
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1418

State of Washington

58th Legislature

2003 Regular Session

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

READ FIRST TIME 03/10/03.

1 AN ACT Relating to drainage infrastructure; amending RCW 77.55.060,
2 77.55.100, 77.55.110, 77.55.280, 77.55.290, 77.55.300, and 77.55.310;
3 adding new sections to chapter 77.55 RCW; creating new sections;
4 providing expiration dates; 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. In addition, the
13 legislature finds that agricultural lands provide key wildlife habitat
14 and open space for the enjoyment and economic benefit of the people of
15 Washington.

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

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

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

21 (4) The legislature declares that the productivity of agricultural
22 lands cannot be sacrificed. The legislature finds that economic
23 circumstances in the agricultural industry, encroaching development on
24 agricultural lands and adjacent lands, and the restrictions imposed on
25 farming in various land use and environmental regulations have resulted
26 in significant losses of agricultural lands in this state. The
27 legislature therefore declares that it is in the best interest of the
28 state to establish policies that result in no net loss of the state's
29 agricultural land base. The legislature also declares that it is in
30 the best interest of the state to implement the hydraulics program and
31 fish passage laws in ways that preserve the agricultural land base,
32 including cooperative agreements between the department of fish and
33 wildlife and affected landowners, and that achieve mutual landowner and
34 fish habitat goals.

35 (5) The legislature finds that the hydraulic project approval
36 provisions of this chapter have recently been implemented in ways that
37 required restoration of salmon habitat by converting existing
38 agricultural land. The legislature also finds that this has resulted

1 in financial losses for agricultural producers and potential damage to
2 previously productive agricultural land in Skagit county. The
3 legislature further finds that failure to reconcile the goals of
4 protecting agricultural lands of long-term commercial significance and
5 fish passage requirements may lead to future damage to and potentially
6 loss of productive agricultural lands in Skagit and other Washington
7 counties.

8 (6) The legislature finds that efforts to restore salmon habitat
9 should look first to opportunities that exist on public lands. The
10 legislature recognizes the importance of restoring salmon habitat as
11 part of the state's overall strategy for recovering salmon. The
12 legislature also finds that public lands play a key role in the state's
13 salmon recovery efforts and that the use of public lands can assist the
14 state in this effort without raising concerns about potential impacts
15 on private property rights.

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

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

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

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

28 (d) Establish a task force to review issues regarding the
29 implementation of fishway and hydraulic project approval requirements
30 as they relate to designated agricultural lands, analyze the
31 effectiveness of the demonstration projects for fish habitat
32 restoration, and report any legislative recommendations to the
33 legislature.

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

36 (1) Subject to subsection (3) of this section, a dam or other
37 obstruction across or in a stream shall be provided with a durable and

1 efficient fishway approved by the director. Plans and specifications
2 shall be provided to the department prior to the director's approval.
3 The fishway shall be maintained in an effective condition and
4 continuously supplied with sufficient water to freely pass fish.

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

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

20 (3) For the purposes of this section, "other obstruction" does not
21 include tide gates or flood gates that were originally installed as
22 part of an agricultural drainage system on or before the effective date
23 of this section or the repair, replacement, or improvement of such tide
24 gates or flood gates.

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

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

36 (2)(a) The department shall grant or deny approval of a standard
37 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 shall 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 unless the condition is consistent with a salmon recovery plan
37 adopted according to chapter 77.85 RCW or a plan developed according to
38 section 12 of this act, the affected landowners and the associated

1 special taxing districts under RCW 85.38.180 have agreed to the
2 installation, and all impacts have been fully compensated. Any
3 condition requiring a self-regulating tide gate to achieve fish passage
4 in an existing hydraulic project approval may not be enforced.

5 **Sec. 4.** RCW 77.55.110 and 2002 c 368 s 3 are each amended to read
6 as follows:

7 (1) In the event that any person or government agency desires to
8 construct any form of hydraulic project or other work that diverts
9 water for agricultural irrigation or stock watering purposes, or when
10 such hydraulic project or other work is associated with streambank
11 stabilization to protect farm and agricultural land as defined in RCW
12 84.34.020, and when such diversion or streambank stabilization will
13 use, divert, obstruct, or change the natural flow or bed of any river
14 or stream or will utilize any waters of the state or materials from the
15 stream beds, the person or government agency shall, before commencing
16 construction or work thereon and to ensure the proper protection of
17 fish life, secure a written approval from the department as to the
18 adequacy of the means proposed for the protection of fish life. This
19 approval shall not be unreasonably withheld or unreasonably
20 conditioned.

