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**SUBSTITUTE HOUSE BILL 1418**

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**State of Washington**

**58th Legislature**

**2003 Regular Session**

**By** House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Quall, Schoesler, Blake, Sump, Morris, Grant, Hatfield, Sehlin, Bailey and Linville)

READ FIRST TIME 03/05/03.

1       AN ACT Relating to drainage infrastructure; amending RCW 77.55.060,  
2 77.55.100, 77.55.110, 77.55.280, 77.55.290, 77.55.300, and 77.55.310;  
3 adding new sections to chapter 77.55 RCW; creating a new section;  
4 providing expiration dates; and declaring an emergency.

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

6       NEW SECTION. **Sec. 1.** (1) The legislature finds that agriculture  
7 is a key industry for the state. The legislature also finds that  
8 agriculture is a way of life for many people whose families settled  
9 lands in the state and have actively farmed them for generations. The  
10 legislature further finds that agriculture is a cultural and historical  
11 component of many communities and represents the societal and economic  
12 foundation of many rural areas in Washington. In addition, the  
13 legislature finds that agricultural lands provide key wildlife habitat  
14 and open space for the enjoyment and economic benefit of the people of  
15 Washington.

16       (2) The legislature also finds that salmon recovery is a priority  
17 in Washington. The legislature recognizes that the listings of salmon  
18 and steelhead runs in Washington under the federal endangered species  
19 act (16 U.S.C. Sec. 1531 et seq.) may impose obligations on state and

1 local governments, as well as the citizens of Washington, to undertake  
2 recovery efforts to facilitate salmon recovery in the state. In  
3 addition to satisfying legal obligations, the legislature recognizes  
4 the importance of salmon recovery for sport, commercial, and tribal  
5 fishing industries, to respect the cultural importance of salmon to  
6 tribes and to the state, and for the economic vitality of many areas of  
7 the state. The legislature further recognizes that numerous efforts  
8 are under way across the state to promote fish habitat restoration and  
9 that millions of dollars of public funds have been dedicated to these  
10 efforts.

11 (3) The legislature further finds that agricultural lands and the  
12 agricultural industry can play an important role in salmon recovery.  
13 The legislature recognizes that all local governments are required by  
14 the growth management act, chapter 36.70A RCW, to designate  
15 agricultural lands of long-term commercial significance and that local  
16 governments planning under RCW 36.70A.040 are required to designate and  
17 protect these lands. The legislature also recognizes that agricultural  
18 lands, by being protected from development that will impair critical  
19 salmon habitat, are both an economic and an environmental resource for  
20 the state.

21 (4) The legislature declares that the productivity of agricultural  
22 lands cannot be sacrificed. The legislature finds that economic  
23 circumstances in the agricultural industry, encroaching development on  
24 agricultural lands and adjacent lands, and the restrictions imposed on  
25 farming in various land use and environmental regulations have resulted  
26 in significant losses of agricultural lands in this state. The  
27 legislature therefore declares that it is in the best interest of the  
28 state to establish policies that result in no net loss of the state's  
29 agricultural land base.

30 (5) The legislature finds that the hydraulic project approval  
31 provisions of this chapter have recently been implemented in ways that  
32 required restoration of salmon habitat by converting existing  
33 agricultural land. The legislature also finds that this has resulted  
34 in financial losses for agricultural producers and potential damage to  
35 previously productive agricultural land in Skagit county. The  
36 legislature further finds that failure to reconcile the goals of  
37 protecting agricultural lands of long-term commercial significance and

1 fish passage requirements may lead to future damage to and potentially  
2 loss of productive agricultural lands in Skagit and other Washington  
3 counties.

4 (6) The legislature finds that efforts to restore salmon habitat  
5 should look first to opportunities that exist on public lands. The  
6 legislature recognizes the importance of restoring salmon habitat as  
7 part of the state's overall strategy for recovering salmon. The  
8 legislature also finds that public lands play a key role in the state's  
9 salmon recovery efforts and that the use of public lands can assist the  
10 state in this effort without raising concerns about potential impacts  
11 on private property rights.

12 (7) The legislature therefore declares that the purposes of this  
13 act are to:

14 (a) Clarify the purpose of the fishway and hydraulic project  
15 approval requirements of chapter 77.55 RCW as applied to works and  
16 projects related to drainage infrastructure including tide gates, flood  
17 gates, and pump stations;

18 (b) Specify a statutory process for the department of fish and  
19 wildlife to follow when imposing conditions on drainage infrastructure  
20 for fishways and for hydraulic project approvals on designated  
21 agricultural lands;

22 (c) Create demonstration projects to assess the effectiveness of  
23 self-regulating tide gates in achieving fish passage and to test their  
24 impact, if any, on surrounding agricultural lands;

25 (d) Prioritize the use of public lands for fish habitat restoration  
26 projects; and

27 (e) Establish a task force to review issues regarding the  
28 implementation of fishway and hydraulic project approval requirements  
29 as they relate to designated agricultural lands, analyze the  
30 effectiveness of the demonstration projects for fish habitat  
31 restoration, and report any legislative recommendations to the  
32 legislature.

