

SENATE BILL REPORT

ESSB 5969

As Passed Senate, March 19, 2003

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

Brief Description: Providing natural resource protection in Skagit county.

Sponsors: Senate Committee on Agriculture (originally sponsored by Senators Haugen, Swecker and Rasmussen).

Brief History:

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

Passed Senate: 3/19/03, 47-0.

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 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 Legislature finds that a collaborative process to examine alternatives to enhance tidal fish habitat should be used to focus and expedite efforts where there is a gain in tidal fish habitat without harming designated agricultural lands. Pilot projects may be needed to test creative solutions.

The purposes of the act are 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;
- require examination of opportunities to enhance tidal fish habitat on publicly owned lands while maintaining habitat for migratory birds and that opportunities outside the dikes should be considered first;
- 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, Skagit County legislative authority, diking and drainage district commissioners and landowners must jointly develop a strategy and propose projects 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 and proposed projects 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 unless it is consistent with the strategy and the strategy has been approved by the Legislature. Any condition requiring fish passage in an existing hydraulic project approval issued for a tide gate in Skagit County is stayed unless it is consistent with the strategy and the strategy is approved by the Legislature. For the purpose of this act, bona fide stream means the Skagit River, the Samish River, Carpenter Creek, and Colony Creek.

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).