21 (2) The department shall grant or deny the approval within forty-
22 five calendar days of the receipt of a complete application and notice
23 of compliance with any applicable requirements of the state
24 environmental policy act, made in the manner prescribed in this
25 section. The permit must contain provisions allowing for minor
26 modifications to the plans and specifications without requiring
27 reissuance of the permit. The applicant may document receipt of
28 application by filing in person or by registered mail.

29 (3) A complete application for an approval shall contain general
30 plans for the overall project, complete plans and specifications of the
31 proposed construction or work within ordinary high water line, and
32 complete plans and specifications for the proper protection of fish
33 life.

34 (4)(a) The forty-five day requirement shall be suspended if
35 ~~((1))~~:

36 (i) After ten working days of receipt of the application, the

1 applicant remains unavailable or unable to arrange for a timely field
2 evaluation of the proposed project; (~~(+2)~~)

3 (ii) The site is physically inaccessible for inspection; or (~~(+3)~~)

4 (iii) The applicant requests delay.

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

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

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

20 (7) If the department denies approval, the department shall provide
21 the applicant, in writing, a statement of the specific reasons why and
22 how the proposed project would adversely affect fish life. Protection
23 of fish life shall be the only ground upon which approval may be denied
24 or conditioned. Issuance, denial, conditioning, or modification shall
25 be appealable to the hydraulic appeals board established in RCW
26 43.21B.005 within thirty days of the notice of decision. The burden
27 shall be upon the department to show that the denial or conditioning of
28 an approval is solely aimed at the protection of fish life.

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

35 (9) A permittee may request modification of an approval due to
36 changed conditions. The request shall be processed within forty-five
37 calendar days of receipt of the written request. A decision by the
38 department may be appealed to the hydraulic appeals board within thirty

1 days of the notice of the decision. The burden is on the permittee to
2 show that changed conditions warrant the requested modification and
3 that such modification will not impair fish life.

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

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

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

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

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

36 (1) Employ a standard of no net loss of agricultural activity on
37 lands designated as agricultural lands of long-term commercial

1 significance according to chapter 36.70A RCW when interpreting the
2 requirements of this section. When assessing the impacts of projects
3 under this section, the department shall establish mechanisms, create
4 conditions, and design strategies to effectuate this standard;

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

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

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

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

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

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

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

35 (2) Chapter . . . , Laws of 2003 (this act) does not limit the
36 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.

37 Any person aggrieved by the approval, denial, conditioning, or

1 modification of hydraulic project approval under this section may
2 formally appeal the decision to the hydraulic appeals board pursuant to
3 the provisions of this chapter.

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

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

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

32 (2) A habitat incentives agreement shall be in writing and shall
33 contain at least the following: A description of the property covered
34 by the agreement, an expiration date, a description of the condition of
35 the property prior to the implementation of the agreement, and other
36 information needed by the landowner and the departments for future
37 reference and decisions.

1 (3) As part of the agreement, the department of fish and wildlife
2 may stipulate the factors that will be considered when the department
3 evaluates a landowner's application for hydraulic project approval
4 under RCW 77.55.100 or 77.55.110 on property covered by the agreement.
5 The department's identification of these evaluation factors shall be in
6 concurrence with the department of natural resources and affected
7 federally recognized Indian tribes. In general, future decisions
8 related to the issuance, conditioning, or denial of hydraulic project
9 approval 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 (4) As part of the agreement, the department of natural resources
13 may stipulate the factors that will be considered when the department
14 evaluates a landowner's application for a forest practices permit under
15 chapter 76.09 RCW on property covered by the agreement. The
16 department's identification of these evaluation factors shall be in
17 concurrence with the department of fish and wildlife and affected
18 federally recognized Indian tribes. In general, future decisions
19 related to the issuance, conditioning, or denial of forest practices
20 permits shall be based on the conditions present on the landowner's
21 property at the time of the agreement, unless all parties agree
22 otherwise.

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

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

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

36 (8) This section does not authorize the department to impose
37 conditions requiring fish habitat restoration either on or affecting
38 lands designated as agricultural lands of long-term commercial

1 significance according to chapter 36.70A RCW in any approvals issued
2 according to RCW 77.55.100 or 77.55.110 or during implementation of
3 fish passage requirements according to RCW 77.55.060 in the absence of
4 a voluntary agreement entered into according to this section.

