

HOUSE BILL REPORT

HB 1720

As Reported by House Committee On:

Agriculture and Natural Resources

Title: An act relating to the protection and restoration of riparian areas through the establishment of a fully voluntary, regionally focused riparian grant program designed to improve the ecological functions of critical riparian management zones.

Brief Description: Concerning the protection and restoration of riparian areas through the establishment of a fully voluntary, regionally focused riparian grant program designed to improve the ecological functions of critical riparian management zones.

Sponsors: Representatives Chapman, Dent, Lekanoff, Kretz, Volz, Klicker, Schmidt, Schmick, Couture, Goehner, Chambers, Ybarra, Stokesbary, Robertson, Sandlin, Christian, Reeves, Morgan, Orcutt, Corry, Barkis, Graham, Dye, Hutchins and Cheney.

Brief History:

Committee Activity:

Agriculture and Natural Resources: 2/7/23, 2/17/23 [DPS].

Brief Summary of Substitute Bill

- Creates two riparian grant programs, one to be administered by the State Conservation Commission and one to be administered by the Salmon Recovery Funding Board.
- Establishes requirements and conditions for the award of riparian grants.
- Establishes the Salmon Riparian Habitat Policy Task Force within the Governor's Salmon Recovery Office to monitor and review the implementation and successes of the riparian grant programs.
- Requires the task force to submit an annual report to the Legislature beginning in 2025 that includes updates on the successes of the riparian habitat restoration achieved through the riparian grant programs and any recommended policy changes to the grant programs necessary to further protect and restore salmon habitat.

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.

HOUSE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Chapman, Chair; Morgan, Vice Chair; Reeves, Vice Chair; Dent, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Kloba, Kretz, Lekanoff, Orcutt, Schmick and Springer.

Staff: Robert Hatfield (786-7117).

Background:

State Conservation Commission.

The State Conservation Commission performs several functions, including assisting the state's 47 local conservation districts in carrying out soil, water, and other natural resource conservation projects. It consists of 10 members: two appointed by the Governor; three elected by local district supervisors; and five serving ex officio, including directors of the departments of Ecology and Agriculture, the Commissioner of Public Lands, the President of the Washington Association of Conservation Districts, and the Dean of the Washington State University College of Agriculture.

Salmon Recovery Funding Board.

The Salmon Recovery Funding Board (SRF Board) is responsible for making grants and loans for salmon habitat projects and salmon recovery activities from the amounts appropriated to the SRF Board for this purpose. The SRF Board consists of five voting Governor appointees and five state officials serving as ex officio nonvoting members.

Watershed Plans.

The Watershed Planning Act establishes a process through which local groups can develop and implement plans for managing and protecting local water resources and rights. The local groups authorized to develop watershed plans are organized by water resource inventory areas.

Habitat Project List.

Washington's system of watersheds is divided into eight salmon recovery regions: Hood Canal, Lower Columbia River, Middle Columbia River, Northeast Washington, Puget Sound, Snake River, Upper Columbia River, and Washington Coast.

Within those eight regions, counties, cities, and tribal governments jointly designate areas for which a habitat project list is to be developed, and designate the lead entity. The lead entity may be a county, city, conservation district, special district, tribal government, regional recovery organization, or other entity. Once selected, a lead entity must establish a committee to provide citizen-based evaluation of the projects proposed for the habitat project list. 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.

Riparian Habitat Recommendations.

The 2022 State Supplemental Operating Budget appropriated funds for the Governor to hire an independent entity to facilitate a process to develop recommendations on proposed changes in policy and spending priorities to improve riparian habitat. Preliminary recommendations were required to be submitted to the Governor and Legislature by October 1, 2022, with final recommendations required to be submitted by November 1, 2022.

Summary of Substitute Bill:

Riparian Grant Programs.

Two riparian grant programs are created, one to be administered by the State Conservation Commission (Commission) and one to be administered by the Salmon Recovery Funding Board (SRF Board). The Commission and the SRF Board must each develop and implement a riparian grant program to fund protection and restoration of critical riparian management zones. The Commission and the SRF Board are each responsible for developing the voluntary grant program criteria to achieve optimal restoration of functioning riparian ecosystems in priority critical riparian management zones.