33 **Sec. 2.** RCW 77.55.060 and 1998 c 190 s 86 are each amended to read  
34 as follows:

35 (1) Subject to subsection (3) of this section, a dam or other  
36 obstruction across or in a stream shall be provided with a durable and  
37 efficient fishway approved by the director. Plans and specifications

1 shall be provided to the department prior to the director's approval.  
2 The fishway shall be maintained in an effective condition and  
3 continuously supplied with sufficient water to freely pass fish.

4 (2) If a person fails to construct and maintain a fishway or to  
5 remove the dam or obstruction in a manner satisfactory to the director,  
6 then within thirty days after written notice to comply has been served  
7 upon the owner, his or her agent, or the person in charge, the director  
8 may construct a fishway or remove the dam or obstruction. Expenses  
9 incurred by the department constitute the value of a lien upon the dam  
10 and upon the personal property of the person owning the dam. Notice of  
11 the lien shall be filed and recorded in the office of the county  
12 auditor of the county in which the dam or obstruction is situated. The  
13 lien may be foreclosed in an action brought in the name of the state.

14 If, within thirty days after notice to construct a fishway or  
15 remove a dam or obstruction, the owner, his or her agent, or the person  
16 in charge fails to do so, the dam or obstruction is a public nuisance  
17 and the director may take possession of the dam or obstruction and  
18 destroy it. No liability shall attach for the destruction.

19 (3) For the purposes of this section, "other obstruction" does not  
20 include tide gates or flood gates that were originally installed on or  
21 before the effective date of this section or the repair, replacement,  
22 or improvement of such tide gates or flood gates.

23 **Sec. 3.** RCW 77.55.100 and 2002 c 368 s 2 are each amended to read  
24 as follows:

25 (1) In the event that any person or government agency desires to  
26 construct any form of hydraulic project or perform other work that will  
27 use, divert, obstruct, or change the natural flow or bed of any of the  
28 salt or fresh waters of the state, such person or government agency  
29 shall, before commencing construction or work thereon and to ensure the  
30 proper protection of fish life, secure the approval of the department  
31 as to the adequacy of the means proposed for the protection of fish  
32 life. This approval shall not be unreasonably withheld or unreasonably  
33 conditioned.

34 (2)(a) The department shall grant or deny approval of a standard  
35 permit within forty-five calendar days of the receipt of a complete  
36 application and notice of compliance with any applicable requirements  
37 of the state environmental policy act, made in the manner prescribed in

1 this section. The permit must contain provisions allowing for minor  
2 modifications to the plans and specifications without requiring  
3 reissuance of the permit.

4 (b) The applicant may document receipt of application by filing in  
5 person or by registered mail. A complete application for approval  
6 shall contain general plans for the overall project, complete plans and  
7 specifications of the proposed construction or work within the mean  
8 higher high water line in salt water or within the ordinary high water  
9 line in fresh water, and complete plans and specifications for the  
10 proper protection of fish life.

11 (c) The forty-five day requirement shall be suspended if:

12 (i) After ten working days of receipt of the application, the  
13 applicant remains unavailable or unable to arrange for a timely field  
14 evaluation of the proposed project;

15 (ii) The site is physically inaccessible for inspection; or

16 (iii) The applicant requests delay. Immediately upon determination  
17 that the forty-five day period is suspended, the department shall  
18 notify the applicant in writing of the reasons for the delay.

19 (d) For purposes of this section, "standard permit" means a written  
20 permit issued by the department when the conditions under subsections  
21 (3) and (5)(b) of this section are not met.

22 (3)(a) The department may issue an expedited written permit in  
23 those instances where normal permit processing would result in  
24 significant hardship for the applicant or unacceptable damage to the  
25 environment. In cases of imminent danger, the department shall issue  
26 an expedited written permit, upon request, for work to repair existing  
27 structures, move obstructions, restore banks, protect property, or  
28 protect fish resources. Expedited permit requests require a complete  
29 written application as provided in subsection (2)(b) of this section  
30 and shall be issued within fifteen calendar days of the receipt of a  
31 complete written application. Approval of an expedited permit is valid  
32 for up to sixty days from the date of issuance.

33 (b) For the purposes of this subsection, "imminent danger" means a  
34 threat by weather, water flow, or other natural conditions that is  
35 likely to occur within sixty days of a request for a permit  
36 application.

