

E2SHB 1418 - S COMM AMD
By Committee on Agriculture

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

3 "Sec. 1. RCW 77.55.060 and 1998 c 190 s 86 are each amended to
4 read as follows:

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

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

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

26 (3) For the purposes of this section, "other obstruction" does not
27 include tide gates, flood gates, and associated man-made agricultural
28 drainage facilities that were originally installed as part of an
29 agricultural drainage system on or before the effective date of this

1 section or the repair, replacement, or improvement of such tide gates
2 or flood gates.

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

5 (1) In the event that any person or government agency desires to
6 construct any form of hydraulic project or perform other work that will
7 use, divert, obstruct, or change the natural flow or bed of any of the
8 salt or fresh waters of the state, such person or government agency
9 shall, before commencing construction or work thereon and to ensure the
10 proper protection of fish life, secure the approval of the department
11 as to the adequacy of the means proposed for the protection of fish
12 life. This approval shall not be unreasonably withheld or unreasonably
13 conditioned.

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

21 (b) The applicant may document receipt of application by filing in
22 person or by registered mail. A complete application for approval
23 shall contain general plans for the overall project, complete plans and
24 specifications of the proposed construction or work within the mean
25 higher high water line in salt water or within the ordinary high water
26 line in fresh water, and complete plans and specifications for the
27 proper protection of fish life.

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

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

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

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

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

4 (3)(a) The department may issue an expedited written permit in
5 those instances where normal permit processing would result in
6 significant hardship for the applicant or unacceptable damage to the
7 environment. In cases of imminent danger, the department shall issue
8 an expedited written permit, upon request, for work to repair existing
9 structures, move obstructions, restore banks, protect property, or
10 protect fish resources. Expedited permit requests require a complete
11 written application as provided in subsection (2)(b) of this section
12 and shall be issued within fifteen calendar days of the receipt of a
13 complete written application. Approval of an expedited permit is valid
14 for up to sixty days from the date of issuance.

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

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

22 (d) The department or the county legislative authority may
23 determine if an imminent danger exists. The county legislative
24 authority shall notify the department, in writing, if it determines
25 that an imminent danger exists.

26 (4) Approval of a standard permit is valid for a period of up to
27 five years from date of issuance. The permittee must demonstrate
28 substantial progress on construction of that portion of the project
29 relating to the approval within two years of the date of issuance. If
30 the department denies approval, the department shall provide the
31 applicant, in writing, a statement of the specific reasons why and how
32 the proposed project would adversely affect fish life. Protection of
33 fish life shall be the only ground upon which approval may be denied or
34 conditioned. Chapter 34.05 RCW applies to any denial of project
35 approval, conditional approval, or requirements for project
36 modification upon which approval may be contingent.

1 (5)(a) 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 to protect fish life shall be established by the department
9 and reduced to writing within thirty days and complied with as provided
10 for in this section. Oral approval shall be granted immediately, upon
11 request, for a stream crossing during an emergency situation.

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

15 (c) The department or the county legislative authority may declare
16 and continue an emergency when one or more of the criteria under (b) of
17 this subsection are met. The county legislative authority shall
18 immediately notify the department if it declares an emergency under
19 this subsection.

20 (6) The department shall, at the request of a county, develop five-
21 year maintenance approval agreements, consistent with comprehensive
22 flood control management plans adopted under the authority of RCW
23 86.12.200, or other watershed plan approved by a county legislative
24 authority, to allow for work on public and private property for bank
25 stabilization, bridge repair, removal of sand bars and debris, channel
26 maintenance, and other flood damage repair and reduction activity under
27 agreed-upon conditions and times without obtaining permits for specific
28 projects.

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

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

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

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

16 (10) The department shall not require a fishway on a tide gate,
17 flood gate, or other associated man-made agricultural drainage
18 facilities as a condition of a hydraulic project approval if such
19 fishway was not originally installed as part of an agricultural
20 drainage system existing on or before the effective date of this
21 section.

22 (11) Any condition requiring a self-regulating tide gate to achieve
23 fish passage in an existing hydraulic project approval under this
24 section may not be enforced.

25 NEW SECTION. Sec. 3. A new section is added to chapter 77.55 RCW
26 to read as follows:

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

1 regulating tide gate a priority. The department shall pay for any tide
2 gate removal required by this section within existing resources.

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.85 RCW
4 to read as follows:

5 (1) If a limiting factors analysis has been conducted under this
6 chapter for a specific geographic area and that analysis shows
7 insufficient intertidal salmon habitat, the department of fish and
8 wildlife and the county legislative authorities of the affected
9 counties may jointly initiate a salmon intertidal habitat restoration
10 planning process to develop a plan that addresses the intertidal
11 habitat goals contained in the limiting factors analysis. The fish and
12 wildlife commission and the county legislative authorities of the
13 geographic area shall jointly appoint a task force composed of the
14 following members:

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

17 (b) Two representatives of the agricultural industry familiar with
18 agricultural issues in the geographic area, one appointed by an
19 organization active in the geographic area and one appointed by a
20 statewide organization representing the industry;

21 (c) Two representatives of environmental interest organizations
22 with familiarity and expertise of salmon habitat, one appointed by an
23 organization in the geographic area and one appointed by a statewide
24 organization representing environmental interests;

25 (d) One representative of a diking and drainage district, appointed
26 by the individual districts in the geographic area or by an association
27 of diking and drainage districts;

28 (e) One representative of the lead entity for salmon recovery in
29 the geographic area, appointed by the lead entity;

30 (f) One representative of each county in the geographic area,
31 appointed by the respective county legislative authorities; and

32 (g) One representative from the office of the governor.

