

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 5396

Chapter 303, Laws of 2005

59th Legislature
2005 Regular Session

HABITAT CONSERVATION PROGRAMS

EFFECTIVE DATE: 7/1/07 - Except section 15, which becomes effective 7/1/05; and section 16, which becomes effective 7/24/05.

Passed by the Senate April 19, 2005
YEAS 45 NAYS 1

BRAD OWEN

President of the Senate

Passed by the House April 14, 2005
YEAS 60 NAYS 36

FRANK CHOPP

Speaker of the House of Representatives

Approved May 6, 2005.

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 **ENGROSSED SUBSTITUTE SENATE BILL 5396** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 6, 2005 - 3:23 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5396

AS AMENDED BY THE HOUSE

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

By Senate Committee on Natural Resources, Ocean & Recreation
(originally sponsored by Senators Fraser, Esser, Jacobsen, Oke,
Regala, Swecker, Rockefeller, Spanel, Pridemore, Thibaudeau, Haugen
and Kline)

READ FIRST TIME 03/02/05.

1 AN ACT Relating to expanding the criteria for habitat conservation
2 programs; amending RCW 79A.15.010, 79A.15.030, 79A.15.040, 79A.15.050,
3 79A.15.060, 79A.15.070, 79A.15.080, 84.33.140, and 77.12.203; adding
4 new sections to chapter 79A.15 RCW; adding a new section to chapter
5 79.70 RCW; adding a new section to chapter 79.71 RCW; creating new
6 sections; providing effective dates; providing an expiration date; and
7 declaring an emergency.

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

9 **Sec. 1.** RCW 79A.15.010 and 1990 1st ex.s. c 14 s 2 are each
10 amended to read as follows:

11 The definitions set forth in this section apply throughout this
12 chapter.

13 (1) "Acquisition" means the purchase on a willing seller basis of
14 fee or less than fee interests in real property. These interests
15 include, but are not limited to, options, rights of first refusal,
16 conservation easements, leases, and mineral rights.

17 (2) "Committee" means the interagency committee for outdoor
18 recreation.

1 (3) "Critical habitat" means lands important for the protection,
2 management, or public enjoyment of certain wildlife species or groups
3 of species, including, but not limited to, wintering range for deer,
4 elk, and other species, waterfowl and upland bird habitat, fish
5 habitat, and habitat for endangered, threatened, or sensitive species.

6 (4) "Farmlands" means any land defined as "farm and agricultural
7 land" in RCW 84.34.020(2).

8 (5) "Local agencies" means a city, county, town, federally
9 recognized Indian tribe, special purpose district, port district, or
10 other political subdivision of the state providing services to less
11 than the entire state.

12 (~~(5)~~) (6) "Natural areas" means areas that have, to a significant
13 degree, retained their natural character and are important in
14 preserving rare or vanishing flora, fauna, geological, natural
15 historical, or similar features of scientific or educational value.

16 (~~(6)~~) (7) "Riparian habitat" means land adjacent to water bodies,
17 as well as submerged land such as streambeds, which can provide
18 functional habitat for salmonids and other fish and wildlife species.
19 Riparian habitat includes, but is not limited to, shorelines and near-
20 shore marine habitat, estuaries, lakes, wetlands, streams, and rivers.

21 (8) "Special needs populations" means physically restricted people
22 or people of limited means.

23 (~~(7)~~) (9) "State agencies" means the state parks and recreation
24 commission, the department of natural resources, the department of
25 general administration, and the department of fish and wildlife.

26 (10) "Trails" means public ways constructed for and open to
27 pedestrians, equestrians, or bicyclists, or any combination thereof,
28 other than a sidewalk constructed as a part of a city street or county
29 road for exclusive use of pedestrians.

30 (~~(8)~~) (11) "Urban wildlife habitat" means lands that provide
31 habitat important to wildlife in proximity to a metropolitan area.

32 (~~(9)~~) (12) "Water access" means boat or foot access to marine
33 waters, lakes, rivers, or streams.

34 **Sec. 2.** RCW 79A.15.030 and 2000 c 11 s 66 are each amended to read
35 as follows:

36 (1) Moneys appropriated for this chapter shall be divided (~~equally~~

1 ~~between the habitat conservation and outdoor recreation accounts and~~
2 ~~shall be used exclusively for the purposes specified in this chapter))~~
3 as follows:

4 (a) Appropriations for a biennium of forty million dollars or less
5 must be allocated equally between the habitat conservation account and
6 the outdoor recreation account.

7 (b) If appropriations for a biennium total more than forty million
8 dollars, the money must be allocated as follows: (i) Twenty million
9 dollars to the habitat conservation account and twenty million dollars
10 to the outdoor recreation account; (ii) any amount over forty million
11 dollars up to fifty million dollars shall be allocated as follows: (A)
12 Ten percent to the habitat conservation account; (B) ten percent to the
13 outdoor recreation account; (C) forty percent to the riparian
14 protection account; and (D) forty percent to the farmlands preservation
15 account; and (iii) any amounts over fifty million dollars must be
16 allocated as follows: (A) Thirty percent to the habitat conservation
17 account; (B) thirty percent to the outdoor recreation account; (C)
18 thirty percent to the riparian protection account; and (D) ten percent
19 to the farmlands preservation account.