37 (c) The department may not require the provisions of the state

1 environmental policy act, chapter 43.21C RCW, to be met as a condition  
2 of issuing a permit under this subsection.

3 (d) The department or the county legislative authority may  
4 determine if an imminent danger exists. The county legislative  
5 authority shall notify the department, in writing, if it determines  
6 that an imminent danger exists.

7 (4) Approval of a standard permit is valid for a period of up to  
8 five years from date of issuance. The permittee must demonstrate  
9 substantial progress on construction of that portion of the project  
10 relating to the approval within two years of the date of issuance. If  
11 the department denies approval, the department shall provide the  
12 applicant, in writing, a statement of the specific reasons why and how  
13 the proposed project would adversely affect fish life. Protection of  
14 fish life shall be the only ground upon which approval may be denied or  
15 conditioned. Chapter 34.05 RCW applies to any denial of project  
16 approval, conditional approval, or requirements for project  
17 modification upon which approval may be contingent.

18 (5)(a) In case of an emergency arising from weather or stream flow  
19 conditions or other natural conditions, the department, through its  
20 authorized representatives, shall issue immediately, upon request, oral  
21 approval for removing any obstructions, repairing existing structures,  
22 restoring stream banks, or to protect property threatened by the stream  
23 or a change in the stream flow without the necessity of obtaining a  
24 written approval prior to commencing work. Conditions of an oral  
25 approval to protect fish life shall be established by the department  
26 and reduced to writing within thirty days and complied with as provided  
27 for in this section. Oral approval shall be granted immediately, upon  
28 request, for a stream crossing during an emergency situation.

29 (b) For purposes of this section and RCW 77.55.110, "emergency"  
30 means an immediate threat to life, the public, property, or of  
31 environmental degradation.

32 (c) The department or the county legislative authority may declare  
33 and continue an emergency when one or more of the criteria under (b) of  
34 this subsection are met. The county legislative authority shall  
35 immediately notify the department if it declares an emergency under  
36 this subsection.

37 (6) The department shall, at the request of a county, develop five-  
38 year maintenance approval agreements, consistent with comprehensive

1 flood control management plans adopted under the authority of RCW  
2 86.12.200, or other watershed plan approved by a county legislative  
3 authority, to allow for work on public and private property for bank  
4 stabilization, bridge repair, removal of sand bars and debris, channel  
5 maintenance, and other flood damage repair and reduction activity under  
6 agreed-upon conditions and times without obtaining permits for specific  
7 projects.

8 (7) This section shall not apply to the construction of any form of  
9 hydraulic project or other work which diverts water for agricultural  
10 irrigation or stock watering purposes authorized under or recognized as  
11 being valid by the state's water codes, or when such hydraulic project  
12 or other work is associated with streambank stabilization to protect  
13 farm and agricultural land as defined in RCW 84.34.020. These  
14 irrigation or stock watering diversion and streambank stabilization  
15 projects shall be governed by RCW 77.55.110.

16 A landscape management plan approved by the department and the  
17 department of natural resources under RCW 76.09.350(2), shall serve as  
18 a hydraulic project approval for the life of the plan if fish are  
19 selected as one of the public resources for coverage under such a plan.

20 (8) For the purposes of this section and RCW 77.55.110, "bed" means  
21 the land below the ordinary high water lines of state waters. This  
22 definition does not include irrigation ditches, canals, storm water  
23 run-off devices, or other artificial watercourses except where they  
24 exist in a natural watercourse that has been altered by man.

25 (9) The phrase "to construct any form of hydraulic project or  
26 perform other work" does not include the act of driving across an  
27 established ford. Driving across streams or on wetted stream beds at  
28 areas other than established fords requires approval. Work within the  
29 ordinary high water line of state waters to construct or repair a ford  
30 or crossing requires approval.

31 (10) The department shall not require the installation of a self-  
32 regulating tide gate as a condition of hydraulic project approval for  
33 maintenance or replacement of agricultural drainage systems under this  
34 section unless the affected landowners and the associated special  
35 taxing districts under RCW 85.38.180 have agreed to the installation  
36 and all impacts have been fully compensated. Any condition requiring  
37 a self-regulating tide gate to achieve fish passage in an existing  
38 hydraulic project approval may not be enforced.