33 (2) Representatives of the United States environmental protection
34 agency, the United States natural resources conservation service,
35 federal fishery agencies, as appointed by their regional director, and

1 tribes with interests in the geographic area shall be invited and
2 encouraged to participate as members of the task force.

3 (3) The task force shall elect a chair and adopt rules for
4 conducting the business of the task force. Staff support for the task
5 force shall be provided by the Washington state conservation
6 commission.

7 (4) The task force shall:

8 (a) Review and analyze the limiting factors analysis for the
9 geographic area;

10 (b) Initiate and oversee intertidal salmon habitat studies for
11 enhancement of the intertidal area as provided in section 5 of this
12 act;

13 (c) Review and analyze the completed assessments listed in section
14 5 of this act;

15 (d) Develop and draft an overall plan that addresses identified
16 intertidal salmon habitat goals that has public support; and

17 (e) Identify appropriate demonstration projects and early
18 implementation projects that are of high priority and should commence
19 immediately within the geographic area.

20 (5) The task force may request briefings as needed on legal issues
21 that may need to be considered when developing or implementing various
22 plan options.

23 (6) Members of the task force shall be reimbursed by the
24 conservation commission for travel expenses as provided in RCW
25 43.03.050 and 43.03.060.

26 (7) The task force shall provide annual reports that provide an
27 update on its activities to the fish and wildlife commission, to the
28 involved county legislative authorities, and to the lead entity formed
29 under this chapter.

30 NEW SECTION. **Sec. 5.** A new section is added to chapter 77.85 RCW
31 to read as follows:

32 (1) In consultation with the task force, the conservation
33 commission may contract with universities, private consultants,
34 nonprofit groups, or other entities to assist it in developing a plan
35 incorporating the following elements:

1 (a) An inventory of existing tide gates located on streams in the
2 county. The inventory shall include location, age, type, and
3 maintenance history of the tide gates and other factors as determined
4 by the task force in consultation with the county and diking and
5 drainage districts;

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

23 (c) A long-term plan for intertidal salmon habitat enhancement to
24 meet the goals of salmon recovery and protection of agricultural lands.
25 The proposal shall consider all other means to achieve salmon recovery
26 without converting farmland. The proposal shall include methods to
27 increase fish passage and otherwise enhance intertidal habitat on
28 public lands pursuant to subsection (2) of this section, voluntary
29 methods to increase fish passage on private lands, a priority list of
30 intertidal salmon enhancement projects, and recommendations for funding
31 of high priority projects. The task force also may propose pilot
32 projects that will be designed to test and measure the success of
33 various proposed strategies.

34 (2) In conjunction with other public landowners and the task force,
35 the department shall develop an initial salmon intertidal habitat
36 enhancement plan for public lands in the county. The initial plan
37 shall include a list of public properties in the intertidal zone that

1 could be enhanced for salmon, a description of how those properties
2 could be altered to support salmon, a description of costs and sources
3 of funds to enhance the property, and a strategy and schedule for
4 prioritizing the enhancement of public lands for intertidal salmon
5 habitat. This initial plan shall be submitted to the task force at
6 least six months before the deadline established in subsection (3) of
7 this section.

8 (3) The final intertidal salmon enhancement plan shall be completed
9 within two years from the date the task force is formed and funding has
10 been secured. A final plan shall be submitted by the task force to the
11 lead entity for the geographic area established under this chapter.

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

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

16 NEW SECTION. **Sec. 7.** The process established in sections 4 and 5
17 of this act shall be initiated as soon as practicable in Skagit county.

18 NEW SECTION. **Sec. 8.** (1) The sum of one hundred fifty thousand
19 dollars, or as much thereof as may be necessary, is appropriated for
20 the fiscal year ending June 30, 2004, from the general fund to the
21 state conservation commission for the purposes of matching funds for
22 the development of the Skagit county intertidal salmon habitat
23 enhancement plan in accordance with sections 4 and 5 of this act.

24 (2) The sum of fifty thousand dollars, or as much thereof as may be
25 necessary, is appropriated for the fiscal year ending June 30, 2005,
26 from the general fund to the state conservation commission for the
27 purposes of matching funds for the development of the Skagit county
28 intertidal salmon habitat enhancement plan in accordance with sections
29 4 and 5 of this act.

30 NEW SECTION. **Sec. 9.** If any provision of this act or its
31 application to any person or circumstance is held invalid, the
32 remainder of the act or the application of the provision to other
33 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and takes effect
4 immediately."

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5 On page 1, line 1 of the title, after "infrastructure;" strike the
6 remainder of the title and insert "amending RCW 77.55.060 and
7 77.55.100; adding new sections to chapter 77.55 RCW; adding new
8 sections to chapter 77.85 RCW; creating a new section; making
9 appropriations; and declaring an emergency."

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