20 (2) Except as otherwise provided in this act, moneys deposited in
21 these accounts shall be invested as authorized for other state funds,
22 and any earnings on them shall be credited to the respective account.

23 (3) All moneys deposited in the habitat conservation ((and)),
24 outdoor recreation, riparian protection, and farmlands preservation
25 accounts shall be allocated as provided under RCW 79A.15.040 ((and)),
26 79A.15.050, and sections 6 and 7 of this act as grants to state or
27 local agencies for acquisition, development, and renovation within the
28 jurisdiction of those agencies, subject to legislative appropriation.
29 The committee may use or permit the use of any funds appropriated for
30 this chapter as matching funds where federal, local, or other funds are
31 made available for projects within the purposes of this chapter.
32 Moneys appropriated to these accounts that are not obligated to a
33 specific project may be used to fund projects from lists of alternate
34 projects from the same account in biennia succeeding the biennium in
35 which the moneys were originally appropriated.

36 (4) Projects receiving grants under this chapter that are developed
37 or otherwise accessible for public recreational uses shall be available
38 to the public ((on a nondiscriminatory basis)).

1 (5) The committee may make grants to an eligible project from
2 ~~((both))~~ the habitat conservation ~~((and))~~, outdoor recreation, riparian
3 protection, and farmlands preservation accounts and any one or more of
4 the applicable categories under such accounts described in RCW
5 79A.15.040 ~~((and))~~, 79A.15.050, and sections 6 and 7 of this act.

6 (6) The committee may accept private donations to the habitat
7 conservation account, the outdoor recreation account, the riparian
8 protection account, and the farmlands preservation account for the
9 purposes specified in this chapter.

10 (7) The committee may apply up to three percent of the funds
11 appropriated for this chapter for the administration of the programs
12 and purposes specified in this chapter.

13 (8) Habitat and recreation land and facilities acquired or
14 developed with moneys appropriated for this chapter may not, without
15 prior approval of the committee, be converted to a use other than that
16 for which funds were originally approved. The committee shall adopt
17 rules and procedures governing the approval of such a conversion.

18 **Sec. 3.** RCW 79A.15.040 and 1999 c 379 s 917 are each amended to
19 read as follows:

20 (1) Moneys appropriated for this chapter to the habitat
21 conservation account shall be distributed in the following way:

22 (a) Not less than ~~((thirty-five))~~ forty percent through June 30,
23 2011, at which time the amount shall become forty-five percent, for the
24 acquisition and development of critical habitat;

25 (b) Not less than ~~((twenty))~~ thirty percent for the acquisition and
26 development of natural areas;

27 (c) Not less than ~~((fifteen))~~ twenty percent for the acquisition
28 and development of urban wildlife habitat; and

29 (d) ~~((The remaining amount shall be considered unallocated and))~~
30 Not less than ten percent through June 30, 2011, at which time the
31 amount shall become five percent, shall be used by the committee to
32 fund ~~((high priority acquisition and development needs for critical~~
33 ~~habitat, natural areas, and urban wildlife habitat. During the fiscal~~
34 ~~biennium ending June 30, 2001, the remaining amount reappropriated from~~
35 ~~the fiscal biennium ending June 30, 1999, may be allocated for matching~~
36 ~~grants for riparian zone habitat protection projects that implement~~
37 ~~watershed plans under the program established in section 329(6),~~

1 ~~chapter 235, Laws of 1997))~~ restoration and enhancement projects on
2 state lands. Only the department of natural resources and the
3 department of fish and wildlife may apply for these funds to be used on
4 existing habitat and natural area lands.

5 (2)(a) In distributing these funds, the committee retains
6 discretion to meet the most pressing needs for critical habitat,
7 natural areas, and urban wildlife habitat, and is not required to meet
8 the percentages described in subsection (1) of this section in any one
9 biennium.

10 (b) If not enough project applications are submitted in a category
11 within the habitat conservation account to meet the percentages
12 described in subsection (1) of this section in any biennium, the
13 committee retains discretion to distribute any remaining funds to the
14 other categories within the account.

15 (3) Only state agencies may apply for acquisition and development
16 funds for ~~((critical habitat and))~~ natural areas projects under
17 subsection (1)~~((a), (b), and (d)))~~ of this section.

18 (4) State and local agencies may apply for acquisition and
19 development funds for critical habitat and urban wildlife habitat
20 projects under subsection (1)(a) and (c) ~~((and (d)))~~ of this section.

21 (5)(a) Any lands that have been acquired with grants under this
22 section by the department of fish and wildlife are subject to an amount
23 in lieu of real property taxes and an additional amount for control of
24 noxious weeds as determined by RCW 77.12.203.

25 (b) Any lands that have been acquired with grants under this
26 section by the department of natural resources are subject to payments
27 in the amounts required under the provisions of sections 11 and 12 of
28 this act.