1       **Sec. 4.** RCW 77.55.110 and 2002 c 368 s 3 are each amended to read  
2 as follows:

3       (1) In the event that any person or government agency desires to  
4 construct any form of hydraulic project or other work that diverts  
5 water for agricultural irrigation or stock watering purposes, or when  
6 such hydraulic project or other work is associated with streambank  
7 stabilization to protect farm and agricultural land as defined in RCW  
8 84.34.020, and when such diversion or streambank stabilization will  
9 use, divert, obstruct, or change the natural flow or bed of any river  
10 or stream or will utilize any waters of the state or materials from the  
11 stream beds, the person or government agency shall, before commencing  
12 construction or work thereon and to ensure the proper protection of  
13 fish life, secure a written approval from the department as to the  
14 adequacy of the means proposed for the protection of fish life. This  
15 approval shall not be unreasonably withheld or unreasonably  
16 conditioned.

17       (2) The department shall grant or deny the approval within forty-  
18 five calendar days of the receipt of a complete application and notice  
19 of compliance with any applicable requirements of the state  
20 environmental policy act, made in the manner prescribed in this  
21 section. The permit must contain provisions allowing for minor  
22 modifications to the plans and specifications without requiring  
23 reissuance of the permit. The applicant may document receipt of  
24 application by filing in person or by registered mail.

25       (3) A complete application for an approval shall contain general  
26 plans for the overall project, complete plans and specifications of the  
27 proposed construction or work within ordinary high water line, and  
28 complete plans and specifications for the proper protection of fish  
29 life.

30       (4)(a) The forty-five day requirement shall be suspended if  
31 ~~((+1))~~:

32       (i) After ten working days of receipt of the application, the  
33 applicant remains unavailable or unable to arrange for a timely field  
34 evaluation of the proposed project; ~~((+2))~~

35       (ii) The site is physically inaccessible for inspection; or ~~((+3))~~

36       (iii) The applicant requests delay.

37       (b) Immediately upon determination that the forty-five day period



1 is suspended, the department shall notify the applicant in writing of  
2 the reasons for the delay.

3 (5) An approval shall remain in effect without need for periodic  
4 renewal for projects that divert water for agricultural irrigation or  
5 stock watering purposes and that involve seasonal construction or other  
6 work. Approval for streambank stabilization projects shall remain in  
7 effect without need for periodic renewal if the problem causing the  
8 need for the streambank stabilization occurs on an annual or more  
9 frequent basis. The permittee must notify the appropriate agency  
10 before commencing the construction or other work within the area  
11 covered by the approval.

12 (6) The permittee must demonstrate substantial progress on  
13 construction of that portion of the project relating to the approval  
14 within two years of the date of issuance.

15 (7) If the department denies approval, the department shall provide  
16 the applicant, in writing, a statement of the specific reasons why and  
17 how the proposed project would adversely affect fish life. Protection  
18 of fish life shall be the only ground upon which approval may be denied  
19 or conditioned. Issuance, denial, conditioning, or modification shall  
20 be appealable to the hydraulic appeals board established in RCW  
21 43.21B.005 within thirty days of the notice of decision. The burden  
22 shall be upon the department to show that the denial or conditioning of  
23 an approval is solely aimed at the protection of fish life.

24 (8) The department may, after consultation with the permittee,  
25 modify an approval due to changed conditions. The modifications shall  
26 become effective unless appealed to the hydraulic appeals board within  
27 thirty days from the notice of the proposed modification. The burden  
28 is on the department to show that changed conditions warrant the  
29 modification in order to protect fish life.

30 (9) A permittee may request modification of an approval due to  
31 changed conditions. The request shall be processed within forty-five  
32 calendar days of receipt of the written request. A decision by the  
33 department may be appealed to the hydraulic appeals board within thirty  
34 days of the notice of the decision. The burden is on the permittee to  
35 show that changed conditions warrant the requested modification and  
36 that such modification will not impair fish life.

37 (10) In case of an emergency arising from weather or stream flow  
38 conditions or other natural conditions, the department, through its

1 authorized representatives, shall issue immediately upon request oral  
2 approval for removing any obstructions, repairing existing structures,  
3 restoring stream banks, or to protect property threatened by the stream  
4 or a change in the stream flow without the necessity of obtaining a  
5 written approval prior to commencing work. Conditions of an oral  
6 approval shall be reduced to writing within thirty days and complied  
7 with as provided for in this section.

8 (11) For purposes of this chapter, "streambank stabilization" shall  
9 include but not be limited to log and debris removal, bank protection  
10 (including riprap, jetties, and groins), gravel removal and erosion  
11 control.

12 (12) The department shall not require the installation of a self-  
13 regulating tide gate as a condition of hydraulic project approval for  
14 maintenance or replacement of agricultural drainage systems under this  
15 section unless the affected landowners and the associated special  
16 taxing districts under RCW 85.38.180 have agreed to the installation  
17 and all impacts have been fully compensated. Any condition requiring  
18 a self-regulating tide gate to achieve fish passage in an existing  
19 hydraulic project approval may not be enforced.

