
ENGROSSED SUBSTITUTE SENATE BILL 5969

State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Agriculture (originally sponsored by Senators Haugen, Swecker and Rasmussen)

READ FIRST TIME 03/05/03.

1 AN ACT Relating to natural resource protection in Skagit county;
2 adding a new section to chapter 77.55 RCW; and creating new sections.

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

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

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

18 The legislature finds that instead of using fish habitat
19 restoration processes, the department of fish and wildlife has

1 attempted in Skagit county to use regulatory statutes that are limited
2 to the protection of fish habitat. However, these regulatory statutes
3 do not require the restoration or enhancement of habitat.

4 The legislature finds that historical interpretations by the agency
5 have changed without a corresponding change in the underlying statute.
6 Further, the term "protection" has been determined to be equivalent to
7 a no net loss standard in the administrative code pertaining to
8 hydraulic project approvals. Likewise, the legislature finds that the
9 protection requirement for agricultural land designated as having long-
10 term commercial significance has been interpreted by the state supreme
11 court in a similar fashion of no reduction and no net loss.

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

15 The legislature finds that a collaborative process to examine
16 reasonable and feasible alternatives to enhance tidal fish habitat
17 should be used to focus and expedite efforts where there is a gain in
18 tidal fish habitat without harming designated agricultural lands. The
19 legislature also finds that pilot projects may be needed to test
20 creative solutions to achieve the dual goals of enhancing tidal fish
21 habitat while protecting designated agricultural lands.

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

23 (1) To protect lands designated by the county as agricultural land
24 of long-term commercial significance from the effects of saltwater
25 intrusion and diminishment of drainage capability for drainage
26 infrastructure, including flood gates, pump stations, ditches, and tide
27 gates;

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

32 (3) To allow tide gates located on bona fide streams to proceed
33 through a fish habitat restoration planning process to find
34 opportunities to use fish habitat while avoiding harm to existing land
35 uses.

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

3 (1) From funds appropriated to the department of fish and wildlife
4 for salmon restoration activities, the fish and wildlife commission, in
5 coordination with the Skagit county legislative authority and diking
6 and drainage district commissioners, and local landowners, shall
7 establish the Skagit tidal fish habitat pilot project to jointly
8 develop a strategy and to propose projects to enhance tidal fish
9 habitat and address the management, operation, and maintenance of tide
10 gates on streams in Skagit county while assuring no net loss of
11 agricultural lands or their productivity. The strategy and proposed
12 projects must be submitted to the appropriate standing committees of
13 the legislature by December 1, 2004. The strategy must consider the
14 following elements:

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

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

1 (c) A long-term proposal for fish habitat enhancement to meet the
2 two goals of salmon recovery and no net loss of designated agricultural
3 lands. The fish and wildlife commission, the Skagit county legislative
4 authority, and diking and drainage district commissioners shall jointly
5 convene a work group of interested parties, including local landowners,
6 tribal councilmembers, local governments, federal fishery agencies,
7 diking and drainage districts, and representatives of the local lead
8 entity under RCW 77.85.050, to develop the strategy and proposed
9 projects, based on the inventory and assessment under (a) and (b) of
10 this subsection. Legislators shall be appointed to the work group,
11 with an equal number from each of the four major caucuses in the house
12 of representatives and the senate as determined by the speaker of the
13 house of representatives and the president of the senate. The proposal
14 shall include methods to increase fish passage and enhance tidal
15 habitat on public lands, voluntary methods to increase fish passage on
16 private lands, a priority list of fish passage projects on bona fide
17 streams, and recommendations for funding of high priority projects.

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

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

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

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

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

27 (3) The department of fish and wildlife may not require fish
28 passage under RCW 77.55.060 or as a condition of hydraulic project
29 approval for maintenance, improvement, or replacement of agricultural
30 drainage systems under this chapter unless the condition is consistent
31 with the strategy developed under this section and the strategy has
32 been approved by the legislature.

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

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

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