In adopting the criteria for the programs, the Commission and the SRF Board must:

- coordinate with the Department of Ecology (Ecology), the Department of Fish and Wildlife (WDFW), conservation districts, the Department of Agriculture (WSDA), private landowners, and other interested stakeholders as well as invite federally recognized tribes to coordinate in the process as full participants; and
- consider the best available locally applicable science that is specific to each region of the state where the program criteria will be applied.

The SRF Board must apply the requirements and criteria set forth above in administering the riparian grant program, rather than any policies or standards that the SRF Board may apply to other grant programs administered by the SRF Board.

The Commission and the SRF Board must prioritize critical riparian management zones at the watershed or subbasin scale where grant funding under the riparian grant programs would be primarily targeted. The prioritization must be informed by, consistent with, and aligned with one or more of the following:

- watershed plans developed pursuant to the Watershed Planning Act;
- the Puget Sound Action Agenda;
- regional salmon recovery plans;
- salmon habitat project lists;
- the prioritization process developed by the Fish Passage Barrier Removal Board; and
- priority projects identified for salmon recovery through agency grant programs.

The prioritization of critical riparian management must be developed in coordination with local conservation districts, the WDFW, Ecology, and water resource inventory area planning units organized pursuant to the Watershed Planning Act. In addition, the Commission and the SRF Board must invite the full participation of federally recognized tribes in the prioritization process.

Conditions for awarding funding for projects under the riparian grant programs should include, but are not limited to:

- consistency with the program criteria described above;
- tiered incentive rates tied to improving functionality for riparian areas; and
- other requirements as determined by the Commission and the SRF Board.

Riparian grant program funding must be distributed equitably throughout the state, consistent with received grant applications and benefit to salmon habitat. Funding is intended primarily for projects located in salmon recovery regions but funding may also be distributed to a project not located in a salmon recovery region upon a determination by the Commission or the SRF Board that the project will provide a unique benefit to salmon habitat.

Allowable expenses to a grantee receiving riparian grant funds include, but are not limited to, labor, equipment, fencing, mulch, seed, seedling trees, manual weed control, and yearly maintenance costs for up to 10 years. Any native woody trees and shrubs planted with funding provided under the riparian grant programs must be maintained for a minimum of five years or as otherwise set by the Commission or the SRF Board for each grantee. Vegetation must be chosen to prevent invasive weed populations and ensure survival and successful establishment of plantings.

The Commission and the SRF Board must determine appropriate recordkeeping and data collections procedures required for program implementation and must establish a data management system that allows for coordination between the funding entity, the Commission or the SRF Board, and other state agencies. Any data collected or shared under the riparian grant programs may be used only to assess the successes of the riparian grant programs in improving the functions of critical riparian habitat.

The Commission and the SRF Board must develop and implement a framework that includes monitoring, adaptive management, and metrics in order to ensure consistency with the requirements of the riparian grant programs.

No more than 2 percent of any funds appropriated for the riparian grant programs may be used for targeted outreach activities that focus on critically identified geographic locations for listed salmon species. No more than 4 percent of any funds appropriated for the riparian grant programs may be used for administrative expenses.

Salmon Riparian Habitat Policy Task Force.

A Salmon Riparian Habitat Policy Task Force is established in the Governor's Salmon Recovery Office (GSRO) to monitor and review the implementation and successes of the grant programs. The task force must build upon the work of the facilitated roundtables and discussions that were commenced pursuant to the authorization provided in the 2022 State Supplemental Operating Budget. The task force must operate on a consensus basis. Members of the task force are appointed by the Executive Director of the GSRO.

The task force includes representation from the following entities:

- four representatives from federally recognized tribes in Washington, two from east of the crest of the Cascades and two from west of the crest of the Cascades, as determined by the federally recognized tribes;
- four representatives from agricultural and livestock producers, all of whom must be appointed from a list of at least four names as recommended by a recognized statewide agriculture organization;
- one representative from a regional salmon recovery organization;
- one representative from a forestry and agriculture organization, as recommended by a recognized statewide agriculture or forestry organization;
- one representative from a nonprofit environmental organization that owns or manages undeveloped land in Washington, as recommended by a recognized statewide environmental organization; and
- one representative from a statewide organization representing all of Washington's 39 counties, as recommended by a recognized statewide organization representing counties.

