
SENATE BILL 5981

State of Washington

58th Legislature

2003 Regular Session

By Senators Haugen, Rasmussen and Swecker

Read first time 02/26/2003. Referred to Committee on Agriculture.

1 AN ACT Relating to construction projects in state waters; amending
2 RCW 77.55.060, 77.55.100, 77.55.110, 77.55.280, 77.55.290, 77.55.300,
3 and 77.55.310; adding new sections to chapter 77.55 RCW; creating new
4 sections; 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. Agricultural lands
13 provide key wildlife habitat and open space for the enjoyment and
14 economic benefit of the people of Washington.

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

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

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

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

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

1 lead to future damage to and potentially loss of productive
2 agricultural lands in Skagit and other Washington counties.

3 (6) The legislature therefore declares that the purposes of this
4 act are to:

5 (a) Affirm the power and duties of drainage district commissioners
6 as stated in RCW 85.06.080;

7 (b) Clarify the purpose of the fishway and hydraulic project
8 approval requirements of chapter 77.55 RCW as applied to works and
9 projects related to drainage infrastructure including tide gates, flood
10 gates, and pump stations;

11 (c) Prioritize the use of public land for fish habitat restoration
12 projects;

13 (d) Create demonstration projects to assess the effectiveness of
14 certain fish passage devices and to test their impact on public land;
15 and

16 (e) Establish a task force to review issues regarding the
17 implementation of fishway and hydraulic project approval requirements
18 as they relate to designated agricultural lands, analyze the
19 effectiveness of the demonstration projects for fish habitat
20 restoration, and report any legislative recommendations to the
21 legislature.

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

24 (1) Subject to subsection (3) of this section, a dam or other
25 obstruction across or in a stream shall be provided with a durable and
26 efficient fishway approved by the director. Plans and specifications
27 shall be provided to the department prior to the director's approval.
28 The fishway shall be maintained in an effective condition and
29 continuously supplied with sufficient water to freely pass fish.

30 (2) If a person fails to construct and maintain a fishway or to
31 remove the dam or obstruction in a manner satisfactory to the director,
32 then within thirty days after written notice to comply has been served
33 upon the owner, his or her agent, or the person in charge, the director
34 may construct a fishway or remove the dam or obstruction. Expenses
35 incurred by the department constitute the value of a lien upon the dam
36 and upon the personal property of the person owning the dam. Notice of

1 the lien shall be filed and recorded in the office of the county
2 auditor of the county in which the dam or obstruction is situated. The
3 lien may be foreclosed in an action brought in the name of the state.

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

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

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

15 In interpreting the requirements of this chapter, the department
16 shall adopt a standard of no net loss of agricultural activity on lands
17 designated as agricultural lands of long-term commercial significance
18 according to chapter 36.70A RCW. When assessing the impacts of
19 projects under this chapter on designated agricultural lands and when
20 considering the imposition of conditions on department permits or
21 approvals according to this chapter, the department shall establish
22 mechanisms, create conditions, and design strategies to effectuate this
23 standard.

24 **Sec. 4.** RCW 77.55.100 and 2002 c 368 s 2 are each amended to read
25 as follows:

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

35 (2)(a) The department shall grant or deny approval of a standard
36 permit within forty-five calendar days of the receipt of a complete

1 application and notice of compliance with any applicable requirements
2 of the state environmental policy act, made in the manner prescribed in
3 this section. The permit must contain provisions allowing for minor
4 modifications to the plans and specifications without requiring
5 reissuance of the permit.

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

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

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

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

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

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

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

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

1 (c) The department may not require the provisions of the state
2 environmental policy act, chapter 43.21C RCW, to be met as a condition
3 of issuing a permit under this subsection.

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

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

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

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

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

1 (6) The department shall, at the request of a county, develop five-
2 year maintenance approval agreements, consistent with comprehensive
3 flood control management plans adopted under the authority of RCW
4 86.12.200, or other watershed plan approved by a county legislative
5 authority, to allow for work on public and private property for bank
6 stabilization, bridge repair, removal of sand bars and debris, channel
7 maintenance, and other flood damage repair and reduction activity under
8 agreed-upon conditions and times without obtaining permits for specific
9 projects.

