S-1668.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SENATE BILL 5959**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**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; reenacting and amending RCW 43.30.411; 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.

**Sec.**  RCW 43.30.411 and 2003 c 334 s 108 and 2003 c 312 s 1 are each reenacted and amended to read as follows:

(1) The department shall exercise all of the powers, duties, and functions now vested in the commissioner of public lands and such powers, duties, and functions are hereby transferred to the department. However, nothing contained in this section shall ((~~effect~~)) affect the commissioner's ex officio membership on any committee provided by law.

(2)(a) Except as provided in (b) of this subsection, and subject to the limitations of RCW 4.24.115, the department, in the exercise of any of its powers, may include in any authorized contract a provision for indemnifying the other contracting party against loss or damages.

(b) When executing a right-of-way or easement contract over private land that involves forest management activities, the department shall indemnify the private landowner if the landowner does not receive a direct benefit from the contract.

(3) The department may not officially enter into a habitat conservation plan, or other multiyear agreement with the federal government under the endangered species act, 16 U.S.C. Sec. 1531 et seq., that commits the state to future action or constrains future state options relating to the management of aquatic lands as it affects overwater structures and log storage. However, this subsection does not limit the authority of the department to pursue other proprietary or legal options to achieve these goals.

**--- END ---**