20 NEW SECTION. Sec. 5. A new section is added to chapter 77.55 RCW  
21 to read as follows:

22 The department shall comply with the requirements of this section  
23 when imposing conditions on approvals issued according to RCW 77.55.100  
24 or 77.55.110 or during implementation of fish passage requirements  
25 according to RCW 77.55.060 for any project or work on or related to  
26 drainage infrastructure on lands designated as agricultural lands of  
27 long-term commercial significance according to chapter 36.70A RCW. The  
28 department shall:

29 (1) Employ a standard of no net loss of agricultural activity on  
30 lands designated as agricultural lands of long-term commercial  
31 significance according to chapter 36.70A RCW when interpreting the  
32 requirements of this section. When assessing the impacts of projects  
33 under this section, the department shall establish mechanisms, create  
34 conditions, and design strategies to effectuate this standard;

35 (2) Consider the quantity and quality of habitat necessary to  
36 ensure fish protection within the watershed of the work or project

1 being considered as identified in assessments and plans prepared  
2 pursuant to sections 10 through 12 of this act or chapter 77.85 RCW;

3 (3) Prepare an environmental assessment of the benefits of the  
4 condition for fish protection and of the impacts to drainage  
5 infrastructure on designated agricultural lands and on public or  
6 private drainage or other infrastructure;

7 (4) Prepare an economic assessment of the costs of any impacts to  
8 drainage infrastructure on designated agricultural lands identified in  
9 subsection (2) of this section, including loss of agricultural crops or  
10 soil productivity, financial loss associated with crop failure, loss in  
11 market value or other financial impacts to the land, and an economic  
12 assessment of any impacts to or loss of public or private drainage or  
13 other infrastructure;

14 (5) Identify a source or source of funding of any financial impacts  
15 to designated agricultural lands determined according to subsection (4)  
16 of this section; and

17 (6) Determine the potential for a voluntary agreement made  
18 according to RCW 77.55.300 to provide adequate fish protection within  
19 the watershed or for habitat restoration programs or efforts within or  
20 outside of the watershed to address fish protection needs.

21 **Sec. 6.** RCW 77.55.280 and 2001 c 253 s 54 are each amended to read  
22 as follows:

23 (1) When a private landowner is applying for hydraulic project  
24 approval under this chapter and that landowner has entered into a  
25 habitat incentives agreement with the department and the department of  
26 natural resources as provided in RCW 77.55.300, the department shall  
27 comply with the terms of that agreement when evaluating the request for  
28 hydraulic project approval.

29 (2) Chapter . . . , Laws of 2003 (this act) does not limit the  
30 ability of the department or a private landowner to enter into a  
31 voluntary habitat incentives agreement under this section.

32 **Sec. 7.** RCW 77.55.290 and 2001 c 253 s 55 are each amended to read  
33 as follows:

34 (1) In order to receive the permit review and approval process  
35 created in this section, a fish habitat enhancement project must meet  
36 the criteria under (a) and (b) of this subsection:

1 (a) A fish habitat enhancement project must be a project to  
2 accomplish one or more of the following tasks:

3 (i) Elimination of human-made fish passage barriers, including  
4 culvert repair and replacement;

5 (ii) Restoration of an eroded or unstable stream bank employing the  
6 principle of bioengineering, including limited use of rock as a  
7 stabilization only at the toe of the bank, and with primary emphasis on  
8 using native vegetation to control the erosive forces of flowing water;  
9 or

10 (iii) Placement of woody debris or other instream structures that  
11 benefit naturally reproducing fish stocks.

12 The department shall develop size or scale threshold tests to  
13 determine if projects accomplishing any of these tasks should be  
14 evaluated under the process created in this section or under other  
15 project review and approval processes. A project proposal shall not be  
16 reviewed under the process created in this section if the department  
17 determines that the scale of the project raises concerns regarding  
18 public health and safety; and

19 (b) A fish habitat enhancement project must be approved in one of  
20 the following ways:

21 (i) By the department pursuant to chapter 77.95 or 77.100 RCW;

22 (ii) By the sponsor of a watershed restoration plan as provided in  
23 chapter 89.08 RCW;

24 (iii) By the department as a department-sponsored fish habitat  
25 enhancement or restoration project;

26 (iv) Through the review and approval process for the jobs for the  
27 environment program;

28 (v) Through the review and approval process for conservation  
29 district-sponsored projects, where the project complies with design  
30 standards established by the conservation commission through  
31 interagency agreement with the United States fish and wildlife service  
32 and the natural resource conservation service;

33 (vi) Through a formal grant program established by the legislature  
34 or the department for fish habitat enhancement or restoration; and

35 (vii) Through other formal review and approval processes  
36 established by the legislature.