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

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

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

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

33 (10) The department may not require the installation of a self-
34 regulating tide gate as a condition of hydraulic project approval for
35 maintenance or replacement of agricultural drainage systems under this
36 section. Any condition requiring fish passage in an existing hydraulic
37 project approval is permanently stayed.

1 **Sec. 5.** 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 may 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. Any condition requiring fish passage in an existing hydraulic
16 project approval is permanently stayed.

17 NEW SECTION. Sec. 6. A new section is added to chapter 77.55 RCW
18 to read as follows:

19 The department shall comply with the requirements of this section
20 when imposing conditions on approvals issued according to RCW
21 77.55.060, 77.55.100, or 77.55.110 for any project or work on lands
22 designated as agricultural lands of long-term commercial significance
23 according to chapter 36.70A RCW. The department shall:

24 (1) Employ the standard of no net loss of agricultural activity on
25 designated agricultural lands in all analyses and decisions as required
26 under section 3 of this act;

27 (2) Consider the quantity and quality of habitat necessary to
28 ensure fish protection within the watershed of the work or project
29 being considered as identified in assessments and plans prepared
30 pursuant to sections 11 through 13 of this act;

31 (3) Prepare an environmental assessment of the benefits of the
32 condition for fish protection and of the impacts of the condition on
33 designated agricultural lands and on public or private drainage or
34 other infrastructure;

35 (4) Prepare an economic assessment of the costs of any impacts on
36 designated agricultural lands identified in subsection (2) of this
37 section, including loss of agricultural crops or soil productivity,

1 financial loss associated with crop failure, loss in market value or
2 other financial impacts to the land, and an economic assessment of any
3 impacts to or loss of public or private drainage or other
4 infrastructure;

5 (5) Identify a source or source of funding of any financial impacts
6 to designated agricultural lands determined according to subsection (4)
7 of this section;

8 (6) Work collaboratively with owners of designated agricultural
9 lands and the associated special taxing districts as defined in RCW
10 85.38.180 to identify opportunities for compensation and to provide
11 compensation to affected landowners for any financial impacts
12 determined according to subsection (4) of this section; and

13 (7) Determine the potential for a voluntary agreement made
14 according to RCW 77.55.300 to provide adequate fish protection within
15 the watershed or for habitat restoration programs or efforts within or
16 outside of the watershed to address fish protection needs.

17 **Sec. 7.** RCW 77.55.280 and 2001 c 253 s 54 are each amended to read
18 as follows:

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

25 (2) Nothing in this act limits the ability of the department or a
26 private landowner to enter into a voluntary habitat incentives
27 agreement under this section. Any such agreement is subject to the
28 requirements of RCW 85.38.180.

29 **Sec. 8.** RCW 77.55.290 and 2001 c 253 s 55 are each amended to read
30 as follows:

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

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

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

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

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

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

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

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

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

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

24 (iv) Through the review and approval process for the jobs for the
25 environment program;

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

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

33 (vii) Through other formal review and approval processes
34 established by the legislature.

35 (2) Fish habitat enhancement projects meeting the criteria of
36 subsection (1) of this section are expected to result in beneficial
37 impacts to the environment. Decisions pertaining to fish habitat
38 enhancement projects meeting the criteria of subsection (1) of this

1 section and being reviewed and approved according to the provisions of
2 this section are not subject to the requirements of RCW
3 43.21C.030(2)(c).

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

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

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

34 **Sec. 9.** RCW 77.55.300 and 2000 c 107 s 229 are each amended to
35 read as follows:

36 (1) (~~Beginning in January 1998,~~) The department of fish and
37 wildlife and the department of natural resources shall implement a

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

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

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

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

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

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

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

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

31 **Sec. 10.** RCW 77.55.310 and 2001 c 253 s 21 are each amended to
32 read as follows:

33 (1) The director may authorize removal, relocation, reconstruction,
34 or other modification of an inadequate fishway or fish protective
35 device required by RCW 77.55.320 which device was in existence on
36 September 1, 1963, without cost to the owner for materials and labor.
37 The modification may not materially alter the amount of water flowing

1 through the fishway or fish protective device. Following modification,
2 the fishway or fish protective device shall be maintained at the
3 expense of the person or governmental agency owning the obstruction or
4 water diversion device.

