

# SENATE BILL REPORT

## SB 5969

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As Reported By Senate Committee On:  
Agriculture, March 4, 2003

**Title:** An act relating to natural resource protection in Skagit county.

**Brief Description:** Providing natural resource protection in Skagit county.

**Sponsors:** Senators Haugen, Swecker and Rasmussen.

**Brief History:**

**Committee Activity:** Agriculture: 3/4/03 [DPS].

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### SENATE COMMITTEE ON AGRICULTURE

**Majority Report:** That Substitute Senate Bill No. 5969 be substituted therefor, and the substitute bill do pass.

Signed by Senators Swecker, Chair; Brandland, Vice Chair; Jacobsen, Rasmussen and Sheahan.

**Staff:** Bob Lee (786-7404)

**Background:** Issues have arisen in Skagit County regarding how to proceed to restore salmon habitat while retaining the drainage infrastructure for continued agricultural production.

**Summary of Substitute Bill:** Included in the legislative findings are the requirements in state law to protect fish habitat under the hydraulics code and to protect both fish habitat and agricultural land designated by the county as having long-term commercial significance under the Growth Management Act. Reference is made to existing fish habitat processes as a means to restore salmon habitat and that existing regulatory fish habitat protection statutes do not require the restoration or enhancement of habitat. However, both the fish habitat protection rules and court cases on protection of designated agricultural land have been interpreted in a similar fashion to assure no reduction in either. Additionally, fishway statutes have not historically been applied to tide gates on drainage facilities.

The purposes of the act are to:

- To protect lands designated by the county as agricultural lands of long-term commercial significance from the effects of saltwater intrusion and diminishment of drainage capability for drainage ditches and tide gates;
- To require examination of opportunities to enhance tidal fish habitat on publicly owned lands while maintaining habitat for migratory birds;

- To allow tide gates located on bona fide streams to proceed through a fish habitat restoration planning process to find opportunities to use habitat while avoiding harm to existing land uses.

From funds appropriated to the Department of Fish and Wildlife for salmon restoration, the Fish and Wildlife Commission, the Department of Fish and Wildlife, Skagit County legislative authority, diking and drainage district commissioners and landowners must jointly develop a strategy to enhance tidal fish habitat and address tide gates on streams in Skagit County, while assuring no net loss of agricultural lands or their productivity. The strategy must be submitted to the appropriate standing committees of the Legislature by December 1, 2004.

The strategy must consider an inventory of tide gates located on bona fide streams, an assessment of impacts to fish and to agriculture, and a long-term proposal that meets the two goals of salmon recovery and no net loss of agricultural lands.

In developing the proposal, the Fish and Wildlife Commission, the Skagit County commissioners and diking and drainage district commissioners are to convene a work group of involved agencies, tribes, interest groups, and representatives from the local salmon restoration planning group. State legislators must be appointed to the work group with an equal number from each of the four caucuses.

The proposal includes methods to increase fish passage and enhance habitat on public lands, voluntary methods to increase fish passage on private lands not located on bona fide streams, a priority list of fish passage projects on bona fide streams, and recommendations for funding for high priority projects. The strategy proceeds in phases with examining opportunities on public lands listed first.

The Department of Fish and Wildlife may not require fish passage as a condition of a hydraulic project approval until July 1, 2005, after the strategy has been submitted to the Legislature. Any condition requiring fish passage in an existing hydraulic project approval is stayed until July 1, 2005. For the purpose of this act, bona fide stream means the Skagit River, the Samish River, Carpenter Creek, and Colony Creek.

The authorization for development of the strategy expires July 1, 2005.

**Substitute Bill Compared to Original Bill:** It is clarified that diking and drainage district commissioners, landowners, and the Department of Fish and Wildlife are to be involved. The assessment is to include a description and identification of natural water courses and the effect of that designation. Included is reference to the Skagit delta fish passage pilot project.

**Appropriation:** None.

**Fiscal Note:** Requested on February 28, 2003.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The issue of how to restore salmon while maintaining a viable agricultural industry in Skagit County needs to be resolved and it is the goal that this process will do that.

The Department of Natural Resources should be included on the work group because they are the land management entity for much of the state lands outside the dike.

**Testimony Against:** None.

**Testified:** Jay Udelhoven, WA DNR (pro); Curtis Johnson, Western Washington Agriculture Assn. (pro); Tim Smith, WDFW (pro w/concerns).