37 (2) Fish habitat enhancement projects meeting the criteria of  
38 subsection (1) of this section are expected to result in beneficial

1 impacts to the environment. Decisions pertaining to fish habitat  
2 enhancement projects meeting the criteria of subsection (1) of this  
3 section and being reviewed and approved according to the provisions of  
4 this section are not subject to the requirements of RCW  
5 43.21C.030(2)(c).

6 (3) Hydraulic project approval is required for projects that meet  
7 the criteria of subsection (1) of this section and are being reviewed  
8 and approved under this section. An applicant shall use a joint  
9 aquatic resource permit application form (~~((developed by the department  
10 of ecology permit assistance center))~~) to apply for approval under this  
11 chapter. On the same day, the applicant shall provide copies of the  
12 completed application form to the department and to each appropriate  
13 local government. Local governments shall accept the application as  
14 notice of the proposed project. The department shall provide a  
15 fifteen-day comment period during which it will receive comments  
16 regarding environmental impacts. In no more than forty-five days, the  
17 department shall either issue hydraulic project approval, with or  
18 without conditions, deny approval, or make a determination that the  
19 review and approval process created by this section is not appropriate  
20 for the proposed project. The department shall base this determination  
21 on identification during the comment period of adverse impacts that  
22 cannot be mitigated by hydraulic project approval. If the department  
23 determines that the review and approval process created by this section  
24 is not appropriate for the proposed project, the department shall  
25 notify the applicant and the appropriate local governments of its  
26 determination. The applicant may reapply for approval of the project  
27 under other review and approval processes.

28 Any person aggrieved by the approval, denial, conditioning, or  
29 modification of hydraulic project approval under this section may  
30 formally appeal the decision to the hydraulic appeals board pursuant to  
31 the provisions of this chapter.

32 (4) No local government may require permits or charge fees for fish  
33 habitat enhancement projects that meet the criteria of subsection (1)  
34 of this section and that are reviewed and approved according to the  
35 provisions of this section.

36 **Sec. 8.** RCW 77.55.300 and 2000 c 107 s 229 are each amended to  
37 read as follows:

1           (1) (~~Beginning in January 1998,~~) The department of fish and  
2 wildlife and the department of natural resources shall implement a  
3 habitat incentives program based on the recommendations of federally  
4 recognized Indian tribes, landowners, the regional fisheries  
5 enhancement groups, the timber, fish, and wildlife cooperators, and  
6 other interested parties. The program shall allow a private landowner  
7 to enter into an agreement with the departments to enhance habitat on  
8 the landowner's property for food fish, game fish, or other wildlife  
9 species. In exchange, the landowner shall receive state regulatory  
10 certainty with regard to future applications for hydraulic project  
11 approval or a forest practices permit on the property covered by the  
12 agreement. The overall goal of the program is to provide a mechanism  
13 that facilitates habitat development on private property while avoiding  
14 an adverse state regulatory impact to the landowner at some future  
15 date. A single agreement between the departments and a landowner may  
16 encompass up to one thousand acres. A landowner may enter into  
17 multiple agreements with the departments, provided that the total  
18 acreage covered by such agreements with a single landowner does not  
19 exceed ten thousand acres. The departments are not obligated to enter  
20 into an agreement unless the departments find that the agreement is in  
21 the best interest of protecting fish or wildlife species or their  
22 habitat.

23           (2) A habitat incentives agreement shall be in writing and shall  
24 contain at least the following: A description of the property covered  
25 by the agreement, an expiration date, a description of the condition of  
26 the property prior to the implementation of the agreement, and other  
27 information needed by the landowner and the departments for future  
28 reference and decisions.

29           (3) As part of the agreement, the department of fish and wildlife  
30 may stipulate the factors that will be considered when the department  
31 evaluates a landowner's application for hydraulic project approval  
32 under RCW 77.55.100 or 77.55.110 on property covered by the agreement.  
33 The department's identification of these evaluation factors shall be in  
34 concurrence with the department of natural resources and affected  
35 federally recognized Indian tribes. In general, future decisions  
36 related to the issuance, conditioning, or denial of hydraulic project  
37 approval shall be based on the conditions present on the landowner's

1 property at the time of the agreement, unless all parties agree  
2 otherwise.

3 (4) As part of the agreement, the department of natural resources  
4 may stipulate the factors that will be considered when the department  
5 evaluates a landowner's application for a forest practices permit under  
6 chapter 76.09 RCW on property covered by the agreement. The  
7 department's identification of these evaluation factors shall be in  
8 concurrence with the department of fish and wildlife and affected  
9 federally recognized Indian tribes. In general, future decisions  
10 related to the issuance, conditioning, or denial of forest practices  
11 permits shall be based on the conditions present on the landowner's  
12 property at the time of the agreement, unless all parties agree  
13 otherwise.

