

SSB 5345 - H COMM AMD

By Committee on Agriculture & Natural Resources

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

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

13       (2) The legislature also finds that salmon recovery is a priority  
14 in Washington. The legislature recognizes that the listings of salmon  
15 and steelhead runs in Washington under the federal endangered species  
16 act (16 U.S.C. Sec. 1531 et seq.) may impose obligations on state and  
17 local governments, as well as the citizens of Washington, to undertake  
18 recovery efforts to facilitate salmon recovery in the state. In  
19 addition to satisfying legal obligations, the legislature recognizes  
20 the importance of salmon recovery for sport, commercial, and tribal  
21 fishing industries, to respect the cultural importance of salmon to  
22 tribes and to the state, and for the economic vitality of many areas of  
23 the state. The legislature further recognizes that numerous efforts  
24 are under way across the state to promote fish habitat restoration and  
25 that millions of dollars of public funds have been dedicated to these  
26 efforts.

27       (3) The legislature further finds that agricultural lands and the  
28 agricultural industry can play an important role in salmon recovery.  
29 The legislature recognizes that all local governments are required by  
30 the growth management act, chapter 36.70A RCW, to designate

1 agricultural lands of long-term commercial significance and that local  
2 governments planning under RCW 36.70A.040 are required to designate and  
3 protect these lands. The legislature also recognizes that agricultural  
4 lands, by being protected from development that will impair critical  
5 salmon habitat, are both an economic and an environmental resource for  
6 the state.

7 (4) The legislature declares that the productivity of agricultural  
8 lands cannot be sacrificed. The legislature finds that economic  
9 circumstances in the agricultural industry, encroaching development on  
10 agricultural lands and adjacent lands, and the restrictions imposed on  
11 farming in various land use and environmental regulations have resulted  
12 in significant losses of agricultural lands in this state. The  
13 legislature therefore declares that it is in the best interest of the  
14 state to establish policies that result in no net loss of the state's  
15 agricultural land base. The legislature also declares that it is in  
16 the best interest of the state to implement the hydraulics program and  
17 fish passage laws in ways that preserve the agricultural land base,  
18 including cooperative agreements between the department of fish and  
19 wildlife and affected landowners, and that achieve mutual landowner and  
20 fish habitat goals.

21 (5) The legislature finds that the hydraulic project approval  
22 provisions of this chapter have recently been implemented in ways that  
23 required restoration of salmon habitat by converting existing  
24 agricultural land. The legislature also finds that this has resulted  
25 in financial losses for agricultural producers and potential damage to  
26 previously productive agricultural land in Skagit county. The  
27 legislature further finds that failure to reconcile the goals of  
28 protecting agricultural lands of long-term commercial significance and  
29 fish passage requirements may lead to future damage to and potentially  
30 loss of productive agricultural lands in Skagit and other Washington  
31 counties.

32 (6) The legislature finds that efforts to restore salmon habitat  
33 should look first to opportunities that exist on public lands. The  
34 legislature recognizes the importance of restoring salmon habitat as  
35 part of the state's overall strategy for recovering salmon. The  
36 legislature also finds that public lands play a key role in the state's

1 salmon recovery efforts and that the use of public lands can assist the  
2 state in this effort without raising concerns about potential impacts  
3 on private property rights.

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

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

10 (b) Create demonstration projects on specified streams to assess  
11 the effectiveness of self-regulating tide gates in achieving fish  
12 passage and to test their impact, if any, on surrounding agricultural  
13 lands;

14 (c) Prioritize the use of public lands for fish habitat restoration  
15 projects; and

16 (d) 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 as  
11 part of an agricultural drainage system on or before the effective date  
12 of this section or the repair, replacement, or improvement of such tide  
13 gates or flood gates.

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

16 (1) In the event that any person or government agency desires to  
17 construct any form of hydraulic project or perform other work that will  
18 use, divert, obstruct, or change the natural flow or bed of any of the  
19 salt or fresh waters of the state, such person or government agency  
20 shall, before commencing construction or work thereon and to ensure the  
21 proper protection of fish life, secure the approval of the department  
22 as to the adequacy of the means proposed for the protection of fish  
23 life. This approval shall not be unreasonably withheld or unreasonably  
24 conditioned.