One representative from each of the following state agencies must serve in a technical advisory role to the task force but may not participate in the consensus process of the task force:

- the WDFW;
- the WSDA;
- the Commission; and
- the Department of Natural Resources.

By May 1, 2024, the task force must submit a preliminary report to the Governor and the relevant committees of the Legislature, with a final report due by June 30, 2024. The reports must provide recommendations addressing the following topics:

- developing and implementing a compensatory or mitigation program for critical riparian habitat restoration;
- recommendations on proposed changes in the grant programs and spending priorities to improve riparian habitat in order to ensure salmon recovery;
- strategies that can attract private investment in improving and protecting salmon and riparian habitat; and
- other relevant riparian and salmon recovery-related topics designated by the task force that focus on voluntary and incentive-based measures.

The GSRO may contract with an independent entity to facilitate the task force facilitation and report. The contract is exempt from competitive procurement requirements.

By June 30, 2025, and every June 30 thereafter, the task force must submit an annual report to the Legislature with updates on the successes of the riparian habitat restoration achieved through the riparian grant programs and any recommended policy changes to the grant programs necessary to further protect and restore salmon habitat.

The task force expires June 30, 2029.

Substitute Bill Compared to Original Bill:

The substitute bill creates a second riparian grant program to be administered by the Salmon Recovery Funding Board.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 17, 2023.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Many stakeholders have worked together on this bill. It is important to make sure the bill is inclusive in order to be successful. Riparian habitats are essential for salmon recovery. There is a need to be respectful of the agricultural community and others who would be affected by proposed projects. Others might want to see more rigid requirements, but this bill sets up a foundation of enhancing riparian habitats. Riparian habitat enhancement has to be on a voluntary basis at this juncture. It is essential to take a regional approach, and essential that tribes be involved in decision making. It is also essential that the east side of the state be treated the same as the west side of the state. If everybody is equally unhappy, that is probably a sign that the bill has found the right sweet spot. This bill is a down payment, because of the magnitude of what is needed in the state to repair rivers and streams for salmon. The bill develops a trusting relationship between all of the interest groups, like tribes, agriculture, and timber.

The bill shows what can happen when everyone comes together. The Governor helped bring stakeholders together through the riparian round table process. This version of a riparian buffer bill goes a long way toward addressing the concerns of the agricultural community. The bill is voluntary, with no threat of regulatory action. The bill takes a hyper-local, regionally based approach. Nobody knows these areas better than those who

live on the land. The bill does not wed itself to a fixed set of science standards because science evolves. Successful policy is not forced.

Waterways have not always been treated with the respect they deserve. In the past, streams and rivers have been used as a dumping ground for waste. In the mid-1980s, the Legislature passed a law that created a process for creating management plans for rivers in the Puget Sound. The Nisqually River was the first river to have a management plan. Initially, there were concerns that farms would not survive. The turning point came when Billy Frank said he wanted farms and other landowners along the river, such as timber companies and the military, to remain and succeed on the river. The Nisqually went on to become the first river in the United States to collaboratively come out with a management plan that everyone agreed on. The management plan is still in use today and has been used as a model for plans all across the country. This bill is not perfect; there may be some things that need to be changed, but it is a start. Working collaboratively achieves far more than forcing a solution. Incentives are important.

Climate change is accelerating the scope and scale at which restoration is needed. There is still a population decline in salmon throughout the Columbia basin. The bill would provide compensation for converting land back to its natural state. The bill aligns with the all hands, all lands approach to salmon recovery. It is good to include four tribal representatives on the task force from both sides of the state. The riparian grant program should include regions above Chief Joseph and Grand Coulee dams.