14 (5) The agreement is binding on and may be used by only the  
15 landowner who entered into the agreement with the department. The  
16 agreement shall not be appurtenant with the land. However, if a new  
17 landowner chooses to maintain the habitat enhancement efforts on the  
18 property, the new landowner and the departments may jointly choose to  
19 retain the agreement on the property.

20 (6) If the departments receive multiple requests for agreements  
21 with private landowners under the habitat incentives program, the  
22 departments shall prioritize these requests and shall enter into as  
23 many agreements as possible within available budgetary resources.

24 (7) This section does not abrogate the department's obligation to  
25 prioritize the use of public lands for fish habitat restoration  
26 projects.

27 (8) This section does not authorize the department to impose  
28 conditions requiring fish habitat restoration either on or affecting  
29 lands designated as agricultural lands of long-term commercial  
30 significance according to chapter 36.70A RCW in any approvals issued  
31 according to RCW 77.55.100 or 77.55.110 or during implementation of  
32 fish passage requirements according to RCW 77.55.060 in the absence of  
33 a voluntary agreement entered into according to this section.

34 **Sec. 9.** RCW 77.55.310 and 2001 c 253 s 21 are each amended to read  
35 as follows:

36 (1) The director may authorize removal, relocation, reconstruction,  
37 or other modification of an inadequate fishway or fish protective

1 device required by RCW 77.55.320 which device was in existence on  
2 September 1, 1963, without cost to the owner for materials and labor.  
3 The modification may not materially alter the amount of water flowing  
4 through the fishway or fish protective device. Following modification,  
5 the fishway or fish protective device shall be maintained at the  
6 expense of the person or governmental agency owning the obstruction or  
7 water diversion device.

8 (2) This section does not authorize the director to implement or  
9 impose fish habitat restoration conditions either on or affecting lands  
10 designated as agricultural lands of long-term commercial significance  
11 according to chapter 36.70A RCW except as authorized under RCW  
12 77.55.300.

13 NEW SECTION. Sec. 10. A new section is added to chapter 77.55 RCW  
14 to read as follows:

15 Upon written request of the affected owners of land designated as  
16 agricultural lands of long-term commercial significance according to  
17 chapter 36.70A RCW or the associated special taxing districts under RCW  
18 85.38.180, the department shall provide for the removal of any self-  
19 regulating tide gate installed because of a condition imposed by the  
20 department in an approval issued according to RCW 77.55.100 or  
21 77.55.110 or during implementation of fish passage requirements  
22 according to RCW 77.55.060. The department shall make the tide gate  
23 removal a priority and complete the removal within ninety days of  
24 receipt of the owner's written request. The department shall pay for  
25 any tide gate removal required by this section within existing  
26 resources.

27 NEW SECTION. Sec. 11. A new section is added to chapter 77.55 RCW  
28 to read as follows:

29 (1) A task force is created that shall be composed of the following  
30 thirteen members and any members identified in subsection (2) of this  
31 section who elect to participate:

32 (a) Two members of the house of representatives, one from each  
33 major caucus, appointed by the speaker of the house of representatives;

34 (b) Two members of the senate, one from each major caucus,  
35 appointed by the president of the senate;



1 (c) One representative of the fish and wildlife commission,  
2 appointed by the chair of the commission;

3 (d) Two representatives of the agricultural industry familiar with  
4 agricultural issues in Skagit county, appointed by the governor from  
5 nominees submitted by organizations representing the industry;

6 (e) Two representatives of environmental interest organizations  
7 with familiarity and expertise in agricultural activities and issues  
8 related to approvals issued under this chapter, appointed by the  
9 governor from nominees submitted by an organization or organizations  
10 representing environmental interests. One of those representatives  
11 must represent a Skagit county organization;

12 (f) One representative of a diking and drainage district, appointed  
13 by the governor from nominees submitted by individual districts and/or  
14 an association of diking and drainage districts;

15 (g) One representative of the lead entity for salmon recovery in  
16 Skagit county, appointed by the lead entity;

17 (h) One representative of Skagit county, appointed by its  
18 legislative authority; and

19 (i) One representative from the office of the governor.

20 (2) Representatives of the United States environmental protection  
21 agency, the United States natural resources conservation service, and  
22 tribes with interests in Skagit county shall be invited and encouraged  
23 to participate as members of the task force.

24 (3) The task force shall convene as soon as possible upon  
25 appointment of its members. The task force shall elect a chair and  
26 adopt rules for conducting the business of the task force. Staff  
27 support for the task force shall be provided by the Washington state  
28 conservation commission.