29 **Sec. 4.** RCW 79A.15.050 and 2003 c 184 s 1 are each amended to read
30 as follows:

31 (1) Moneys appropriated for this chapter to the outdoor recreation
32 account shall be distributed in the following way:

33 (a) Not less than ~~((twenty-five))~~ thirty percent to the state parks
34 and recreation commission for the acquisition and development of state
35 parks, with at least ~~((seventy-five))~~ fifty percent of ~~((this))~~ the
36 money for acquisition costs~~((.~~ ~~However, between July 27, 2003, and~~

1 ~~June 30, 2009, at least fifty percent of this money for the acquisition~~
2 ~~and development of state parks must be used for acquisition costs));~~

3 (b) Not less than (~~twenty-five~~) thirty percent for the
4 acquisition, development, and renovation of local parks, with at least
5 fifty percent of this money for acquisition costs;

6 (c) Not less than (~~fifteen~~) twenty percent for the acquisition
7 (~~and~~), renovation, or development of trails;

8 (d) Not less than (~~ten~~) fifteen percent for the acquisition
9 (~~and~~), renovation, or development of water access sites, with at
10 least seventy-five percent of this money for acquisition costs; and

11 (e) (~~The remaining amount shall be considered unallocated and~~
12 ~~shall be distributed by the committee to state and local agencies to~~
13 ~~fund high priority acquisition and development needs for parks, trails,~~
14 ~~and water access sites)) Not less than five percent for development and
15 renovation projects on state recreation lands. Only the department of
16 natural resources and the department of fish and wildlife may apply for
17 these funds to be used on their existing recreation lands.~~

18 (2)(a) In distributing these funds, the committee retains
19 discretion to meet the most pressing needs for state and local parks,
20 trails, and water access sites, and is not required to meet the
21 percentages described in subsection (1) of this section in any one
22 biennium.

23 (b) If not enough project applications are submitted in a category
24 within the outdoor recreation account to meet the percentages described
25 in subsection (1) of this section in any biennium, the committee
26 retains discretion to distribute any remaining funds to the other
27 categories within the account.

28 (3) Only local agencies may apply for acquisition, development, or
29 renovation funds for local parks under subsection (1)(b) of this
30 section.

31 (4) Only state and local agencies may apply for funds for trails
32 under subsection (1)(c) of this section.

33 (5) Only state and local agencies may apply for funds for water
34 access sites under subsection (1)(d) of this section.

35 NEW SECTION. Sec. 5. A new section is added to chapter 79A.15 RCW
36 to read as follows:

37 A state or local agency shall review the proposed project

1 application with the county or city with jurisdiction over the project
2 area prior to applying for funds for the acquisition of property under
3 this chapter. The appropriate county or city legislative authority
4 may, at its discretion, submit a letter to the committee identifying
5 the authority's position with regard to the acquisition project. The
6 committee shall make the letters received under this section available
7 to the governor and the legislature when the prioritized project list
8 is submitted under section 6 of this act, RCW 79A.15.060, and
9 79A.15.070.

10 NEW SECTION. **Sec. 6.** A new section is added to chapter 79A.15 RCW
11 to read as follows:

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

16 (2) Moneys appropriated for this chapter to the riparian protection
17 account must be distributed for the acquisition or enhancement or
18 restoration of riparian habitat. All enhancement or restoration
19 projects, except those qualifying under subsection (10)(a) of this
20 section, must include the acquisition of a real property interest in
21 order to be eligible.

22 (3) State and local agencies and lead entities under chapter 77.85
23 RCW may apply for acquisition and enhancement or restoration funds for
24 riparian habitat projects under subsection (1) of this section. Other
25 state agencies not defined in RCW 79A.15.010, such as the department of
26 transportation and the department of corrections, may enter into
27 interagency agreements with state agencies to apply in partnership for
28 funds under this section.

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

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

36 (6) Moneys appropriated for this section may be used by grant

1 recipients for costs incidental to restoration and acquisition,
2 including, but not limited to, surveying expenses, fencing, and
3 signing.

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

15 (8) The committee may not approve a local project where the local
16 agency share is less than the amount to be awarded from the riparian
17 protection account. In-kind contributions, including contributions of
18 a real property interest in land may be used to satisfy the local
19 agency's share.

20 (9) State agencies receiving grants for acquisition of land under
21 this section must pay an amount in lieu of real property taxes equal to
22 the amount of tax that would be due if the land were taxable as open
23 space land under chapter 84.34 RCW except taxes levied for any state
24 purpose, plus an additional amount for control of noxious weeds equal
25 to that which would be paid if such lands were privately owned. The
26 county assessor and county legislative authority shall assist in
27 determining the appropriate calculation of the amount of tax that would
28 be due.

29 (10) In determining acquisition priorities with respect to the
30 riparian protection account, the committee must consider, at a minimum,
31 the following criteria:

32 (a) Whether the project continues the conservation reserve
33 enhancement program. Applications that extend the duration of leases
34 of riparian areas that are currently enrolled in the conservation
35 reserve enhancement program shall be eligible. Such applications are
36 eligible for a conservation lease extension of at least twenty-five
37 years of duration;

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

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

7 (d) Whether the proposal includes an ongoing stewardship program
8 that includes control of noxious weeds, detrimental invasive species,
9 and that identifies the source of the funds from which the stewardship
10 program will be funded;

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

12 (f) Whether the quality of the habitat is improved or, for projects
13 including restoration or enhancement, the potential for restoring
14 quality habitat including linkage of the site to other high quality
15 habitat;

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

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

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

24 (11) Before November 1st of each even-numbered year, the committee
25 will recommend to the governor a prioritized list of projects to be
26 funded under this section. The governor may remove projects from the
27 list recommended by the committee and will submit this amended list in
28 the capital budget request to the legislature. The list must include,
29 but not be limited to, a description of each project and any particular
30 match requirement.

