
SENATE BILL 5969

State of Washington 58th Legislature 2003 Regular Session

By Senators Haugen, Swecker and Rasmussen

Read first time 02/26/2003. Referred to Committee on Agriculture.

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 ditches
19 and tide gates;

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

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

27 NEW SECTION. **Sec. 3.** (1) From funds appropriated to the
28 department of fish and wildlife for salmon restoration activities, the
29 fish and wildlife commission, in coordination with the Skagit county
30 legislative authority and diking district commissioners, shall jointly
31 develop a strategy to enhance tidal fish habitat and address the
32 management, operation, and maintenance of tide gates on streams in
33 Skagit county while assuring no net loss of agricultural lands or their
34 productivity. The strategy must be submitted to the appropriate
35 standing committees of the legislature by December 1, 2004. The
36 strategy must consider the following elements:

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

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

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

- 1 (2) The strategy shall proceed in four phases as follows:
- 2 (a) Examining opportunities and proposing projects for tidal fish
3 habitat improvements on public land inside the dike;
- 4 (b) Examining opportunities and proposing projects for tidal fish
5 habitat improvements on public land outside the dike;
- 6 (c) Examining opportunities and proposing projects for tidal fish
7 habitat improvements on areas that have bona fide streams; and
- 8 (d) Examining voluntary opportunities for tidal fish habitat
9 improvements where there are no bona fide streams.
- 10 (3) The department of fish and wildlife may not require fish
11 passage as a condition of hydraulic project approval for maintenance,
12 improvement, or replacement of agricultural drainage systems under
13 chapter 77.55 RCW until July 1, 2005, after the strategy developed
14 under this section has been submitted to the legislature.
- 15 (4) Any condition requiring fish passage in an existing hydraulic
16 project approval issued for a tide gate in Skagit county under chapter
17 77.55 RCW is stayed until July 1, 2005.
- 18 (5) For the purpose of this act, "stream" or "bona fide stream"
19 means the Skagit river, the Samish river, Carpenter creek, and Colony
20 creek.
- 21 (6) This section expires July 1, 2005.

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