25 (2)(a) The department shall grant or deny approval of a standard  
26 permit within forty-five calendar days of the receipt of a complete  
27 application and notice of compliance with any applicable requirements  
28 of the state environmental policy act, made in the manner prescribed in  
29 this section. The permit must contain provisions allowing for minor  
30 modifications to the plans and specifications without requiring  
31 reissuance of the permit.

32 (b) The applicant may document receipt of application by filing in  
33 person or by registered mail. A complete application for approval  
34 shall contain general plans for the overall project, complete plans and  
35 specifications of the proposed construction or work within the mean

1 higher high water line in salt water or within the ordinary high water  
2 line in fresh water, and complete plans and specifications for the  
3 proper protection of fish life.

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

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

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

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

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

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

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

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

33 (d) The department or the county legislative authority may  
34 determine if an imminent danger exists. The county legislative  
35 authority shall notify the department, in writing, if it determines  
36 that an imminent danger exists.

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

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

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

26 (c) The department or the county legislative authority may declare  
27 and continue an emergency when one or more of the criteria under (b) of  
28 this subsection are met. The county legislative authority shall  
29 immediately notify the department if it declares an emergency under  
30 this subsection.

31 (6) The department shall, at the request of a county, develop five-  
32 year maintenance approval agreements, consistent with comprehensive  
33 flood control management plans adopted under the authority of RCW  
34 86.12.200, or other watershed plan approved by a county legislative  
35 authority, to allow for work on public and private property for bank  
36 stabilization, bridge repair, removal of sand bars and debris, channel

1 maintenance, and other flood damage repair and reduction activity under  
2 agreed-upon conditions and times without obtaining permits for specific  
3 projects.

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

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

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

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

27 (10) The department shall not require the installation of a self-  
28 regulating tide gate as a condition of hydraulic project approval for  
29 maintenance or replacement of agricultural drainage systems under this  
30 section unless the condition is consistent with a salmon recovery plan  
31 adopted according to chapter 77.85 RCW or a plan developed according to  
32 section 12 of this act, the affected landowners and the associated  
33 special taxing districts under RCW 85.38.180 have agreed to the  
34 installation, and all impacts have been fully compensated. Any  
35 condition requiring a self-regulating tide gate to achieve fish passage  
36 in an existing 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.

1        (b) Immediately upon determination that the forty-five day period  
2 is suspended, the department shall notify the applicant in writing of  
3 the reasons for the delay.

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

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

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

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

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

1       (10) In case of an emergency arising from weather or stream flow  
2 conditions or other natural conditions, the department, through its  
3 authorized representatives, shall issue immediately upon request oral  
4 approval for removing any obstructions, repairing existing structures,  
5 restoring stream banks, or to protect property threatened by the stream  
6 or a change in the stream flow without the necessity of obtaining a  
7 written approval prior to commencing work. Conditions of an oral  
8 approval shall be reduced to writing within thirty days and complied  
9 with as provided for in this section.

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

14       (12) The department shall not require the installation of a self-  
15 regulating tide gate as a condition of hydraulic project approval for  
16 maintenance or replacement of agricultural drainage systems under this  
17 section unless the condition is consistent with a salmon recovery plan  
18 adopted according to chapter 77.85 RCW or a plan developed according to  
19 section 12 of this act, the affected landowners and the associated  
20 special taxing districts under RCW 85.38.180 have agreed to the  
21 installation, and all impacts have been fully compensated. Any  
22 condition requiring a self-regulating tide gate to achieve fish passage  
23 in an existing hydraulic project approval may not be enforced.

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

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

33       (1) Employ a standard of no net loss of agricultural activity on  
34 lands designated as agricultural lands of long-term commercial  
35 significance according to chapter 36.70A RCW when interpreting the

1 requirements of this section. When assessing the impacts of projects  
2 under this section, the department shall establish mechanisms, create  
3 conditions, and design strategies to effectuate this standard;

4 (2) Consider the quantity and quality of habitat necessary to  
5 ensure fish protection within the watershed of the work or project  
6 being considered as identified in assessments and plans prepared  
7 pursuant to sections 10 through 12 of this act or chapter 77.85 RCW;

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

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

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

22 (6) Determine the potential for a voluntary agreement made  
23 according to RCW 77.55.300 to provide adequate fish protection within  
24 the watershed or for habitat restoration programs or efforts within or  
25 outside of the watershed to address fish protection needs.

