and 1990 1st ex.s. c 17 s 17 are each
27 amended to read as follows:

28 (1) On or before September 1, 1991, each county, and each city,
29 shall designate where appropriate:

1 (a) Agricultural lands that are not already characterized by urban
2 growth and that have long-term significance for the commercial
3 production of food or other agricultural products;

4 (b) Forest lands that are not already characterized by urban growth
5 and that have long-term significance for the commercial production of
6 timber;

7 (c) Mineral resource lands that are not already characterized by
8 urban growth and that have long-term significance for the extraction of
9 minerals; and

10 (d) Critical areas.

11 (2) In making the designations required by this section, counties
12 and cities shall consider the guidelines established pursuant to RCW
13 36.70A.050.

14 (3) Counties and cities shall designate wetlands as critical areas
15 consistent with chapter 90.-- RCW (sections 1 through 9 of this act).

16 NEW SECTION. Sec. 14. Sections 1 through 9 of this act shall
17 constitute a new chapter in Title 90 RCW.