31 NEW SECTION. **Sec. 7.** A new section is added to chapter 79A.15 RCW
32 to read as follows:

33 (1) The farmlands preservation account is established in the state
34 treasury. The committee will administer the account in accordance with
35 chapter 79A.25 RCW and this chapter, and hold it separate and apart
36 from all other money, funds, and accounts of the committee. Moneys
37 appropriated for this chapter to the farmlands preservation account

1 must be distributed for the acquisition and preservation of farmlands
2 in order to maintain the opportunity for agricultural activity upon
3 these lands.

4 (2)(a) Moneys appropriated for this chapter to the farmlands
5 preservation account may be distributed for (i) the fee simple or less
6 than fee simple acquisition of farmlands; (ii) the enhancement or
7 restoration of ecological functions on those properties; or (iii) both.
8 In order for a farmland preservation grant to provide for an
9 environmental enhancement or restoration project, the project must
10 include the acquisition of a real property interest.

11 (b) If a city or county acquires a property through this program in
12 fee simple, the city or county shall endeavor to secure preservation of
13 the property through placing a conservation easement, or other form of
14 deed restriction, on the property which dedicates the land to
15 agricultural use and retains one or more property rights in perpetuity.
16 Once an easement or other form of deed restriction is placed on the
17 property, the city or county shall seek to sell the property, at fair
18 market value, to a person or persons who will maintain the property in
19 agricultural production. Any moneys from the sale of the property
20 shall either be used to purchase interests in additional properties
21 which meet the criteria in subsection (9) of this section, or to repay
22 the grant from the state which was originally used to purchase the
23 property.

24 (3) Cities and counties may apply for acquisition and enhancement
25 or restoration funds for farmland preservation projects within their
26 jurisdictions under subsection (1) of this section.

27 (4) The committee may adopt rules establishing acquisition and
28 enhancement or restoration policies and priorities for distributions
29 from the farmlands preservation account.

30 (5) The acquisition of a property right in a project under this
31 section by a county or city does not provide a right of access to the
32 property by the public unless explicitly provided for in a conservation
33 easement or other form of deed restriction.

34 (6) Except as provided in RCW 79A.15.030(7), moneys appropriated
35 for this section may not be used by the committee to fund staff
36 positions or other overhead expenses, or by a city or county to fund
37 operation or maintenance of areas acquired under this chapter.

1 (7) Moneys appropriated for this section may be used by grant
2 recipients for costs incidental to restoration and acquisition,
3 including, but not limited to, surveying expenses, fencing, and
4 signing.

5 (8) The committee may not approve a local project where the local
6 agency's share is less than the amount to be awarded from the farmlands
7 preservation account. In-kind contributions, including contributions
8 of a real property interest in land, may be used to satisfy the local
9 agency's share.

10 (9) In determining the acquisition priorities, the committee must
11 consider, at a minimum, the following criteria:

12 (a) Community support for the project;

13 (b) A recommendation as part of a limiting factors or critical
14 pathways analysis, a watershed plan or habitat conservation plan, or a
15 coordinated regionwide prioritization effort;

16 (c) The likelihood of the conversion of the site to nonagricultural
17 or more highly developed usage;

18 (d) Consistency with a local land use plan, or a regional or
19 statewide recreational or resource plan. The projects that assist in
20 the implementation of local shoreline master plans updated according to
21 RCW 90.58.080 or local comprehensive plans updated according to RCW
22 36.70A.130 must be highly considered in the process;

23 (e) Benefits to salmonids;

24 (f) Benefits to other fish and wildlife habitat;

25 (g) Integration with recovery efforts for endangered, threatened,
26 or sensitive species;

27 (h) The viability of the site for continued agricultural
28 production, including, but not limited to:

29 (i) Soil types;

30 (ii) On-site production and support facilities such as barns,
31 irrigation systems, crop processing and storage facilities, wells,
32 housing, livestock sheds, and other farming infrastructure;

33 (iii) Suitability for producing different types or varieties of
34 crops;

35 (iv) Farm-to-market access;

36 (v) Water availability; and

37 (i) Other community values provided by the property when used as
38 agricultural land, including, but not limited to:

- 1 (i) Viewshed;
- 2 (ii) Aquifer recharge;
- 3 (iii) Occasional or periodic collector for storm water runoff;
- 4 (iv) Agricultural sector job creation;
- 5 (v) Migratory bird habitat and forage area; and
- 6 (vi) Educational and curriculum potential.

7 (10) In allotting funds for environmental enhancement or
8 restoration projects, the committee will require the projects to meet
9 the following criteria:

10 (a) Enhancement or restoration projects must further the ecological
11 functions of the farmlands;

12 (b) The projects, such as fencing, bridging watercourses,
13 replanting native vegetation, replacing culverts, clearing of
14 waterways, etc., must be less than fifty percent of the acquisition
15 cost of the project including any in-kind contribution by any party;

16 (c) The projects should be based on accepted methods of achieving
17 beneficial enhancement or restoration results; and

18 (d) The projects should enhance the viability of the preserved
19 farmland to provide agricultural production while conforming to any
20 legal requirements for habitat protection.

21 (11) Before November 1st of each even-numbered year, the committee
22 will recommend to the governor a prioritized list of all projects to be
23 funded under this section. The governor may remove projects from the
24 list recommended by the committee and must submit this amended list in
25 the capital budget request to the legislature. The list must include,
26 but not be limited to, a description of each project and any particular
27 match requirement.

