

CERTIFICATION OF ENROLLMENT

SENATE BILL 5348

Chapter 16, Laws of 2009

61st Legislature
2009 Regular Session

MITIGATION BANKING PROJECTS--FUNDING--ELIGIBILITY

EFFECTIVE DATE: 07/26/09

Passed by the Senate March 2, 2009
YEAS 47 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House March 13, 2009
YEAS 92 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved March 25, 2009, 1:50 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5348** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

March 26, 2009

**Secretary of State
State of Washington**

SENATE BILL 5348

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By Senators Swecker, Haugen, Jacobsen, Parlette, Rockefeller, and Shin; by request of The Recreation and Conservation Funding Board

Read first time 01/20/09. Referred to Committee on Natural Resources, Ocean & Recreation.

1 AN ACT Relating to removing references to mitigation banking
2 project eligibility for moneys in the habitat conservation account and
3 the riparian protection account; and amending RCW 79A.15.060 and
4 79A.15.120.

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

6 **Sec. 1.** RCW 79A.15.060 and 2007 c 241 s 31 are each amended to
7 read as follows:

8 (1) The board may adopt rules establishing acquisition policies and
9 priorities for distributions from the habitat conservation account.

10 (2) Except as provided in RCW 79A.15.030(7), moneys appropriated
11 for this chapter may not be used by the board to fund staff positions
12 or other overhead expenses, or by a state, regional, or local agency to
13 fund operation or maintenance of areas acquired under this chapter.

14 (3) Moneys appropriated for this chapter may be used by grant
15 recipients for costs incidental to acquisition, including, but not
16 limited to, surveying expenses, fencing, and signing.

17 (4) ~~((Moneys appropriated for this section may be used to fund~~
18 ~~mitigation banking projects involving the restoration, creation,~~
19 ~~enhancement, or preservation of critical habitat and urban wildlife~~

1 ~~habitat, provided that the parties seeking to use the mitigation bank~~
2 ~~meet the matching requirements of subsection (5) of this section. The~~
3 ~~moneys from this section may not be used to supplant an obligation of~~
4 ~~a state or local agency to provide mitigation. For the purposes of~~
5 ~~this section, a mitigation bank means a site or sites where critical~~
6 ~~habitat or urban wildlife habitat is restored, created, enhanced, or in~~
7 ~~exceptional circumstances, preserved expressly for the purpose of~~
8 ~~providing compensatory mitigation in advance of authorized project~~
9 ~~impacts to similar resources.~~

10 (5)) The board may not approve a local project where the local
11 agency share is less than the amount to be awarded from the habitat
12 conservation account.

13 ((6)) (5) In determining acquisition priorities with respect to
14 the habitat conservation account, the board shall consider, at a
15 minimum, the following criteria:

16 (a) For critical habitat and natural areas proposals:

17 (i) Community support for the project;

18 (ii) The project proposal's ongoing stewardship program that
19 includes control of noxious weeds, detrimental invasive species, and
20 that identifies the source of the funds from which the stewardship
21 program will be funded;

22 (iii) Recommendations as part of a watershed plan or habitat
23 conservation plan, or a coordinated regionwide prioritization effort,
24 and for projects primarily intended to benefit salmon, limiting
25 factors, or critical pathways analysis;

26 (iv) Immediacy of threat to the site;

27 (v) Uniqueness of the site;

28 (vi) Diversity of species using the site;

29 (vii) Quality of the habitat;

30 (viii) Long-term viability of the site;

31 (ix) Presence of endangered, threatened, or sensitive species;

32 (x) Enhancement of existing public property;

33 (xi) Consistency with a local land use plan, or a regional or
34 statewide recreational or resource plan, including projects that assist
35 in the implementation of local shoreline master plans updated according
36 to RCW 90.58.080 or local comprehensive plans updated according to RCW
37 36.70A.130;

38 (xii) Educational and scientific value of the site;

1 (xiii) Integration with recovery efforts for endangered,
2 threatened, or sensitive species;

3 (xiv) For critical habitat proposals by local agencies, the
4 statewide significance of the site.

5 (b) For urban wildlife habitat proposals, in addition to the
6 criteria of (a) of this subsection:

7 (i) Population of, and distance from, the nearest urban area;

8 (ii) Proximity to other wildlife habitat;

9 (iii) Potential for public use; and

10 (iv) Potential for use by special needs populations.

11 (~~(+7)~~) (6) Before November 1st of each even-numbered year, the
12 board shall recommend to the governor a prioritized list of all state
13 agency and local projects to be funded under RCW 79A.15.040(1) (a),
14 (b), and (c). The governor may remove projects from the list
15 recommended by the board and shall submit this amended list in the
16 capital budget request to the legislature. The list shall include, but
17 not be limited to, a description of each project and any particular
18 match requirement, and describe for each project any anticipated
19 restrictions upon recreational activities allowed prior to the project.

