
ENGROSSED SENATE BILL 5959

State of Washington

64th Legislature

2015 Regular Session

By Senator Hatfield

Read first time 02/13/15. Referred to Committee on Natural Resources & Parks.

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

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

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

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

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

12 (4) The legislature further finds that, given the potential long-
13 lasting ramifications on future legislative and executive branch
14 options, the decision to commit the state to the potential long-term
15 limitations of a habitat conservation plan should be given the
16 highest level of review and public outreach and participation
17 possible. This model was utilized when the legislature directed the
18 department of natural resources to negotiate a habitat conservation
19 plan in what is known as the forests and fish law (chapter 4, Laws of
20 1999), and it is a model that should be relied upon whenever a state
21 agency, or other party, decides that a habitat conservation plan is
22 in the best interest of the state.

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

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

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.30
2 RCW to read as follows:

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

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

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

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

18 (c) Consult with affected federally recognized tribal
19 governments;

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

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

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

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

37 (h) Confer with the office of the attorney general to determine
38 whether adoption of the habitat conservation plan will result in new
39 regulatory conditions or costs for affected facilities or activities

1 already permitted to "take" under the federal endangered species act;
2 and

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

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