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HOUSE BILL 2134

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State of Washington

61st Legislature

2009 Regular Session

By Representative McCoy

Read first time 02/11/09. Referred to Committee on Local Government & Housing.

1 AN ACT Relating to the consideration of impacts to plant species  
2 identified by the natural heritage program; amending RCW 79.70.030;  
3 adding a new section to chapter 35.21 RCW; adding a new section to  
4 chapter 35A.21 RCW; adding a new section to chapter 36.01 RCW; adding  
5 a new section to chapter 43.30 RCW; adding a new section to chapter  
6 77.12 RCW; and adding a new section to chapter 79A.05 RCW.

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

8 NEW SECTION. **Sec. 1.** A new section is added to chapter 35.21 RCW  
9 to read as follows:

10 (1) City and town permitting processes must consider impacts to  
11 heritage plants that may reside on a proposed project site.  
12 Consideration of impacts includes, but is not limited to, consulting  
13 with the natural heritage program and associated data banks of the  
14 department of natural resources to determine, or attempt to determine,  
15 whether a heritage plant is located on the proposed project site.

16 (2) Cities and towns may not issue permits for project proposals  
17 affecting or likely to affect heritage plants without prior development  
18 and implementation of an appropriate mitigation process for the  
19 affected or likely to be affected plants.

1 (3) The definitions in this subsection apply throughout this  
2 section unless the context clearly requires otherwise.

3 (a) "Heritage plant" means a plant species identified by the  
4 natural heritage program established under RCW 79.70.030; and

5 (b) "An appropriate mitigation process" means a process ensuring  
6 that:

7 (i) There is no net loss of an affected plant species; and

8 (ii) Plant transplanting, when transplanting is practicable,  
9 involves movements of minimal distances.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 35A.21 RCW  
11 to read as follows:

12 (1) Code city permitting processes must consider impacts to  
13 heritage plants that may reside on a proposed project site.  
14 Consideration of impacts includes, but is not limited to, consulting  
15 with the natural heritage program and associated data banks of the  
16 department of natural resources to determine, or attempt to determine,  
17 whether a heritage plant is located on the proposed project site.

18 (2) Code cities may not issue permits for project proposals  
19 affecting or likely to affect heritage plants without prior development  
20 and implementation of an appropriate mitigation process for the  
21 affected or likely to be affected plants.

22 (3) The definitions in this subsection apply throughout this  
23 section unless the context clearly requires otherwise.

24 (a) "Heritage plant" means a plant species identified by the  
25 natural heritage program established under RCW 79.70.030; and

26 (b) "An appropriate mitigation process" means a process ensuring  
27 that:

28 (i) There is no net loss of an affected plant species; and

29 (ii) Plant transplanting, when transplanting is practicable,  
30 involves movements of minimal distances.

31 NEW SECTION. **Sec. 3.** A new section is added to chapter 36.01 RCW  
32 to read as follows:

33 (1) County permitting processes must consider impacts to heritage  
34 plants that may reside on a proposed project site. Consideration of  
35 impacts includes, but is not limited to, consulting with the natural

1 heritage program and associated data banks of the department of natural  
2 resources to determine, or attempt to determine, whether a heritage  
3 plant is located on the proposed project site.

4 (2) Counties may not issue permits for project proposals affecting  
5 or likely to affect heritage plants without prior development and  
6 implementation of an appropriate mitigation process for the affected or  
7 likely to be affected plants.

8 (3) The definitions in this subsection apply throughout this  
9 section unless the context clearly requires otherwise.

10 (a) "Heritage plant" means a plant species identified by the  
11 natural heritage program established under RCW 79.70.030; and

12 (b) "An appropriate mitigation process" means a process ensuring  
13 that:

14 (i) There is no net loss of an affected plant species; and

15 (ii) Plant transplanting, when transplanting is practicable,  
16 involves movements of minimal distances.

17 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.30 RCW  
18 to read as follows:

19 (1) The department must consider impacts to heritage plants that  
20 may reside on all land owned, leased, or managed by the department.  
21 Consideration of impacts includes, but is not limited to, consulting  
22 with the natural heritage program and associated data banks of the  
23 department to determine, or attempt to determine, whether a heritage  
24 plant is located on a site.