28 **Sec. 8.** RCW 79A.15.060 and 2000 c 11 s 67 are each amended to read
29 as follows:

30 (1) The committee may adopt rules establishing acquisition policies
31 and priorities for distributions from the habitat conservation account.

32 (2) Except as provided in RCW 79A.15.030(7), moneys appropriated
33 for this chapter may not be used by the committee to fund
34 ((additional)) staff positions or other overhead expenses, or by a
35 state, regional, or local agency to fund operation ((and)) or
36 maintenance of areas acquired under this chapter((, ~~except that the~~
37 ~~committee may use moneys appropriated for this chapter for the fiscal~~

1 ~~biennium ending June 30, 2001, for the administrative costs of~~
2 ~~implementing the pilot watershed plan implementation program~~
3 ~~established in section 329(6), chapter 235, Laws of 1997, and~~
4 ~~developing an inventory of publicly owned lands established in section~~
5 ~~329(7), chapter 235, Laws of 1997)).~~

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

9 ~~((Except as provided in subsection (5) of this section,))~~
10 Moneys appropriated for this section may be used to fund mitigation
11 banking projects involving the restoration, creation, enhancement, or
12 preservation of critical habitat and urban wildlife habitat, provided
13 that the parties seeking to use the mitigation bank meet the matching
14 requirements of subsection (5) of this section. The moneys from this
15 section may not be used to supplant an obligation of a state or local
16 agency to provide mitigation. For the purposes of this section, a
17 mitigation bank means a site or sites where critical habitat or urban
18 wildlife habitat is restored, created, enhanced, or in exceptional
19 circumstances, preserved expressly for the purpose of providing
20 compensatory mitigation in advance of authorized project impacts to
21 similar resources.

22 (5) The committee may not approve a local project where the local
23 agency share is less than the amount to be awarded from the habitat
24 conservation account.

25 ~~((5) During the fiscal biennium ending June 30, 2001, the~~
26 ~~committee may approve a riparian zone habitat protection project~~
27 ~~established in section 329(6), chapter 235, Laws of 1997, where the~~
28 ~~local agency share is less than the amount to be awarded from the~~
29 ~~habitat conservation account.))~~

30 (6) In determining acquisition priorities with respect to the
31 habitat conservation account, the committee shall consider, at a
32 minimum, the following criteria:

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

34 (i) Community support for the project;

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

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

5 (iv) Immediacy of threat to the site;
6 ~~((+iii))~~ (v) Uniqueness of the site;
7 ~~((+iv))~~ (vi) Diversity of species using the site;
8 ~~((+v))~~ (vii) Quality of the habitat;
9 ~~((+vi))~~ (viii) Long-term viability of the site;
10 ~~((+vii))~~ (ix) Presence of endangered, threatened, or sensitive

11 species;
12 ~~((+viii))~~ (x) Enhancement of existing public property;
13 ~~((+ix))~~ (xi) Consistency with a local land use plan, or a regional
14 or statewide recreational or resource plan, including projects that
15 assist in the implementation of local shoreline master plans updated
16 according to RCW 90.58.080 or local comprehensive plans updated
17 according to RCW 36.70A.130; ((and

18 +x)) (xii) Educational and scientific value of the site;
19 (xiii) Integration with recovery efforts for endangered,
20 threatened, or sensitive species;
21 (xiv) For critical habitat proposals by local agencies, the
22 statewide significance of the site.

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

- 25 (i) Population of, and distance from, the nearest urban area;
- 26 (ii) Proximity to other wildlife habitat;
- 27 (iii) Potential for public use; and
- 28 (iv) Potential for use by special needs populations.

29 ~~(7) ((Before October 1st of each even numbered year, the committee~~
30 ~~shall recommend to the governor a prioritized list of state agency~~
31 ~~projects to be funded under RCW 79A.15.040(1) (a), (b), and (c). The~~
32 ~~governor may remove projects from the list recommended by the committee~~
33 ~~and shall submit this amended list in the capital budget request to the~~
34 ~~legislature. The list shall include, but not be limited to, a~~
35 ~~description of each project; and shall describe for each project any~~
36 ~~anticipated restrictions upon recreational activities allowed prior to~~
37 ~~the project.~~

1 (a) For trails proposals:
2 (i) Community support for the project;
3 (ii) Immediacy of threat to the site;
4 (iii) Linkage between communities;
5 (iv) Linkage between trails;
6 (v) Existing or potential usage;
7 (vi) Consistency with ~~((an existing))~~ a local land use plan, or a
8 regional or statewide recreational or resource plan, including projects
9 that assist in the implementation of local shoreline master plans
10 updated according to RCW 90.58.080 or local comprehensive plans updated
11 according to RCW 36.70A.130;

12 (vii) Availability of water access or views;
13 (viii) Enhancement of wildlife habitat; and
14 (ix) Scenic values of the site.

15 (b) For water access proposals:

16 (i) Community support for the project;
17 (ii) Distance from similar water access opportunities;
18 (iii) Immediacy of threat to the site;
19 (iv) Diversity of possible recreational uses; ~~((and))~~
20 (v) Public demand in the area; and
21 (vi) Consistency with a local land use plan, or a regional or
22 statewide recreational or resource plan, including projects that assist
23 in the implementation of local shoreline master plans updated according
24 to RCW 90.58.080 or local comprehensive plans updated according to RCW
25 36.70A.130.