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

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

34 (2) Chapter . . . , Laws of 2003 (this act) does not limit the  
35 ability of the department and a private landowner or, if applicable, an

1 associated special taxing district under RCW 85.38.180, to enter into  
2 a voluntary habitat incentives agreement under this section.

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

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

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

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

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

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

19 The department shall develop size or scale threshold tests to  
20 determine if projects accomplishing any of these tasks should be  
21 evaluated under the process created in this section or under other  
22 project review and approval processes. A project proposal shall not be  
23 reviewed under the process created in this section if the department  
24 determines that the scale of the project raises concerns regarding  
25 public health and safety; and

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

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

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

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

33 (iv) Through the review and approval process for the jobs for the  
34 environment program;

35 (v) Through the review and approval process for conservation  
36 district-sponsored projects, where the project complies with design

1 standards established by the conservation commission through  
2 interagency agreement with the United States fish and wildlife service  
3 and the natural resource conservation service;

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

6 (vii) Through other formal review and approval processes  
7 established by the legislature.

8 (2) Fish habitat enhancement projects meeting the criteria of  
9 subsection (1) of this section are expected to result in beneficial  
10 impacts to the environment. Decisions pertaining to fish habitat  
11 enhancement projects meeting the criteria of subsection (1) of this  
12 section and being reviewed and approved according to the provisions of  
13 this section are not subject to the requirements of RCW  
14 43.21C.030(2)(c).

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

1 Any person aggrieved by the approval, denial, conditioning, or  
2 modification of hydraulic project approval under this section may  
3 formally appeal the decision to the hydraulic appeals board pursuant to  
4 the provisions of this chapter.

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

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

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

33 (2) A habitat incentives agreement shall be in writing and shall  
34 contain at least the following: A description of the property covered  
35 by the agreement, an expiration date, a description of the condition of

1 the property prior to the implementation of the agreement, and other  
2 information needed by the landowner and the departments for future  
3 reference and decisions.

4 (3) As part of the agreement, the department of fish and wildlife  
5 may stipulate the factors that will be considered when the department  
6 evaluates a landowner's application for hydraulic project approval  
7 under RCW 77.55.100 or 77.55.110 on property covered by the agreement.  
8 The department's identification of these evaluation factors shall be in  
9 concurrence with the department of natural resources and affected  
10 federally recognized Indian tribes. In general, future decisions  
11 related to the issuance, conditioning, or denial of hydraulic project  
12 approval shall be based on the conditions present on the landowner's  
13 property at the time of the agreement, unless all parties agree  
14 otherwise.

15 (4) As part of the agreement, the department of natural resources  
16 may stipulate the factors that will be considered when the department  
17 evaluates a landowner's application for a forest practices permit under  
18 chapter 76.09 RCW on property covered by the agreement. The  
19 department's identification of these evaluation factors shall be in  
20 concurrence with the department of fish and wildlife and affected  
21 federally recognized Indian tribes. In general, future decisions  
22 related to the issuance, conditioning, or denial of forest practices  
23 permits shall be based on the conditions present on the landowner's  
24 property at the time of the agreement, unless all parties agree  
25 otherwise.

26 (5) The agreement is binding on and may be used by only the  
27 landowner who entered into the agreement with the department. The  
28 agreement shall not be appurtenant with the land. However, if a new  
29 landowner chooses to maintain the habitat enhancement efforts on the  
30 property, the new landowner and the departments may jointly choose to  
31 retain the agreement on the property.

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

36 (7) This section does not abrogate the department's obligation to

1 prioritize the use of public lands for fish habitat restoration  
2 projects.

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

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

12 (1) The director may authorize removal, relocation, reconstruction,  
13 or other modification of an inadequate fishway or fish protective  
14 device required by RCW 77.55.320 which device was in existence on  
15 September 1, 1963, without cost to the owner for materials and labor.  
16 The modification may not materially alter the amount of water flowing  
17 through the fishway or fish protective device. Following modification,  
18 the fishway or fish protective device shall be maintained at the  
19 expense of the person or governmental agency owning the obstruction or  
20 water diversion device.