20 **Sec. 2.** RCW 79A.15.120 and 2007 c 241 s 37 are each amended to
21 read as follows:

22 (1) The riparian protection account is established in the state
23 treasury. The board must administer the account in accordance with
24 chapter 79A.25 RCW and this chapter, and hold it separate and apart
25 from all other money, funds, and accounts of the board.

26 (2) Moneys appropriated for this chapter to the riparian protection
27 account must be distributed for the acquisition or enhancement or
28 restoration of riparian habitat. All enhancement or restoration
29 projects, except those qualifying under subsection (~~(+10)~~) (9)(a) of
30 this section, must include the acquisition of a real property interest
31 in order to be eligible.

32 (3) State and local agencies and lead entities under chapter 77.85
33 RCW may apply for acquisition and enhancement or restoration funds for
34 riparian habitat projects under subsection (1) of this section. Other
35 state agencies not defined in RCW 79A.15.010, such as the department of
36 transportation and the department of corrections, may enter into

1 interagency agreements with state agencies to apply in partnership for
2 funds under this section.

3 (4) The board may adopt rules establishing acquisition policies and
4 priorities for distributions from the riparian protection account.

5 (5) Except as provided in RCW 79A.15.030(7), moneys appropriated
6 for this section may not be used by the board to fund staff positions
7 or other overhead expenses, or by a state, regional, or local agency to
8 fund operation or maintenance of areas acquired under this chapter.

9 (6) Moneys appropriated for this section may be used by grant
10 recipients for costs incidental to restoration and acquisition,
11 including, but not limited to, surveying expenses, fencing, and
12 signing.

13 ~~(7) ((Moneys appropriated for this section may be used to fund
14 mitigation banking projects involving the restoration, creation,
15 enhancement, or preservation of riparian habitat, provided that the
16 parties seeking to use the mitigation bank meet the matching
17 requirements of subsection (8) of this section. The moneys from this
18 section may not be used to supplant an obligation of a state or local
19 agency to provide mitigation. For the purposes of this section, a
20 mitigation bank means a site or sites where riparian habitat is
21 restored, created, enhanced, or in exceptional circumstances, preserved
22 expressly for the purpose of providing compensatory mitigation in
23 advance of authorized project impacts to similar resources.~~

24 ~~(8))~~ The board may not approve a local project where the local
25 agency share is less than the amount to be awarded from the riparian
26 protection account. In-kind contributions, including contributions of
27 a real property interest in land may be used to satisfy the local
28 agency's share.

29 ~~((9))~~ (8) State agencies receiving grants for acquisition of land
30 under this section must pay an amount in lieu of real property taxes
31 equal to the amount of tax that would be due if the land were taxable
32 as open space land under chapter 84.34 RCW except taxes levied for any
33 state purpose, plus an additional amount for control of noxious weeds
34 equal to that which would be paid if such lands were privately owned.
35 The county assessor and county legislative authority shall assist in
36 determining the appropriate calculation of the amount of tax that would
37 be due.

1 (~~(10)~~) (9) In determining acquisition priorities with respect to
2 the riparian protection account, the board must consider, at a minimum,
3 the following criteria:

4 (a) Whether the project continues the conservation reserve
5 enhancement program. Applications that extend the duration of leases
6 of riparian areas that are currently enrolled in the conservation
7 reserve enhancement program shall be eligible. Such applications are
8 eligible for a conservation lease extension of at least twenty-five
9 years of duration;

10 (b) Whether the projects are identified or recommended in a
11 watershed planning process under chapter 247, Laws of 1998, salmon
12 recovery planning under chapter 77.85 RCW, or other local plans, such
13 as habitat conservation plans, and these must be highly considered in
14 the process;

15 (c) Whether there is community support for the project;

16 (d) Whether the proposal includes an ongoing stewardship program
17 that includes control of noxious weeds, detrimental invasive species,
18 and that identifies the source of the funds from which the stewardship
19 program will be funded;

20 (e) Whether there is an immediate threat to the site;

21 (f) Whether the quality of the habitat is improved or, for projects
22 including restoration or enhancement, the potential for restoring
23 quality habitat including linkage of the site to other high quality
24 habitat;

25 (g) Whether the project is consistent with a local land use plan,
26 or a regional or statewide recreational or resource plan. The projects
27 that assist in the implementation of local shoreline master plans
28 updated according to RCW 90.58.080 or local comprehensive plans updated
29 according to RCW 36.70A.130 must be highly considered in the process;

30 (h) Whether the site has educational or scientific value; and

31 (i) Whether the site has passive recreational values for walking
32 trails, wildlife viewing, or the observation of natural settings.

33 (~~(11)~~) (10) Before November 1st of each even-numbered year, the
34 board will recommend to the governor a prioritized list of projects to
35 be funded under this section. The governor may remove projects from
36 the list recommended by the board and will submit this amended list in
37 the capital budget request to the legislature. The list must include,

1 but not be limited to, a description of each project and any particular
2 match requirement.

Passed by the Senate March 2, 2009.

Passed by the House March 13, 2009.

Approved by the Governor March 25, 2009.

Filed in Office of Secretary of State March 26, 2009.