26 ~~(7) ((Before October 1st of each even-numbered year, the committee~~
27 ~~shall recommend to the governor a prioritized list of state agency~~
28 ~~projects to be funded under RCW 79A.15.050(1) (a), (c), and (d). The~~
29 ~~governor may remove projects from the list recommended by the committee~~
30 ~~and shall submit this amended list in the capital budget request to the~~
31 ~~legislature. The list shall include, but not be limited to, a~~
32 ~~description of each project; and shall describe for each project any~~
33 ~~anticipated restrictions upon recreational activities allowed prior to~~
34 ~~the project.~~

35 ~~(8))~~ Before ~~((October))~~ November 1st of each even-numbered year,
36 the committee shall recommend to the governor a prioritized list of all
37 state agency and local projects to be funded under RCW 79A.15.050(1)
38 (a), (b), (c), and (d). The governor may remove projects from the list

1 recommended by the committee and shall submit this amended list in the
2 capital budget request to the legislature. The list shall include, but
3 not be limited to, a description of each project and any particular
4 match requirement, and describe for each project any anticipated
5 restrictions upon recreational activities allowed prior to the project.

6 **Sec. 10.** RCW 79A.15.080 and 1990 1st ex.s. c 14 s 9 are each
7 amended to read as follows:

8 The committee shall not sign contracts or otherwise financially
9 obligate funds from the habitat conservation account (~~(or)~~), the
10 outdoor recreation account, the riparian protection account, or the
11 farmlands preservation account as provided in this chapter before the
12 legislature has appropriated funds for a specific list of projects.
13 The legislature may remove projects from the list recommended by the
14 governor.

15 NEW SECTION. **Sec. 11.** A new section is added to chapter 79.70 RCW
16 to read as follows:

17 The state treasurer, on behalf of the department, must distribute
18 to counties for all lands acquired for the purposes of this chapter an
19 amount in lieu of real property taxes equal to the amount of tax that
20 would be due if the land were taxable as open space land under chapter
21 84.34 RCW except taxes levied for any state purpose, plus an additional
22 amount equal to the amount of weed control assessment that would be due
23 if such lands were privately owned. The county assessor and county
24 legislative authority shall assist in determining the appropriate
25 calculation of the amount of tax that would be due. The county shall
26 distribute the amount received under this section in lieu of real
27 property taxes to all property taxing districts except the state in
28 appropriate tax code areas the same way it would distribute local
29 property taxes from private property. The county shall distribute the
30 amount received under this section for weed control to the appropriate
31 weed district.

32 NEW SECTION. **Sec. 12.** A new section is added to chapter 79.71 RCW
33 to read as follows:

34 The state treasurer, on behalf of the department, must distribute
35 to counties for all lands acquired for the purposes of this chapter an

1 amount in lieu of real property taxes equal to the amount of tax that
2 would be due if the land were taxable as open space land under chapter
3 84.34 RCW except taxes levied for any state purpose, plus an additional
4 amount equal to the amount of weed control assessment that would be due
5 if such lands were privately owned. The county assessor and county
6 legislative authority shall assist in determining the appropriate
7 calculation of the amount of tax that would be due. The county shall
8 distribute the amount received under this section in lieu of real
9 property taxes to all property taxing districts except the state in
10 appropriate tax code areas the same way it would distribute local
11 property taxes from private property. The county shall distribute the
12 amount received under this section for weed control to the appropriate
13 weed district.

14 **Sec. 13.** RCW 84.33.140 and 2003 c 170 s 5 are each amended to read
15 as follows:

16 (1) When land has been designated as forest land under RCW
17 84.33.130, a notation of the designation shall be made each year upon
18 the assessment and tax rolls. A copy of the notice of approval
19 together with the legal description or assessor's parcel numbers for
20 the land shall, at the expense of the applicant, be filed by the
21 assessor in the same manner as deeds are recorded.

22 (2) In preparing the assessment roll as of January 1, 2002, for
23 taxes payable in 2003 and each January 1st thereafter, the assessor
24 shall list each parcel of designated forest land at a value with
25 respect to the grade and class provided in this subsection and adjusted
26 as provided in subsection (3) of this section. The assessor shall
27 compute the assessed value of the land using the same assessment ratio
28 applied generally in computing the assessed value of other property in
29 the county. Values for the several grades of bare forest land shall be
30 as follows:

31	LAND	OPERABILITY	VALUES
32	GRADE	CLASS	PER ACRE
33		1	\$234
34	1	2	229
35		3	217

1		4	157
2		1	198
3	2	2	190
4		3	183
5		4	132
6		1	154
7	3	2	149
8		3	148
9		4	113
10		1	117
11	4	2	114
12		3	113
13		4	86
14		1	85
15	5	2	78
16		3	77
17		4	52
18		1	43
19	6	2	39
20		3	39
21		4	37
22		1	21
23	7	2	21
24		3	20
25		4	20
26	8		1

27 (3) On or before December 31, 2001, the department shall adjust by
28 rule under chapter 34.05 RCW, the forest land values contained in
29 subsection (2) of this section in accordance with this subsection, and
30 shall certify the adjusted values to the assessor who will use these
31 values in preparing the assessment roll as of January 1, 2002. For the
32 adjustment to be made on or before December 31, 2001, for use in the
33 2002 assessment year, the department shall:

34 (a) Divide the aggregate value of all timber harvested within the
35 state between July 1, 1996, and June 30, 2001, by the aggregate harvest
36 volume for the same period, as determined from the harvester excise tax
37 returns filed with the department under RCW 84.33.074; and

1 (b) Divide the aggregate value of all timber harvested within the
2 state between July 1, 1995, and June 30, 2000, by the aggregate harvest
3 volume for the same period, as determined from the harvester excise tax
4 returns filed with the department under RCW 84.33.074; and

5 (c) Adjust the forest land values contained in subsection (2) of
6 this section by a percentage equal to one-half of the percentage change
7 in the average values of harvested timber reflected by comparing the
8 resultant values calculated under (a) and (b) of this subsection.