The grandfather of collaborative watershed management processes is the Nisqually River process. There is a similar process for the Snohomish River. That process spread to the Walla Walla River, and then the Dungeness River. There is an immense amount of local experience that can inform the state on how to solve these problems. The Chehalis River process has built on the Nisqually process, and the Chehalis River process has been put in statute so that it will live beyond the individual people involved in the process. It would be helpful for the committee look to the leaders in these individual basins.

The bill takes a collaborative approach on salmon recovery, which is a shared goal of the entire state. The bill should be passed in its current form. It has been carefully negotiated by stakeholders.

The state has a long history of trying to create a one-size-fits-all policy on agricultural lands. The bill sets that approach aside and creates a fully voluntary, funded approach to habitat protection. The bill will not punish landowners in critical riparian areas. The bill creates a new era of cooperation between seemingly disparate communities.

The bill recognizes that landowners deserve to weigh in on what happens on their lands. The bill calls for a collective approach to guide how habitat improvements are approached in the future. There is support for fully voluntary regional habitat improvement programs. Strategies for achieving these goals must be ecologically beneficial to private landowners.

All counties share the goal of ensuring the ecosystem is healthy enough to support a thriving salmon population. Voluntary programs have better long-term impacts than heavy handed regulations. Other voluntary programs work well, such as transfers of development rights, conservation futures, and the voluntary stewardship program (VSP). These programs have more interest from landowners than there is money and staff to implement. It would be good to fully implement and fund the VSP as a complement to this bill. Counties should be involved in implementing the grant process. The Department of Ecology (Ecology) should be added as a technical advisor to the task force. It would be good to add language that requires consistency with other salmon restoration funding criteria.

There has been a lot of skepticism among the business community on this topic, but there is support for voluntary incentive programs. This is a fully voluntary riparian buffer program.

The State Conservation Commission (Commission) is the right entity to create and implement a riparian grant program. Conservation districts have strong trust-based relationships with landowners.

This approach is even better than the forestry riparian easement program (FREP) because FREP has often been under-funded. All Washingtonians should contribute to salmon restoration efforts, not just a small number of landowners. Documents from the Department of Fish and Wildlife (WDFW) show that much of the temperature protection for a stream comes in the first 100 feet of a riparian buffer, rather than a wider buffer based on site potential tree height. There has been talk about adding a regulatory backstop or minimum standards to the bill, but those elements should not be part of this bill.

Some farms have many miles of streams, creeks, and seasonal drainages. Farmlands also play other roles, like filtering stormwater, aquifer recharge, and providing water for salmon. Farms have been a stronghold in preventing urban sprawl by not allowing conversion to uses that are detrimental to salmon and other species. This bill accomplishes many objectives, including allowing farms to continue. Mandatory buffers would consume roughly one-third of one person's farm. Funding in the program could go to some very high value restoration projects.

The conservation reserve easement program involves reasonable buffer widths.

It is in farmers' best interest to support bills like this that work in the direction of voluntary stewardship.

(Opposed) There is support for a fully voluntary grant program to incentivize landowners to take land out of production. A strong, well-funded voluntary program will be helpful to salmon restoration. There are two main flaws in the current bill. First, it lacks a standard to guide the conservation districts in implementing the grant program. The bill should align minimum standards with federal standards. Second, the bill establishes a task force within

the Governor's Salmon Recovery Office but agencies are only allowed to serve in a technical advisory role, not in the consensus process of the task force. Agencies are the ones doing the work of restoration, and are the ones most familiar with that work. It is unacceptable that agencies not be a part of the consensus process.

(Other) Governor Inslee has done important work on the salmon issue for the past four years. That work has led to this bill. Solving complex problems like salmon recovery requires relationships and trust. The issue is critically important. Culture and traditions are tied to salmon and the river. Being on the water is like going to church; it provides an opportunity to think of all the many generations before who have been on the water and been able to harvest fish from the river. Harvest seasons have diminished from seven months to 12 days. There have been cutbacks on harvest each year. Science points to habitat decline and climate change as drivers of salmon population declines. The trend in the Nisqually River is not good. When the salmon are healthy, we human beings are healthy. Salmon need a healthy home when they return from the sea. They need a river that is flowing with cool, clean water. There have recently been summer temperatures in the Nisqually River that are near-lethal for salmon. The recovery of salmon and the upholding of treaty rights is non-negotiable. The state must stop looking for ways to do as little as possible, but instead look for ways to do as much as possible. There needs to be accountability to ensure healthy riparian habitat. Each generation is only here for a short time.