21 (2) This section does not authorize the director to implement or  
22 impose fish habitat restoration conditions either on or affecting lands  
23 designated as agricultural lands of long-term commercial significance  
24 according to chapter 36.70A RCW except as authorized under RCW  
25 77.55.300.

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

28 Upon written request of the affected owners of land designated as  
29 agricultural lands of long-term commercial significance according to  
30 chapter 36.70A RCW or the associated special taxing districts under RCW  
31 85.38.180, the department shall provide for the removal of the self-  
32 regulating function of any self-regulating tide gate installed because  
33 of a condition imposed by the department in an approval issued  
34 according to RCW 77.55.100 or 77.55.110 or during implementation of  
35 fish passage requirements according to RCW 77.55.060. The department

1 shall make the tide gate removal of the self-regulating function of any  
2 self-regulating tide gate a priority and complete the removal within  
3 thirty days of receipt of the request of the owner or the associated  
4 special taxing district under RCW 85.38.180. The department shall pay  
5 for any tide gate removal required by this section within existing  
6 resources.

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

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

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

14 (b) Two members of the senate, one from each major caucus,  
15 appointed by the senate majority leader;

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

18 (d) Two representatives of the agricultural industry familiar with  
19 agricultural issues in Skagit county, with one appointed by an  
20 organization active in Skagit county and one appointed by a statewide  
21 organization representing the industry;

22 (e) Two representatives of environmental interest organizations  
23 with familiarity and expertise in agricultural activities and issues  
24 related to approvals issued under this chapter, with one appointed by  
25 a Skagit county organization and the other appointed by a statewide  
26 organization representing environmental interests;

27 (f) One representative of a Skagit county diking and drainage  
28 district, appointed by the individual districts in Skagit county or by  
29 an association of diking and drainage districts;

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

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

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

35 (2) Representatives of the United States environmental protection

1 agency, the United States natural resources conservation service, and  
2 tribes with interests in Skagit county shall be invited and encouraged  
3 to participate as members of the task force.

4 (3) The task force shall convene as soon as possible upon  
5 appointment of its members. The task force shall elect a chair and  
6 adopt rules for conducting the business of the task force. Staff  
7 support for the task force shall be provided by the Washington state  
8 conservation commission.

9 (4) The task force shall:

10 (a) Review and analyze the issues identified in section 1 of this  
11 act and the purposes specified in section 1(7) of this act as they  
12 relate to Skagit county to determine the effectiveness of chapter  
13 . . . , Laws of 2003 (this act) in addressing those issues and achieving  
14 those purposes;

15 (b) Define the scope, nature, and extent of the assessments listed  
16 in section 12 of this act, review the assessments listed in section 13  
17 of this act, develop a methodology to distinguish between facilities in  
18 Skagit county that function as drainage infrastructure and those that  
19 are passages for fish, and recommend statutory and policy changes to  
20 provide fish and wildlife habitat to meet salmon recovery goals while  
21 assuring no net loss of the farmland base;

22 (c) Identify appropriate demonstration projects on the Skagit  
23 river, the Samish river, Carpenter creek, and Colony creek and provide  
24 direction on project purpose, duration, monitoring, reporting, and  
25 funding; and

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

28 (5) Legislative members of the task force shall be reimbursed for  
29 travel expenses as provided in RCW 44.04.120. Nonlegislative members  
30 of the task force shall be reimbursed for travel expenses as provided  
31 in RCW 43.03.050 and 43.03.060.

32 (6) The first meeting of the task force shall be held within thirty  
33 days of the effective date of this act. Beginning in November 2003,  
34 the task force shall provide annual reports to the appropriate  
35 committees of the legislature with its findings and any legislative  
36 recommendations. The task force shall submit a final report and any

1 legislative recommendations to the appropriate committees of the  
2 legislature by November 30, 2004.

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

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

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

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

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

30 (c) A long-term proposal for fish habitat enhancement to meet the  
31 two goals of salmon recovery and no net loss of agricultural lands.  
32 The proposal shall consider all other means to achieve salmon recovery  
33 without converting farmland. The proposal shall include methods to  
34 increase fish passage and enhance habitat on public lands, voluntary  
35 methods to increase fish passage on private lands, a priority list of  
36 fish passage projects, and recommendations for funding of high priority

1 projects. The task force also may propose pilot projects that will be  
2 designed to test and measure the success of various proposed  
3 strategies.