9 (4) For the adjustments to be made on or before December 31, 2002,
10 and each succeeding year thereafter, the same procedure described in
11 subsection (3) of this section shall be followed using harvester excise
12 tax returns filed under RCW 84.33.074. However, this adjustment shall
13 be made to the prior year's adjusted value, and the five-year periods
14 for calculating average harvested timber values shall be successively
15 one year more recent.

16 (5) Land graded, assessed, and valued as forest land shall continue
17 to be so graded, assessed, and valued until removal of designation by
18 the assessor upon the occurrence of any of the following:

19 (a) Receipt of notice from the owner to remove the designation;

20 (b) Sale or transfer to an ownership making the land exempt from ad
21 valorem taxation;

22 (c) Sale or transfer of all or a portion of the land to a new
23 owner, unless the new owner has signed a notice of forest land
24 designation continuance, except transfer to an owner who is an heir or
25 devisee of a deceased owner, shall not, by itself, result in removal of
26 designation. The signed notice of continuance shall be attached to the
27 real estate excise tax affidavit provided for in RCW 82.45.150. The
28 notice of continuance shall be on a form prepared by the department.
29 If the notice of continuance is not signed by the new owner and
30 attached to the real estate excise tax affidavit, all compensating
31 taxes calculated under subsection (11) of this section shall become due
32 and payable by the seller or transferor at time of sale. The auditor
33 shall not accept an instrument of conveyance regarding designated
34 forest land for filing or recording unless the new owner has signed the
35 notice of continuance or the compensating tax has been paid, as
36 evidenced by the real estate excise tax stamp affixed thereto by the
37 treasurer. The seller, transferor, or new owner may appeal the new
38 assessed valuation calculated under subsection (11) of this section to

1 the county board of equalization in accordance with the provisions of
2 RCW 84.40.038. Jurisdiction is hereby conferred on the county board of
3 equalization to hear these appeals;

4 (d) Determination by the assessor, after giving the owner written
5 notice and an opportunity to be heard, that:

6 (i) The land is no longer primarily devoted to and used for growing
7 and harvesting timber. However, land shall not be removed from
8 designation if a governmental agency, organization, or other recipient
9 identified in subsection (13) or (14) of this section as exempt from
10 the payment of compensating tax has manifested its intent in writing or
11 by other official action to acquire a property interest in the
12 designated forest land by means of a transaction that qualifies for an
13 exemption under subsection (13) or (14) of this section. The
14 governmental agency, organization, or recipient shall annually provide
15 the assessor of the county in which the land is located reasonable
16 evidence in writing of the intent to acquire the designated land as
17 long as the intent continues or within sixty days of a request by the
18 assessor. The assessor may not request this evidence more than once in
19 a calendar year;

20 (ii) The owner has failed to comply with a final administrative or
21 judicial order with respect to a violation of the restocking, forest
22 management, fire protection, insect and disease control, and forest
23 debris provisions of Title 76 RCW or any applicable rules under Title
24 76 RCW; or

25 (iii) Restocking has not occurred to the extent or within the time
26 specified in the application for designation of such land.

27 (6) Land shall not be removed from designation if there is a
28 governmental restriction that prohibits, in whole or in part, the owner
29 from harvesting timber from the owner's designated forest land. If
30 only a portion of the parcel is impacted by governmental restrictions
31 of this nature, the restrictions cannot be used as a basis to remove
32 the remainder of the forest land from designation under this chapter.
33 For the purposes of this section, "governmental restrictions" includes:
34 (a) Any law, regulation, rule, ordinance, program, or other action
35 adopted or taken by a federal, state, county, city, or other
36 governmental entity; or (b) the land's zoning or its presence within an
37 urban growth area designated under RCW 36.70A.110.

1 (7) The assessor shall have the option of requiring an owner of
2 forest land to file a timber management plan with the assessor upon the
3 occurrence of one of the following:

4 (a) An application for designation as forest land is submitted; or

5 (b) Designated forest land is sold or transferred and a notice of
6 continuance, described in subsection (5)(c) of this section, is signed.

7 (8) If land is removed from designation because of any of the
8 circumstances listed in subsection (5)(a) through (c) of this section,
9 the removal shall apply only to the land affected. If land is removed
10 from designation because of subsection (5)(d) of this section, the
11 removal shall apply only to the actual area of land that is no longer
12 primarily devoted to the growing and harvesting of timber, without
13 regard to any other land that may have been included in the application
14 and approved for designation, as long as the remaining designated
15 forest land meets the definition of forest land contained in RCW
16 84.33.035.

