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**SUBSTITUTE SENATE BILL 5969**

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**State of Washington**

**58th Legislature**

**2003 Regular Session**

**By** Senate Committee on Agriculture (originally sponsored by Senators Haugen, Swecker and Rasmussen)

READ FIRST TIME 03/05/03.

1       AN ACT Relating to natural resource protection in Skagit county;  
2       creating new sections; and providing an expiration date.

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

4       NEW SECTION.   **Sec. 1.** The legislature finds that counties have  
5       been given the authority to designate agricultural lands of long-term  
6       commercial significance and that such lands are protected as a matter  
7       of state law. The legislature finds that counties have also been given  
8       the authority to designate fish habitat and that these areas are to be  
9       protected as a matter of state law. In addition, the legislature finds  
10      that the department of fish and wildlife has been granted authority to  
11      protect fish habitat in streams.

12      The legislature finds that several fish habitat restoration  
13      processes have been established for the specific purpose of developing  
14      plans acceptable to the local communities to restore fish habitat and  
15      that several millions of dollars of public funds have been dedicated to  
16      projects supported by the local community, including many in Skagit  
17      county.

18      The legislature finds that instead of using fish habitat  
19      restoration processes, the department of fish and wildlife has

1 attempted in Skagit county to use regulatory statutes that are limited  
2 to the protection of fish habitat. However, these regulatory statutes  
3 do not require the restoration or enhancement of habitat.

4 The legislature finds that historical interpretations by the agency  
5 have changed without a corresponding change in the underlying statute.  
6 Further, the term "protection" has been determined to be equivalent to  
7 a no net loss standard by the administrative code pertaining to  
8 hydraulic project approvals. Likewise, the legislature finds that the  
9 protection requirement for agricultural land designated as having long-  
10 term commercial significance has been interpreted by the state supreme  
11 court in a similar fashion of no reduction and no net loss.

12 The legislature further finds that for over fifty years that  
13 fishway statutes have been in effect, they have not been applied to  
14 tide gates on drainage facilities.

15 NEW SECTION. **Sec. 2.** The purposes of this act are:

16 (1) To protect lands designated by the county as agricultural land  
17 of long-term commercial significance from the effects of saltwater  
18 intrusion and diminishment of drainage capability for drainage  
19 infrastructure, including flood gates, pump stations, ditches, and tide  
20 gates;

21 (2) To require examination of opportunities to enhance tidal fish  
22 habitat on hundreds of acres of publicly owned land while maintaining  
23 habitat for migratory birds; and

24 (3) To allow tide gates located on bona fide streams to proceed  
25 through a fish habitat restoration planning process to find  
26 opportunities to use fish habitat while avoiding harm to existing land  
27 uses.

28 NEW SECTION. **Sec. 3.** (1) From funds appropriated to the  
29 department of fish and wildlife for salmon restoration activities, the  
30 fish and wildlife commission and the department of fish and wildlife,  
31 in coordination with the Skagit county legislative authority and diking  
32 and drainage district commissioners, and local landowners, shall  
33 establish the Skagit delta fish passage pilot project to jointly  
34 develop a strategy to enhance tidal fish habitat and address the  
35 management, operation, and maintenance of tide gates on streams in  
36 Skagit county while assuring no net loss of agricultural lands or their

1 productivity. The strategy must be submitted to the appropriate  
2 standing committees of the legislature by December 1, 2004. The  
3 strategy must consider the following elements:

4 (a) An inventory of existing tide gates located on bona fide  
5 streams in Skagit county. The inventory must include location, age,  
6 type, and maintenance history of the tide gate, and other factors as  
7 determined by the commission, the county, diking and drainage  
8 districts, and local landowners;

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

27 (c) A long-term proposal for fish habitat enhancement to meet the  
28 two goals of salmon recovery and no net loss of agricultural lands.  
29 The fish and wildlife commission, the Skagit county legislative  
30 authority, and diking and drainage district commissioners shall jointly  
31 convene a work group of interested parties, including local landowners,  
32 tribal councilmembers, local governments, federal fishery agencies,  
33 diking and drainage districts, and representatives of the local lead  
34 entity under RCW 77.85.050, to develop the proposal, based on the  
35 inventory and assessment under (a) and (b) of this subsection.  
36 Legislators shall be appointed to the work group, with an equal number  
37 from each of the four major caucuses in the house of representatives  
38 and the senate as determined by the speaker of the house of

1 representatives and the president of the senate. The proposal shall  
2 include methods to increase fish passage and enhance habitat on public  
3 lands, voluntary methods to increase fish passage on private lands, a  
4 priority list of fish passage projects on bona fide streams, and  
5 recommendations for funding of high priority projects.

6 (2) The strategy shall proceed in four phases as follows:

7 (a) Examining opportunities and proposing projects for tidal fish  
8 habitat improvements on public land inside the dike;

9 (b) Examining opportunities and proposing projects for tidal fish  
10 habitat improvements on public land outside the dike;

11 (c) Examining opportunities and proposing projects for tidal fish  
12 habitat improvements on areas that have bona fide streams; and

13 (d) Examining voluntary opportunities for tidal fish habitat  
14 improvements where there are no bona fide streams.

15 (3) During the Skagit delta fish passage pilot project the  
16 department of fish and wildlife may not require fish passage as a  
17 condition of hydraulic project approval for maintenance, improvement,  
18 or replacement of agricultural drainage systems under chapter 77.55 RCW  
19 until July 1, 2005, after the strategy developed under this section has  
20 been submitted to the legislature.

21 (4) Any condition requiring fish passage in an existing hydraulic  
22 project approval issued for a tide gate in Skagit county under chapter  
23 77.55 RCW is stayed until July 1, 2005.

24 (5) For the purpose of this act, "stream" or "bona fide stream"  
25 means the Skagit river, the Samish river, Carpenter creek, and Colony  
26 creek.

27 (6) This section expires July 1, 2005.

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