

FINAL BILL REPORT

E2SHB 1418

PARTIAL VETO

C 391 L 03

Synopsis as Enacted

Brief Description: Exempting drainage infrastructure from certain environmental requirements.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Quall, Schoesler, Blake, Sump, Morris, Grant, Hatfield, Sehlin, Bailey and Linville).

House Committee on Agriculture & Natural Resources

House Committee on Appropriations

Senate Committee on Agriculture

Senate Committee on Ways & Means

Background:

The Growth Management Act (GMA) requires counties and cities meeting certain population and growth criteria to plan under its major requirements. All counties and cities must satisfy certain GMA requirements, including identification and protection of critical areas and designation of natural resource lands of long-term commercial significance. "Natural resource lands" for purposes of the GMA includes agricultural, forest, and mineral resource lands.

The hydraulics code requires any obstruction across or in a stream to have a durable and effective fishway approved by the Director of the Department of Fish and Wildlife (DFW). A failure to provide, maintain, or operate such a fishway is a gross misdemeanor. After certain notice, the Director may remove an obstruction at the owner's expense or destroy it as a public nuisance.

If a person or agency wishes to construct any form of hydraulic project or perform other work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state, the person must secure a hydraulic project approval (HPA) from the DFW regarding the adequacy of the means proposed for the protection of fish life. The DFW may levy a civil penalty of up to \$100 per day for a violation of this requirement.

Two recent HPA decisions involved installation of self-regulating tide gates (SRTs). Skagit County Dike District No. 22 applied for a HPA to replace an existing four-foot pipe and tide gate on Dry Slough. The HPA issued by the DFW required the replacement culvert to be fitted with a SRT. The HPA conditions have been appealed to

the Hydraulic Appeals Board. The other decision involved Skagit County Public Works Department's request for a HPA to disable the regulating float system on a SRT installed on Edison Slough in 2000 and operate it as a standard tide gate for 24 months. The DFW denied the request, and the Skagit County Public Works Department requested an informal review of the denial.

Summary:

Department of Fish and Wildlife Requirements

Provisions addressing the Department of Fish and Wildlife's (DFW's) authority related to agricultural drainage systems are added to the hydraulics code. The term "other obstruction" as used in the fish passage requirements does not include tide gates, flood gates, and associated man-made agricultural drainage facilities that were originally installed as part of an agricultural drainage system on or before the effective date of the legislation. The term also does not apply to the repair, replacement, or improvement of these facilities. In addition, the DFW is prohibited from requiring a fishway on a tide gate, flood gate, or other associated man-made agricultural drainage facilities as a condition of hydraulic project approval (HPA) if the fishway was not originally installed as part of the drainage system before the effective date of these provisions. Further, any condition requiring a self-regulating tide gate (SRT) to achieve fish passage in an existing HPA may not be enforced.

Upon request of either an adversely affected owner of land designated as agricultural land of long-term commercial significance according to the Growth Management Act (GMA) or the associated diking and drainage district, the DFW must authorize the removal of the self-regulating function of any SRT installed because of a condition imposed by the DFW in a HPA or during implementation of fish passage requirements. The DFW must make the authorization a priority and pay for the removal within existing resources.

Salmon Intertidal Habitat Restoration Planning

The Fish and Wildlife Commission and county legislative authorities for a geographic area in which a limiting factors analysis demonstrates insufficient intertidal salmon habitat may jointly initiate a salmon intertidal habitat restoration planning process. The purpose of this process is to develop a plan addressing intertidal habitat goals in the limiting factors analysis. The Fish and Wildlife Commission and the geographic area's county legislative authorities must jointly appoint a task force with representatives of the Governor, Fish and Wildlife Commission, agricultural industry, environmental organizations, appropriate diking and drainage district, lead entity for salmon recovery, and each county in the geographic area. Representatives of the United States Environmental Protection Agency, Natural Resources Conservation Service, and fishery agencies and tribes with interests in the geographic area must be invited and encouraged to participate in any such task force. Provisions are included for operations and

governance of a task force and for annual reports to the Fish and Wildlife Commission, county legislative authorities, and the appropriate lead entity for salmon recovery. A planning process and task force must be initiated as soon as practicable in Skagit County.

A task force established pursuant to this authority must: (1) review and analyze the geographic area's limiting factors analysis; (2) initiate and oversee intertidal salmon habitat studies; (3) review and analyze completed assessments; (4) develop and draft an overall plan to address intertidal salmon habitat goals; and (5) identify appropriate demonstration projects and early implementation projects for the geographic area. The plan must incorporate certain elements, including:

- an inventory of existing tide gates, with specified information on these gates;
- an assessment of the role of tide gates and intertidal fish habitat addressing numerous issues; and
- a long-term plan for intertidal salmon enhancement to meet the goals of salmon recovery and agricultural lands protection.

The state Conservation Commission must staff any task force created according to these provisions and may contract with universities, private consultants, nonprofit groups, or other entities to assist with plan development. The final intertidal salmon enhancement plan must be completed within two years after task force formation and funding. An initial salmon intertidal habitat enhancement plan for public lands meeting certain requirements must be developed by the DFW in conjunction with public land owners and the task force. This initial public lands plan must be submitted to the task force at least six months before the deadline for the final plan.

Definition

For the purposes of the hydraulics code, "tide gate" is defined as a one-way check valve that prevents the backflow of tidal water.

Votes on Final Passage:

House 97 0
Senate 44 4 (Senate amended)
House 97 0 (House concurred)

Effective: May 20, 2003

Partial Veto Summary: The Governor vetoed the provision requiring the Department of Fish and Wildlife to authorize and pay for the removal of the self-regulating function of any SRT installed because of a condition imposed by the DFW in a HPA or during implementation of fish passage requirements upon request of either an adversely affected agricultural land owner or the associated diking and drainage district.