29 (4) The task force shall:

30 (a) Review and analyze the issues identified in section 1 of this  
31 act and the purposes specified in section 1(6) of this act to determine  
32 the effectiveness of chapter . . . , Laws of 2003 (this act) in  
33 addressing those issues and achieving those purposes;

34 (b) Define the scope, nature, and extent of the assessments listed  
35 in section 12 of this act, review the assessments listed in section 13  
36 of this act, develop a methodology to distinguish between facilities  
37 that function as drainage infrastructure and those that are passages

1 for fish, and recommend statutory and policy changes to provide fish  
2 and wildlife habitat while assuring no net loss of the farmland base;

3 (c) Identify appropriate demonstration projects and provide  
4 direction on project purpose, duration, monitoring, reporting, and  
5 funding; and

6 (d) Review and analyze the selection, monitoring, and results of  
7 any such demonstration projects.

8 (5) Legislative members of the task force shall be reimbursed for  
9 travel expenses as provided in RCW 44.04.120. Nonlegislative members  
10 of the task force shall be reimbursed for travel expenses as provided  
11 in RCW 43.03.050 and 43.03.060.

12 (6) Beginning in November 2003, the task force shall provide annual  
13 reports to the appropriate committees of the legislature with its  
14 findings and any legislative recommendations. The task force shall  
15 submit a final report and any legislative recommendations to the  
16 appropriate committees of the legislature by November 30, 2004.

17 (7) This section expires June 30, 2005.

18 NEW SECTION. **Sec. 12.** A new section is added to chapter 77.55 RCW  
19 to read as follows:

20 (1) The task force may contract with universities, private  
21 consultants, nonprofit groups, or other entities to assist it in  
22 developing a strategy incorporating the following elements:

23 (a) An inventory of existing tide gates located on streams in  
24 Skagit county. The inventory shall include location, age, type, and  
25 maintenance history of the tide gates and other factors as determined  
26 by the task force, the county, and districts;

27 (b) An assessment of the role of tide gates located on streams in  
28 Skagit county; the role of tidal fish habitat for various life stages  
29 of salmon; the quantity and characterization of tidal fish habitat  
30 currently accessible to fish; the quantity and characterization of the  
31 present tidal fish habitat created at the time the dikes and outlets  
32 were constructed; the quantity of potential tidal fish habitat on  
33 public lands and alternatives to enhance this habitat; the effects of  
34 salt water intrusion on agricultural land, including the effects of  
35 backfeeding of salt water through the underground drainage system; the  
36 role of tide gates in drainage systems, including relieving excess  
37 water from saturated soil and providing reservoir functions between

1 tides; the effect of saturated soils on production of crops; the  
2 characteristics of properly functioning tidal fish habitat; the  
3 description of agricultural lands designated by the county as having  
4 long-term commercial significance and the effect of that designation;  
5 and the economic impacts to existing land uses for various alternatives  
6 for tide gate alteration; and

7 (c) A long-term proposal for fish habitat enhancement to meet the  
8 two goals of salmon recovery and no net loss of agricultural lands.  
9 The proposal shall consider all other means to achieve salmon recovery  
10 without converting farmland. The proposal shall include methods to  
11 increase fish passage and enhance habitat on public lands, voluntary  
12 methods to increase fish passage on private lands, a priority list of  
13 fish passage projects, and recommendations for funding of high priority  
14 projects. The lead entity also may propose pilot projects that will be  
15 designed to test and measure the success of various proposed  
16 strategies.

17 (2) This section expires November 30, 2004.

18 NEW SECTION. **Sec. 13.** A new section is added to chapter 77.55 RCW  
19 to read as follows:

20 (1) In conjunction with other public landowners, the department  
21 shall create a salmon habitat restoration plan for all public lands in  
22 Skagit county. The plan shall include a list of public properties that  
23 must be restored for salmon, a description of how those properties can  
24 be altered to support salmon, a description of costs and sources of  
25 funds to restore the property, and a strategy and schedule for  
26 prioritizing the restoration of public lands for salmon habitat.

27 (2) The department shall make the Skagit public lands salmon  
28 habitat restoration plan a priority and complete it by November 30,  
29 2004.

30 NEW SECTION. **Sec. 14.** A new section is added to chapter 77.55 RCW  
31 to read as follows:

32 As used in this chapter, "tide gate" means a one-way check valve  
33 that prevents the backflow of tidal water.

34 NEW SECTION. **Sec. 15.** If any provision of this act or its

1 application to any person or circumstance is held invalid, the  
2 remainder of the act or the application of the provision to other  
3 persons or circumstances is not affected.

4 NEW SECTION. **Sec. 16.** This act is necessary for the immediate  
5 preservation of the public peace, health, or safety, or support of the  
6 state government and its existing public institutions, and takes effect  
7 immediately.

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