
SENATE BILL 5102

State of Washington

66th Legislature

2019 Regular Session

By Senator Sheldon

Prefiled 01/08/19.

1 AN ACT Relating to department of natural resources' land
2 acquisitions; amending RCW 79.70.030 and 79.71.040; adding a new
3 section to chapter 79.02 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that it is in the
6 public interest for citizens and private landowners to collaborate
7 with state agencies and public land managers in the management of
8 natural resources and recreation. The legislature further finds that
9 private landowners should be encouraged to allow public access to
10 natural resources, where appropriate, without a concern for losing
11 ownership of that property. Therefore, the legislature finds that the
12 use of certain public land acquisition processes should be restricted
13 to encourage positive working relationships between private
14 landowners and state agencies that manage public natural resource
15 lands.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 79.02
17 RCW to read as follows:

18 (1) If the department is seeking to acquire private lands through
19 adverse possession, the claim must rely on the actions of the
20 requesting party and not the actions of the general public. Any claim

1 for adverse possession brought by the department must include fair
2 and clear notice that the land is being used by the department and
3 include evidence of physical occupation of the property sufficient to
4 provide a property owner constructive or actual notice of the claim.

5 (2) If the department is seeking to clarify boundary points or
6 lines of aquatic lands, as the term "aquatic lands" is defined in RCW
7 79.105.060, surveyors must review the existing public record and
8 landmarks. Equitable apportionment is only appropriate to the extent
9 that the boundary points and lines cannot be ascertained from the
10 public record, landmarks, and other publicly available documentation.

11 (3) For the purposes of this section, "equitable apportionment"
12 means that if tideland boundaries are ambiguous, the court may draw
13 boundaries proportionately based on the amount of upland frontage so
14 that each upland owner has access to navigable water.

15 **Sec. 3.** RCW 79.70.030 and 2003 c 334 s 549 are each amended to
16 read as follows:

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

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

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

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

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

38 (3) (a) Consistent with the plan, acquire by gift, devise,
39 purchase, grant, dedication, or means other than eminent domain,

1 adverse possession, or equitable apportionment, the fee or any lesser
2 right or interest in real property which shall be held and managed as
3 a natural area;

4 (b) For the purposes of this subsection, "equitable
5 apportionment" means that if tideland boundaries are ambiguous, the
6 court may draw boundaries proportionately based on the amount of
7 upland frontage so that each upland owner has access to navigable
8 water;

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

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

15 (6) Maintain a natural heritage program to provide assistance in
16 the selection and nomination of areas containing natural heritage
17 resources for registration or dedication. The program shall maintain
18 a classification of natural heritage resources, an inventory of their
19 locations, and a data bank for such information. The department shall
20 cooperate with the department of fish and wildlife in the selection
21 and nomination of areas from the data bank that relate to critical
22 wildlife habitats. Information from the data bank shall be made
23 available to public and private agencies and individuals for
24 environmental assessment and proprietary land management purposes.
25 Usage of the classification, inventory, or data bank of natural
26 heritage resources for any purpose inconsistent with the natural
27 heritage program is not authorized;

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

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

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

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

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

20 (a) The department shall adopt rules as authorized by RCW
21 43.12.065 and 79.70.030(1) and chapter 34.05 RCW relating to
22 voluntary natural area registration.

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

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

29 (d) Any public agency may register lands under provisions of this
30 chapter.

31 **Sec. 4.** RCW 79.71.040 and 1987 c 472 s 4 are each amended to
32 read as follows:

33 (1) The department is authorized to acquire property or less than
34 fee interests in property, as defined by RCW 64.04.130, by all means,
35 except eminent domain, adverse possession, or equitable
36 apportionment, for creating natural resources conservation areas,
37 where acquisition is the best way to achieve the purposes of this
38 chapter. Areas acquired or assembled by the department for

1 conservation purposes will be designated as "Washington natural
2 resources conservation areas."

3 (2) For the purposes of this section, "equitable apportionment"
4 means that if tideland boundaries are ambiguous, the court may draw
5 boundaries proportionately based on the amount of upland frontage so
6 that each upland owner has access to navigable water.

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