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

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

7 (1) In conjunction with other public landowners, the department  
8 shall create a salmon habitat restoration plan for all public lands in  
9 Skagit county. The plan shall include a list of public properties that  
10 must be restored for salmon, a description of how those properties can  
11 be altered to support salmon, a description of costs and sources of  
12 funds to restore the property, and a strategy and schedule for  
13 prioritizing the restoration of public lands for salmon habitat.

14 (2) The department shall make the Skagit public lands salmon  
15 habitat restoration plan a priority and complete it by November 30,  
16 2004.

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

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

21 NEW SECTION. **Sec. 15.** The legislature does not intend to  
22 appropriate additional funds for the implementation of this act and  
23 expects all affected state agencies to implement this act's provisions  
24 within existing appropriations.

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

29 NEW SECTION. **Sec. 17.** This act is necessary for the immediate  
30 preservation of the public peace, health, or safety, or support of the  
31 state government and its existing public institutions, and takes effect  
32 immediately."

1           On page 1, line 1 of the title, after "infrastructure;" strike the  
2 remainder of the title and insert "amending RCW 77.55.060, 77.55.100,  
3 77.55.110, 77.55.280, 77.55.290, 77.55.300, and 77.55.310; adding new  
4 sections to chapter 77.55 RCW; creating new sections; providing  
5 expiration dates; and declaring an emergency."

EFFECT: Replaces provisions regarding application of fish passage provisions under the hydraulics code with provisions: (1) Specifying the term "other obstruction" in fish passage provisions does not include tide gates or flood gates originally installed as part of an agricultural drainage system on or before the effective date of the legislation or to the repair, replacement, or improvement of these gates; (2) prohibiting the Department of Fish and Wildlife (DFW) from requiring the installation of a self-regulating tide gate (SRT) as a condition of hydraulic project approval (HPA) for maintenance or replacement of agricultural drainage systems unless: (a) The condition is consistent with a salmon recovery plan adopted according to salmon recovery statutes or provisions of this legislation; (b) affected land owners and the associated diking and drainage district agree to the installation; and (c) all impacts have been fully compensated; (3) prohibiting any condition requiring a SRT to achieve fish passage in an existing HPA from being enforced and requiring the DFW to pay for the removal of the self-regulating function of any SRT installed because of such a condition; (4) requiring the DFW to comply with a set of criteria when implementing fish passage requirements or when imposing HPA conditions for any projects or work on or related to drainage infrastructure on agricultural lands of long-term commercial significance designated according to the Growth Management Act (GMA); (5) creating a 13-member task force to perform specified duties, including review of enumerated issues as they relate to Skagit county, recommendation of statutory and policy changes, identification and review of appropriate demonstration projects on the certain Skagit county streams, and development of a strategy incorporating certain elements; (6) requiring the DFW to create, in conjunction with other public land owners, a salmon habitat restoration plan for all public lands in Skagit county; (7) specifying the existing voluntary habitat incentives agreement provisions do not abrogate the DFW's obligation to prioritize the use of public lands for fish habitat restoration projects and do not authorize the DFW to impose conditions requiring

fish habitat restoration on or affecting designated agricultural lands in any HPA or during implementation of fish passage requirements in the absence of a voluntary agreement; (8) specifying the DFW director's authority to authorize removal or changes to obstructions in streams does not authorize him or her to impose fish habitat restoration on or affecting designated agricultural lands except as authorized under a voluntary habitat incentives agreement; (9) defining "tide gate" as a one-way check valve that prevents the backflow of tidal water; (10) adding legislative findings regarding the agricultural industry in Washington, salmon recovery efforts in the state, and implementation of fish passage requirements; (11) adding a legislative declaration that it is in the state's best interest to implement the hydraulics program and fish passage laws in ways that preserve the agricultural land base and achieve mutual landowner and fish habitat goals; (12) adding legislative purposes; and (13) specifying legislative intent to not appropriate additional funds to any affected state agencies for implementing these provisions.

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