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

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

16 (2) This section does not authorize the director to implement or
17 impose fish habitat restoration conditions either on or affecting lands
18 designated as agricultural lands of long-term commercial significance
19 according to chapter 36.70A RCW except as authorized under RCW
20 77.55.300.

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

23 Upon written request of the affected owners of land designated as
24 agricultural lands of long-term commercial significance according to
25 chapter 36.70A RCW or the associated special taxing districts under RCW
26 85.38.180, the department shall provide for the removal of the self-
27 regulating function of any self-regulating tide gate installed because
28 of a condition imposed by the department in an approval issued
29 according to RCW 77.55.100 or 77.55.110 or during implementation of
30 fish passage requirements according to RCW 77.55.060. The department
31 shall make the tide gate removal of the self-regulating function of any
32 self-regulating tide gate a priority and complete the removal within
33 thirty days of receipt of the request of the owner or the associated
34 special taxing district under RCW 85.38.180. The department shall pay
35 for any tide gate removal required by this section within existing
36 resources.

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

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

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

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

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

12 (d) Two representatives of the agricultural industry familiar with
13 agricultural issues in Skagit county, with one appointed by an
14 organization active in Skagit county and one appointed by a statewide
15 organization representing the industry;

16 (e) Two representatives of environmental interest organizations
17 with familiarity and expertise in agricultural activities and issues
18 related to approvals issued under this chapter, with one appointed by
19 a Skagit county organization and the other appointed by a statewide
20 organization representing environmental interests;

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

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

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

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

29 (2) Representatives of the United States environmental protection
30 agency, the United States natural resources conservation service, and
31 tribes with interests in Skagit county shall be invited and encouraged
32 to participate as members of the task force.

33 (3) The task force shall convene as soon as possible upon
34 appointment of its members. The task force shall elect a chair and
35 adopt rules for conducting the business of the task force. Staff
36 support for the task force shall be provided by the Washington state
37 conservation commission.

38 (4) The task force shall:

1 (a) Review and analyze the issues identified in section 1 of this
2 act and the purposes specified in section 1(7) of this act as they
3 relate to Skagit county to determine the effectiveness of chapter
4 . . . , Laws of 2003 (this act) in addressing those issues and achieving
5 those purposes;

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

13 (c) Identify appropriate demonstration projects on the Skagit
14 river, the Samish river, Carpenter creek, and Colony creek and provide
15 direction on project purpose, duration, monitoring, reporting, and
16 funding; and

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

19 (5) Legislative members of the task force shall be reimbursed for
20 travel expenses as provided in RCW 44.04.120. Nonlegislative members
21 of the task force shall be reimbursed for travel expenses as provided
22 in RCW 43.03.050 and 43.03.060.

23 (6) The first meeting of the task force shall be held within thirty
24 days of the effective date of this act. Beginning in November 2003,
25 the task force shall provide annual reports to the appropriate
26 committees of the legislature with its findings and any legislative
27 recommendations. The task force shall submit a final report and any
28 legislative recommendations to the appropriate committees of the
29 legislature by November 30, 2004.

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

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

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

36 (a) An inventory of existing tide gates located on streams in

1 Skagit county. The inventory shall include location, age, type, and
2 maintenance history of the tide gates and other factors as determined
3 by the task force, the county, and districts;

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

21 (c) A long-term proposal for fish habitat enhancement to meet the
22 two goals of salmon recovery and no net loss of agricultural lands.
23 The proposal shall consider all other means to achieve salmon recovery
24 without converting farmland. The proposal shall include methods to
25 increase fish passage and enhance habitat on public lands, voluntary
26 methods to increase fish passage on private lands, a priority list of
27 fish passage projects, and recommendations for funding of high priority
28 projects. The task force also may propose pilot projects that will be
29 designed to test and measure the success of various proposed
30 strategies.

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

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

34 (1) In conjunction with other public landowners, the department
35 shall create a salmon habitat restoration plan for all public lands in
36 Skagit county. The plan shall include a list of public properties that
37 must be restored for salmon, a description of how those properties can

1 be altered to support salmon, a description of costs and sources of
2 funds to restore the property, and a strategy and schedule for
3 prioritizing the restoration of public lands for salmon habitat.

4 (2) The department shall make the Skagit public lands salmon
5 habitat restoration plan a priority and complete it by November 30,
6 2004.

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

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

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

15 NEW SECTION. **Sec. 16.** 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. 17.** 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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