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

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

12 Upon written request of the owner of land designated as
13 agricultural lands of long-term commercial significance according to
14 chapter 36.70A RCW, the department shall provide for the removal of any
15 self-regulating tide gate installed because of a condition imposed by
16 the department in an approval issued according to RCW 77.55.060,
17 77.55.100, or 77.55.110 or hydraulic project approval for maintenance
18 or replacement of agricultural drainage systems under this section.
19 The department shall make the tide gate removal a priority and complete
20 the removal within ninety days of receipt of the owner's written
21 request. The department shall pay for any tide gate removal required
22 by this section within existing resources.

23 NEW SECTION. Sec. 12. (1) A task force is created that is
24 composed of the following thirteen members and any members identified
25 in subsection (2) of this section who elect to participate:

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

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

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

32 (d) Two representatives of the agricultural industry familiar with
33 agricultural issues in Skagit county, appointed by the governor from
34 nominees submitted by organizations representing the industry in the
35 state;

1 (e) Two representatives of environmental interest organizations
2 with familiarity and expertise in agricultural activities and issues
3 related to approvals issued under chapter 77.55 RCW, appointed by the
4 governor from nominees submitted by an organization or organizations
5 representing environmental interests. One of those representatives
6 must represent a Skagit county organization;

7 (f) One representative of a Skagit county diking and drainage
8 district, appointed by the governor from nominees submitted by either
9 individual districts, or an association of diking and drainage
10 districts, or both;

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

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

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

16 (2) Representatives of the United States environmental protection
17 agency, the United States natural resources conservation service, and
18 tribes with interests in Skagit county shall be invited and encouraged
19 to participate as nonvoting members of the task force.

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

25 (4) The task force shall:

26 (a) Review and analyze the issues identified in section 1 of this
27 act and the purposes specified in section 1(6) of this act to determine
28 the effectiveness of this act in addressing those issues and achieving
29 those purposes;

30 (b) Define the scope, nature, and extent of the assessments listed
31 in section 13 of this act, review the assessments listed in section 13
32 of this act, develop a methodology to distinguish between facilities
33 that function as drainage infrastructure and those that are passages
34 for fish, and recommend statutory and policy changes to provide fish
35 and wildlife habitat while ensuring that there is no net loss of
36 farmland;

37 (c) Identify appropriate demonstration projects and provide

1 direction on project purpose, duration, monitoring, reporting, and
2 funding; and

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

5 (5) Legislative members of the task force shall be reimbursed for
6 travel expenses as provided in RCW 44.04.120. Nonlegislative members
7 of the task force shall be reimbursed for travel expenses as provided
8 in RCW 43.03.050 and 43.03.060. The task force shall meet in Skagit
9 county.

10 (6) Beginning in December 2003, the task force shall provide annual
11 reports to the appropriate committees of the legislature with its
12 findings and any legislative recommendations. The task force shall
13 submit a final report and any legislative recommendations to the
14 appropriate committees of the legislature by December 31, 2005.

15 NEW SECTION. **Sec. 13.** The task force created in section 12 of
16 this act must rely on university or private consultants to prepare a
17 strategy that incorporates the following elements:

18 (1) An inventory of existing tide gates located in Skagit county.
19 The inventory shall include location, age, type, and maintenance
20 history of the tide gates and other factors as determined by Skagit
21 county and the affected districts;

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

1 and the economic impacts to existing land uses for various alternatives
2 for tide gate alteration; and

3 (3) A long-term proposal for fish habitat enhancement to meet the
4 two goals of salmon recovery and no net loss of agricultural lands.
5 The proposal shall include methods to increase fish passage and enhance
6 habitat on public lands, voluntary methods to increase fish passage on
7 private lands, a priority list of fish passage projects, and
8 recommendations for funding of high priority projects. The lead entity
9 also may propose pilot projects that will be designed to test and
10 measure the success of various proposed strategies.

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

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

15 NEW SECTION. **Sec. 15.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

19 NEW SECTION. **Sec. 16.** This act is necessary for the immediate
20 preservation of the public peace, health, or safety, or support of the
21 state government and its existing public institutions, and takes effect
22 immediately.

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