It is genuinely encouraging that this bill is even being discussed in the Legislature. Despite the great intentions, there remains work to be done. Stakeholders understandably want to ensure economic viability of farms, but it is also important to recover endangered salmon stocks. It is time for the state to lean into restoration of critical areas and achieve net gain. It is important to emphasize the role of the WDFW and Ecology in the task force. Ecology has designated authority under the Clean Water Act, and the WDFW manual sets standards for riparian restoration. There is a need to compensate the landowners for their efforts, but that only makes sense so long as there are regulatory assurances that after voluntary stewards are compensated for their efforts, there is actually holistic restoration beyond the first few years of planting buffer vegetation. The WDFW has already worked on developing the science, and there is no longer time to question the state of the science. The intentions behind the bill are commendable, but there is concern that the language in the bill is not enough to guard against further degradation.

There are concerns with some of the current language. There is a need to recognize that this bill exists because of a commitment from the Governor to work on riparian restoration. The State of Washington has a duty to make sure that treaty-reserved resources, such as salmon, continue to be available to tribal communities. There is support for providing new funds for habitat protection and restoration, especially in riparian areas. There is success in the Skokomish River in restoring spring chinook and sockeye populations. The Skokomish Tribe and conservation districts are partners in recovery. Some of the concerns with the bill are that many of the tasks and processes in the bill are already being done; so there is a

concern with reinventing the wheel. With regard to funding, there are already organizations like the Recreation and Conservation Office (RCO) that administer grants for restoring riparian areas; in terms of distributing funds, a lot of those new dollars should go through the RCO. The state already has a Puget Sound Ecosystem Monitoring Program. There is concern with some of the language in the bill regarding setting priorities in watersheds and subbasins; in many watersheds, this has already occurred through the lead entity process and regional salmon recovery plans.

Getting a bipartisan bill on salmon recovery is a challenge. There are private property rights side and treaty rights on the other side, and science is between them. People are working to find the right balance. This bill is both a financial down payment and a down payment on trust. A few changes are needed regarding funding. There should be more funding distributed to the RCO. The money should not all be sent to the Commission. There should be a balanced approach to funding criteria. It is probably not possible to find a perfect bill, but it is important to not have an unbalanced bill.

The bill contains a number of components that belong in the state's approach to riparian restoration. The bill has valuable incentives to help protect public resources. The bill has an important focus on data management systems. There are ways to encourage additional site specific science, such as soils data. The bill should call for longer commitments and protections, closer to permanent protections. State agencies should be included in the substantive discussion and recommendations of the task force.

Persons Testifying: (In support) Representative Mike Chapman, prime sponsor; Dan Wood and Jay Gordon, Washington State Dairy Federation; Jarred-Michael Erickson and Michael Moran, Confederated Tribes of the Colville Reservation; Todd Myers and Pam Lewison, Washington Policy Center; W. Ron Allen, Jamestown S'Klallam Tribe; Rosella Mosby, Washington Farm Bureau; Amanda McKinney, Yakima County; Ron Wesen, Skagit County; Brynn Brady, Washington State Association of Counties; Mike Ennis, Association of Washington Business; Tom Salzer, Washington Association of Conservation Districts; Gregory Ebe; Leroy Plagerman; Gary Bailey, Washington Association of Wheat Growers; Jeff De Jong; and Jim Wilcox, Wilcox Family Farm.

(Opposed) Ruth Musgrave, Office of the Governor.

(Other) Margen Carlson, Department of Fish and Wildlife; William Frank III; Kadi Bizyayeva, Stillaguamish Tribe of Indians; David Herrera, Skokomish Indian Tribe; and Leonard Forsman, The Suquamish Tribe.

Persons Signed In To Testify But Not Testifying: None.