

SSB 5969 - S AMD 237

By Senators Swecker, Haugen

ADOPTED 03/19/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that counties have
4 been given the authority to designate agricultural lands of long-term
5 commercial significance and that such lands are protected as a matter
6 of state law. The legislature finds that counties have also been given
7 the authority to designate fish habitat and that these areas are to be
8 protected as a matter of state law. In addition, the legislature finds
9 that the department of fish and wildlife has been granted authority to
10 protect fish habitat in streams.

11 The legislature finds that several fish habitat restoration
12 processes have been established for the specific purpose of developing
13 plans acceptable to the local communities to restore fish habitat and
14 that several millions of dollars of public funds have been dedicated to
15 projects supported by the local community, including many in Skagit
16 county.

17 The legislature finds that instead of using fish habitat
18 restoration processes, the department of fish and wildlife has
19 attempted in Skagit county to use regulatory statutes that are limited
20 to the protection of fish habitat. However, these regulatory statutes
21 do not require the restoration or enhancement of habitat.

22 The legislature finds that historical interpretations by the agency
23 have changed without a corresponding change in the underlying statute.
24 Further, the term "protection" has been determined to be equivalent to
25 a no net loss standard in the administrative code pertaining to
26 hydraulic project approvals. Likewise, the legislature finds that the
27 protection requirement for agricultural land designated as having long-
28 term commercial significance has been interpreted by the state supreme
29 court in a similar fashion of no reduction and no net loss.

1 The legislature further finds that for over fifty years that
2 fishway statutes have been in effect, they have not been applied to
3 tide gates on agricultural drainage facilities.

4 The legislature finds that a collaborative process to examine
5 reasonable and feasible alternatives to enhance tidal fish habitat
6 should be used to focus and expedite efforts where there is a gain in
7 tidal fish habitat without harming designated agricultural lands. The
8 legislature also finds that pilot projects may be needed to test
9 creative solutions to achieve the dual goals of enhancing tidal fish
10 habitat while protecting designated agricultural lands.

11 NEW SECTION. **Sec. 2.** The purposes of this act are:

12 (1) To protect lands designated by the county as agricultural land
13 of long-term commercial significance from the effects of saltwater
14 intrusion and diminishment of drainage capability for drainage
15 infrastructure, including flood gates, pump stations, ditches, and tide
16 gates;

17 (2) To require examination of opportunities to enhance tidal fish
18 habitat on hundreds of acres of publicly owned land while maintaining
19 habitat for migratory birds and that opportunities on publicly owned
20 lands outside the dikes be considered first; and

21 (3) To allow tide gates located on bona fide streams to proceed
22 through a fish habitat restoration planning process to find
23 opportunities to use fish habitat while avoiding harm to existing land
24 uses.

25 NEW SECTION. **Sec. 3.** A new section is added to chapter 77.55 RCW
26 to read as follows:

27 (1) From funds appropriated to the department of fish and wildlife
28 for salmon restoration activities, the fish and wildlife commission, in
29 coordination with the Skagit county legislative authority and diking
30 and drainage district commissioners, and local landowners, shall
31 establish the Skagit tidal fish habitat pilot project to jointly
32 develop a strategy and to propose projects to enhance tidal fish
33 habitat and address the management, operation, and maintenance of tide
34 gates on streams in Skagit county while assuring no net loss of
35 agricultural lands or their productivity. The strategy and proposed

1 projects must be submitted to the appropriate standing committees of
2 the legislature by December 1, 2004. The strategy must consider the
3 following elements:

4 (a) An inventory of existing tide gates located on bona fide
5 streams in Skagit county. The inventory must include location, age,
6 type, and maintenance history of the tide gate, and other factors as
7 determined by the commission, the county, diking and drainage
8 districts, and local landowners;

9 (b) An assessment of the role of tide gates located on bona fide
10 streams in the Skagit county; the role of tidal fish habitat for
11 various life stages of salmon; the quantity and characterization of
12 tidal fish habitat currently accessible to fish; the quantity and
13 characterization of the present tidal fish habitat created at the time
14 the dikes and outlets were constructed; the quantity of potential tidal
15 fish habitat on public lands and alternatives to enhance this habitat;
16 the effects of salt water intrusion on agricultural land including the
17 effects of backfeeding of salt water through the underground drainage
18 system; the role of tide gates in drainage systems including relieving
19 excess water from saturated soil and providing reservoir functions
20 between tides; the effect of saturated soils on production of crops;
21 the characteristics of properly functioning tidal fish habitat; the
22 description of agricultural lands designated by the county as having
23 long-term commercial significance and the effect of that designation;
24 the description and identification of natural water courses and the
25 effect of that designation; and the economic impacts to existing land
26 uses for various alternatives for tide gate alteration; and

27 (c) A long-term proposal for fish habitat enhancement to meet the
28 two goals of salmon recovery and no net loss of designated agricultural
29 lands. The fish and wildlife commission, the Skagit county legislative
30 authority, and diking and drainage district commissioners shall jointly
31 convene a work group of interested parties, including local landowners,
32 tribal councilmembers, local governments, federal fishery agencies,
33 diking and drainage districts, and representatives of the local lead
34 entity under RCW 77.85.050, to develop the strategy and proposed
35 projects, based on the inventory and assessment under (a) and (b) of
36 this subsection. Legislators shall be appointed to the work group,
37 with an equal number from each of the four major caucuses in the house
38 of representatives and the senate as determined by the speaker of the

1 house of representatives and the president of the senate. The proposal
2 shall include methods to increase fish passage and enhance tidal
3 habitat on public lands, voluntary methods to increase fish passage on
4 private lands, a priority list of fish passage projects on bona fide
5 streams, and recommendations for funding of high priority projects.

6 (2) The strategy shall proceed in four phases as follows:

7 (a) Examining opportunities and proposing projects for tidal fish
8 habitat improvements on public land outside the dike;

9 (b) Examining opportunities and proposing projects for tidal fish
10 habitat improvements on public land inside the dike;

11 (c) Examining opportunities and proposing projects for tidal fish
12 habitat improvements on areas that have bona fide streams; and

13 (d) Examining voluntary opportunities for tidal fish habitat
14 improvements where there are no bona fide streams.

15 (3) The department of fish and wildlife may not require fish
16 passage under RCW 77.55.060 or as a condition of hydraulic project
17 approval for maintenance, improvement, or replacement of agricultural
18 drainage systems under this chapter unless the condition is consistent
19 with the strategy developed under this section and the strategy has
20 been approved by the legislature.

21 (4) Any condition requiring fish passage in an existing hydraulic
22 project approval issued for a tide gate in Skagit county under this
23 chapter is stayed unless the condition is consistent with the strategy
24 developed under this section and the strategy has been approved by the
25 legislature.

26 (5) For the purpose of this section, "stream" or "bona fide stream"
27 means the Skagit river, the Samish river, Carpenter creek, and Colony
28 creek."

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29 On page 1, line 1 of the title, after "county;" strike the
30 remainder of the title and insert "adding a new section to chapter
31 77.55 RCW; and creating new sections."

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