25 (2) The department may not conduct or allow activities of any sort  
26 affecting or likely to affect heritage plants without prior development  
27 and implementation of an appropriate mitigation process for the  
28 affected or likely to be affected plants. Activities affecting or  
29 likely to affect heritage plants include, but are not limited to:

30 (a) Application of herbicides; and

31 (b) Grazing of livestock.

32 (3) The definitions in this subsection apply throughout this  
33 section unless the context clearly requires otherwise.

34 (a) "Heritage plant" means a plant species identified by the  
35 natural heritage program established under RCW 79.70.030; and

36 (b) "An appropriate mitigation process" means a process ensuring  
37 that:

- 1 (i) There is no net loss of an affected plant species; and
- 2 (ii) Plant transplanting, when transplanting is practicable,
- 3 involves movements of minimal distances.

4 NEW SECTION. **Sec. 5.** A new section is added to chapter 77.12 RCW  
5 to read as follows:

6 (1) The department must consider impacts to heritage plants that  
7 may reside on all land owned, leased, or managed by the department.  
8 Consideration of impacts includes, but is not limited to, consulting  
9 with the natural heritage program and associated data banks of the  
10 department of natural resources to determine, or attempt to determine,  
11 whether a heritage plant is located on a site.

12 (2) The department may not conduct or allow activities of any sort  
13 affecting or likely to affect heritage plants without prior development  
14 and implementation of an appropriate mitigation process for the  
15 affected or likely to be affected plants. Activities affecting or  
16 likely to affect heritage plants include, but are not limited to:

- 17 (a) Application of herbicides; and
- 18 (b) Grazing of livestock.

19 (3) The definitions in this subsection apply throughout this  
20 section unless the context clearly requires otherwise.

21 (a) "Heritage plant" means a plant species identified by the  
22 natural heritage program established under RCW 79.70.030; and

23 (b) "An appropriate mitigation process" means a process ensuring  
24 that:

- 25 (i) There is no net loss of an affected plant species; and
- 26 (ii) Plant transplanting, when transplanting is practicable,
- 27 involves movements of minimal distances.

28 NEW SECTION. **Sec. 6.** A new section is added to chapter 79A.05 RCW  
29 to read as follows:

30 (1) The commission must consider impacts to heritage plants that  
31 may reside on all land owned, leased, or managed by the commission.  
32 Consideration of impacts includes, but is not limited to, consulting  
33 with the natural heritage program and associated data banks of the  
34 department of natural resources to determine, or attempt to determine,  
35 whether a heritage plant is located on a site.

1 (2) The commission may not conduct or allow activities of any sort  
2 affecting or likely to affect heritage plants without prior development  
3 and implementation of an appropriate mitigation process for the  
4 affected or likely to be affected plants. Activities affecting or  
5 likely to affect heritage plants include, but are not limited to:

6 (a) Application of herbicides; and

7 (b) Grazing of livestock.

8 (3) The definitions in this subsection apply throughout this  
9 section unless the context clearly requires otherwise.

10 (a) "Heritage plant" means a plant species identified by the  
11 natural heritage program established under RCW 79.70.030; and

12 (b) "An appropriate mitigation process" means a process ensuring  
13 that:

14 (i) There is no net loss of an affected plant species; and

15 (ii) Plant transplanting, when transplanting is practicable,  
16 involves movements of minimal distances.

