
SENATE BILL 5346

State of Washington

58th Legislature

2003 Regular Session

By Senators Haugen, Swecker, Doumit, Morton, Rasmussen, Hargrove, Horn and Spanel

Read first time 01/22/2003. Referred to Committee on Agriculture.

1 AN ACT Relating to damage to property; adding a new section to
2 chapter 77.55 RCW; and declaring an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

6 (1) The department shall be responsible for any damage to public or
7 private property that results from a requirement the department imposed
8 as a condition on a hydraulic project approval issued under RCW
9 77.55.100 or other permit issued by the department, that changes the
10 operating characteristics of tide gates. A change in operating
11 characteristics includes but is not limited to: (a) Increasing the
12 elevation of the water surface behind the tide gate; (b) reducing the
13 reservoir capacity behind the tide gate; (c) decreasing the ability to
14 drain the area behind the tide gate; or (d) increasing the intrusion of
15 saltwater into the area above the tide gate.

16 (2) As used in this section, damage includes but is not limited to:
17 (a) Adversely affecting the operation of drain fields for septic
18 systems; (b) increasing the elevation of the water behind the tide gate
19 causing flooding, increased saturation of soil, or reduced drainage,

1 resulting in loss of production in the growing agricultural crops; (c)
2 increasing the intrusion of saltwater into areas above the tide gate
3 that increases the toxicity of soil and reduces soil productivity; or
4 (d) allowing an increase in the intrusion of saltwater adversely
5 affecting the use of ground or surface waters.

6 (3) Persons adversely affected by changes required by the
7 department to a tide gate shall notify in writing both the owner of the
8 tide gate and the department describing the damage that is occurring.
9 The department shall investigate all complaints received and respond
10 within thirty days of the receipt of the complaint. If the damage is
11 determined to be ongoing, the department shall either: (a) Immediately
12 require the return of the tide gate to its original operating
13 characteristics; or (b) enter into an agreement with all damaged
14 parties to compensate for the loss.

15 (4) If the department fails to take action within ninety days of
16 the submission of a written complaint, the person who claims to be
17 damaged as a result of requirements imposed by the department may file
18 a damage claim in the superior court in the county in which the
19 affected property is located and may petition the court for an order
20 nullifying the permit conditions that are causing the damage. The
21 superior court may require the department to compensate damaged parties
22 and to nullify permit conditions that are causing the damage. Any
23 payment for damages shall be from the current funds appropriated to the
24 division of the department that imposed the permit condition that
25 resulted in damage.

26 NEW SECTION. **Sec. 2.** This act is necessary for the immediate
27 preservation of the public peace, health, or safety, or support of the
28 state government and its existing public institutions, and takes effect
29 immediately.

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