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**ENGROSSED SENATE BILL 5959**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senator Hatfield

AN ACT Relating to agreements with the federal government, such as those available under the endangered species act, affecting the state's management of its natural resources; adding a new section to chapter 43.30 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  (1) The legislature finds that the federal endangered species act provides legal options for nonfederal parties to engage in acts that would cause otherwise prohibited harm to a threatened or endangered species. A commonly used option offered by the federal government is the formulation of a habitat conservation plan. These voluntary long-term agreements between the federal government and a nonfederal party allow defined actions to occur, despite potential harm to a threatened or endangered species, according to agreed upon processes and limitations.

(2) The legislature further finds that habitat conservation plans have been successfully entered into by private parties in Washington and by the Washington state government itself. These agreements have been instrumental in sustaining the working status of natural resource lands and providing a degree of regulatory certainty to the nonfederal signatories to the various habitat conservation plans.

(3) The legislature further finds that state agency participation in habitat conservation plans is a potentially beneficial option for state land managers and state regulatory programs. However, participation in a habitat conservation plan often requires the state to commit to taking certain actions, refrain from certain actions, or be required to seek federal approval for actions that would otherwise be within the state's inherent authority. The result of a state agency entering into a habitat conservation plan could be to limit decision-making options for future legislatures, governors and other statewide elected officials, and executive branch agency directors for an extended period of time.

(4) The legislature further finds that, given the potential long-lasting ramifications on future legislative and executive branch options, the decision to commit the state to the potential long-term limitations of a habitat conservation plan should be given the highest level of review and public outreach and participation possible. This model was utilized when the legislature directed the department of natural resources to negotiate a habitat conservation plan in what is known as the forests and fish law (chapter 4, Laws of 1999), and it is a model that should be relied upon whenever a state agency, or other party, decides that a habitat conservation plan is in the best interest of the state.

(5) Long-term agreements like habitat conservation plans that are applicable to the management of the state's portfolio of aquatic lands merit particular caution due to the number and diversity of similarly situated nonstate entities that own or manage aquatic lands and to the diversity of overwater structures that are, and can be, constructed over aquatic lands. Unilateral state agency decisions to enter into habitat conservation plans would affect the owners and managers of overwater structures and other aquatic lands in the state and potentially raise new liabilities.

(6) The goal of ensuring that the state is managing its aquatic land portfolio in a manner most protective of endangered species is laudable and should be encouraged. However, state agencies, especially those empowered to make proprietary management decisions, have other tools available to achieve similar outcomes without committing the state to a long-term surrender of its inherent authority, proprietary interests, and police powers.

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

(1) Within thirty days of the effective date of this section, the commissioner must withdraw the draft aquatic lands habitat conservation plan then under review by the United States fish and wildlife service and national marine fisheries service from further consideration by the federal agencies.

(2) Before adopting any habitat conservation plan covering aquatic lands, the department must complete the following:

(a) Consider the advantages and disadvantages of adopting the habitat conservation plan at issue;

(b) Facilitate a stakeholder engagement process, including a stakeholder advisory committee to assist in developing the plan and associated environmental impact documents. The stakeholder advisory committee shall meet regularly. The first meeting of the stakeholder advisory committee must include discussion of the advantages and disadvantages of adopting the habitat conservation plan at issue;

(c) Consult with affected federally recognized tribal governments;

(d) Collaborate with stakeholders, federally recognized tribes, and other interested parties to develop a list of priority science projects to be addressed in the adaptive management process created by the habitat conservation plan;

(e) Collaborate with the board to prepare budget information clearly identifying near-term and long-term implementation costs of the proposal, including recommended funding sources. The department must submit a funding request to the governor and the legislature for full implementation of the habitat conservation plan;

(f) Collaborate with the board, stakeholders, federally recognized tribes, and other interested parties to prepare a draft implementation rule, conduct a cost-benefit analysis, and draft a small business economic impact statement;

(g) Confer with the office of the attorney general to ensure the proposed habitat conservation plan protects both the department and its lessees from future liability under the federal endangered species act, 16 U.S.C. Sec. 1531 et seq.;

(h) Confer with the office of the attorney general to determine whether adoption of the habitat conservation plan will result in new regulatory conditions or costs for affected facilities or activities already permitted to "take" under the federal endangered species act; and

(i) Determine whether to adopt a habitat conservation plan by December 1st of any calendar year and consult with the appropriate policy and fiscal committees of the legislature during the immediately following legislative session. The department may not submit any habitat conservation plan for final approval by the federal government before the end of that regular legislative session.

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