17 **Sec. 7.** RCW 79.70.030 and 2003 c 334 s 549 are each amended to  
18 read as follows:

19 In order to set aside, preserve, and protect natural areas within  
20 the state, the department is authorized, in addition to any other  
21 powers, to:

22 (1) Establish the criteria for selection, acquisition, management,  
23 protection, and use of such natural areas, including:

24 (a) Limiting public access to natural area preserves consistent  
25 with the purposes of this chapter. Where appropriate, and on a case-  
26 by-case basis, a buffer zone with an increased low level of public  
27 access may be created around the environmentally sensitive areas;

28 (b) Developing a management plan for each designated natural area  
29 preserve. The plan must identify the significant resources to be  
30 conserved consistent with the purposes of this chapter and identify the  
31 areas with potential for low-impact public and environmental  
32 educational uses. The plan must specify the types of management  
33 activities and public uses that are permitted, consistent with the  
34 purposes of this chapter. The department must make the plans available  
35 for review and comment by the public, and state, tribal, and local  
36 agencies, prior to final approval;

1 (2) Cooperate or contract with any federal, state, or local  
2 governmental agency, private organizations, or individuals in carrying  
3 out the purpose of this chapter;

4 (3) Consistent with the plan, acquire by gift, devise, purchase,  
5 grant, dedication, or means other than eminent domain, the fee or any  
6 lesser right or interest in real property which shall be held and  
7 managed as a natural area;

8 (4) Acquire by gift, devise, grant, or donation any personal  
9 property to be used in the acquisition and/or management of natural  
10 areas;

11 (5) Inventory existing public, state, and private lands in  
12 cooperation with the council to assess possible natural areas to be  
13 preserved within the state;

14 (6)(a) Maintain a natural heritage program to provide assistance in  
15 the selection and nomination of areas containing natural heritage  
16 resources for registration or dedication. The program shall maintain  
17 a classification of natural heritage resources, an inventory of their  
18 locations, and a data bank for such information.

19 (b) The department shall cooperate with the department of fish and  
20 wildlife in the selection and nomination of areas from the data bank  
21 that relate to critical wildlife habitats. The department shall also  
22 cooperate with local governments and state agencies requesting  
23 consultation services under sections 1 through 6 of this act.  
24 Information from the data bank shall be made available to public and  
25 private agencies and individuals for environmental assessment (~~and~~),  
26 proprietary land management purposes, and permitting processes under  
27 sections 1 through 3 of this act. Usage of the classification,  
28 inventory, or data bank of natural heritage resources for any purpose  
29 inconsistent with the natural heritage program is not authorized;

30 (7) Prepare a natural heritage plan which shall govern the natural  
31 heritage program in the conduct of activities to create and manage a  
32 system of natural areas that includes natural resources conservation  
33 areas, and may include areas designated under the research natural area  
34 program on federal lands in the state;

35 (a) The plan shall list the natural heritage resources to be  
36 considered for registration and shall provide criteria for the  
37 selection and approval of natural areas under this chapter;

1 (b) The department shall provide opportunities for input, comment,  
2 and review to the public, other public agencies, and private groups  
3 with special interests in natural heritage resources during preparation  
4 of the plan;

5 (c) Upon approval by the council and adoption by the department,  
6 the plan shall be updated and submitted biennially to the appropriate  
7 committees of the legislature for their information and review. The  
8 plan shall take effect ninety days after the adjournment of the  
9 legislative session in which it is submitted unless the reviewing  
10 committees suggest changes or reject the plan; and

11 (8) Maintain a state register of natural areas containing  
12 significant natural heritage resources to be called the Washington  
13 register of natural area preserves. Selection of natural areas for  
14 registration shall be in accordance with criteria listed in the natural  
15 heritage plan and accomplished through voluntary agreement between the  
16 owner of the natural area and the department. No privately owned lands  
17 may be proposed to the council for registration without prior notice to  
18 the owner or registered without voluntary consent of the owner. No  
19 state or local governmental agency may require such consent as a  
20 condition of any permit or approval of or settlement of any civil or  
21 criminal proceeding or to penalize any landowner in any way for failure  
22 to give, or for withdrawal of, such consent.

23 (a) The department shall adopt rules as authorized by RCW 43.12.065  
24 and 79.70.030(1) and chapter 34.05 RCW relating to voluntary natural  
25 area registration.

26 (b) After approval by the council, the department may place sites  
27 onto the register or remove sites from the register.

28 (c) The responsibility for management of registered natural area  
29 preserves shall be with the preserve owner. A voluntary management  
30 agreement may be developed between the department and the owners of the  
31 sites on the register.

32 (d) Any public agency may register lands under provisions of this  
33 chapter.

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