
HOUSE BILL 2373

State of Washington 59th Legislature 2006 Regular Session

By Representatives Pearson, Buck, Sump, Haler, Kristiansen and Kretz

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Committee on Natural Resources, Ecology & Parks.

1 AN ACT Relating to riparian flood damages; amending RCW 4.24.470
2 and 4.24.490; adding a new section to chapter 77.55 RCW; and adding a
3 new section to chapter 4.24 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 77.55 RCW
6 to read as follows:

7 (1) The department shall, when reviewing applications for hydraulic
8 projects under RCW 77.55.021 specifically intended by the applicant to
9 eliminate or reduce damages to upland properties caused by potential
10 floods, give equal consideration to protecting fish life, public
11 safety, and private property.

12 (2) Any denial or conditioning by the department of a hydraulic
13 project approval specifically intended by the applicant to eliminate or
14 reduce damages to upland properties caused by potential floods must be
15 accompanied by a written analysis, signed by the director, explaining
16 the denial or condition of the hydraulic project in terms of fish life,
17 public safety, and private property protection.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 4.24 RCW
2 to read as follows:

3 (1) Any person who suffers damages to his or her property due to
4 flooding of a riparian area may bring an action against the department
5 of fish and wildlife as a state agency, along with a personal action
6 against the director of the department of fish and wildlife, in a court
7 of competent jurisdiction for exemplary damages of up to three times
8 the actual damages sustained in the flooding event, plus reasonable
9 fees for attorney expenses and expenses incurred in proving flood
10 damages, if the department of fish and wildlife had, in the ten years
11 preceding the flood event, denied or unreasonably conditioned a
12 hydraulic project approval under chapter 77.55 RCW for a hydraulic
13 project that would have prevented or lessened the flood damage. The
14 person bringing the action under this section is not required to be the
15 same person who applied for the denied or conditioned hydraulic project
16 approval.

17 (2) The person bringing an action under this section must prove by
18 a preponderance of the evidence both the value of damages caused
19 directly or indirectly by the flood event, as well as whether the
20 completion of the project for which the denial was issued would have
21 prevented or lessened the flood damage.

22 (3) In actions where both the department of fish and wildlife as a
23 public agency and the director of the department of fish and wildlife
24 as an individual are found liable under this section, both the
25 department and the director shall be held jointly and severally liable.

26 (4) All damages due to the person bringing a successful action
27 under this section by the department of fish and wildlife must be paid
28 within thirty days of final judgment exclusively from the state
29 wildlife account created in RCW 77.12.170.

30 **Sec. 3.** RCW 4.24.470 and 1987 c 212 s 401 are each amended to read
31 as follows:

32 (1) Except as provided in section 2 of this act, an appointed or
33 elected official or member of the governing body of a public agency is
34 immune from civil liability for damages for any discretionary decision
35 or failure to make a discretionary decision within his or her official
36 capacity, but liability shall remain on the public agency for the
37 tortious conduct of its officials or members of the governing body.

1 (2) For purposes of this section:

2 (a) "Public agency" means any state agency, board, commission,
3 department, institution of higher education, school district, political
4 subdivision, or unit of local government of this state including but
5 not limited to municipal corporations, quasi-municipal corporations,
6 special purpose districts, and local service districts.

7 (b) "Governing body" means the policy-making body of a public
8 agency.

9 **Sec. 4.** RCW 4.24.490 and 1989 c 413 s 3 are each amended to read
10 as follows:

11 (1) Except as provided in section 2 of this act, the state shall
12 indemnify and hold harmless its employees in the amount of any judgment
13 obtained or fine levied against an employee in any state or federal
14 court, or in the amount of the settlement of a claim, or shall pay the
15 judgment, fine, or settlement, if the act or omission that gave rise to
16 the civil or criminal liability was in good faith and occurred while
17 the employee was acting within the scope of his or her employment or
18 duties and the employee is being represented in accordance with RCW
19 4.92.070.

20 (2) For purposes of this section "state employee" means a member of
21 the civil service or an exempt person under chapter 41.06 RCW(~~(, or~~
22 ~~higher education personnel under chapter 28B.16 RCW)~~).

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