17 (9) Within thirty days after the removal of designation as forest
18 land, the assessor shall notify the owner in writing, setting forth the
19 reasons for the removal. The seller, transferor, or owner may appeal
20 the removal to the county board of equalization in accordance with the
21 provisions of RCW 84.40.038.

22 (10) Unless the removal is reversed on appeal a copy of the notice
23 of removal with a notation of the action, if any, upon appeal, together
24 with the legal description or assessor's parcel numbers for the land
25 removed from designation shall, at the expense of the applicant, be
26 filed by the assessor in the same manner as deeds are recorded and a
27 notation of removal from designation shall immediately be made upon the
28 assessment and tax rolls. The assessor shall revalue the land to be
29 removed with reference to its true and fair value as of January 1st of
30 the year of removal from designation. Both the assessed value before
31 and after the removal of designation shall be listed. Taxes based on
32 the value of the land as forest land shall be assessed and payable up
33 until the date of removal and taxes based on the true and fair value of
34 the land shall be assessed and payable from the date of removal from
35 designation.

36 (11) Except as provided in subsection (5)(c), (13), or (14) of this
37 section, a compensating tax shall be imposed on land removed from
38 designation as forest land. The compensating tax shall be due and

1 payable to the treasurer thirty days after the owner is notified of the
2 amount of this tax. As soon as possible after the land is removed from
3 designation, the assessor shall compute the amount of compensating tax
4 and mail a notice to the owner of the amount of compensating tax owed
5 and the date on which payment of this tax is due. The amount of
6 compensating tax shall be equal to the difference between the amount of
7 tax last levied on the land as designated forest land and an amount
8 equal to the new assessed value of the land multiplied by the dollar
9 rate of the last levy extended against the land, multiplied by a
10 number, in no event greater than nine, equal to the number of years for
11 which the land was designated as forest land, plus compensating taxes
12 on the land at forest land values up until the date of removal and the
13 prorated taxes on the land at true and fair value from the date of
14 removal to the end of the current tax year.

15 (12) Compensating tax, together with applicable interest thereon,
16 shall become a lien on the land which shall attach at the time the land
17 is removed from designation as forest land and shall have priority to
18 and shall be fully paid and satisfied before any recognizance,
19 mortgage, judgment, debt, obligation, or responsibility to or with
20 which the land may become charged or liable. The lien may be
21 foreclosed upon expiration of the same period after delinquency and in
22 the same manner provided by law for foreclosure of liens for delinquent
23 real property taxes as provided in RCW 84.64.050. Any compensating tax
24 unpaid on its due date shall thereupon become delinquent. From the
25 date of delinquency until paid, interest shall be charged at the same
26 rate applied by law to delinquent ad valorem property taxes.

27 (13) The compensating tax specified in subsection (11) of this
28 section shall not be imposed if the removal of designation under
29 subsection (5) of this section resulted solely from:

30 (a) Transfer to a government entity in exchange for other forest
31 land located within the state of Washington;

32 (b) A taking through the exercise of the power of eminent domain,
33 or sale or transfer to an entity having the power of eminent domain in
34 anticipation of the exercise of such power;

35 (c) A donation of fee title, development rights, or the right to
36 harvest timber, to a government agency or organization qualified under
37 RCW 84.34.210 and 64.04.130 for the purposes enumerated in those
38 sections, or the sale or transfer of fee title to a governmental entity

1 or a nonprofit nature conservancy corporation, as defined in RCW
2 64.04.130, exclusively for the protection and conservation of lands
3 recommended for state natural area preserve purposes by the natural
4 heritage council and natural heritage plan as defined in chapter 79.70
5 RCW or approved for state natural resources conservation area purposes
6 as defined in chapter 79.71 RCW. At such time as the land is not used
7 for the purposes enumerated, the compensating tax specified in
8 subsection (11) of this section shall be imposed upon the current
9 owner;

10 (d) The sale or transfer of fee title to the parks and recreation
11 commission for park and recreation purposes;

12 (e) Official action by an agency of the state of Washington or by
13 the county or city within which the land is located that disallows the
14 present use of the land;

15 (f) The creation, sale, or transfer of forestry riparian easements
16 under RCW 76.13.120;

17 (g) The creation, sale, or transfer of a fee interest or a
18 conservation easement for the riparian open space program under RCW
19 76.09.040;

20 (h) The sale or transfer of land within two years after the death
21 of the owner of at least a fifty percent interest in the land if the
22 land has been assessed and valued as classified forest land, designated
23 as forest land under this chapter, or classified under chapter 84.34
24 RCW continuously since 1993. The date of death shown on a death
25 certificate is the date used for the purposes of this subsection
26 (13)(h); or

27 (i) The sale or transfer of land after the death of the owner of at
28 least a fifty percent interest in the land if the land has been
29 assessed and valued as classified forest land, designated as forest
30 land under this chapter, or classified under chapter 84.34 RCW
31 continuously since 1993 and the sale or transfer takes place after July
32 22, 2001, and on or before July 22, 2003, and the death of the owner
33 occurred after January 1, 1991. The date of death shown on a death
34 certificate is the date used for the purposes of this subsection
35 (13)(i).

36 (14) In a county with a population of more than one million
37 inhabitants, the compensating tax specified in subsection (11) of this

1 section shall not be imposed if the removal of designation as forest
2 land under subsection (5) of this section resulted solely from:

3 (a) An action described in subsection (13) of this section; or

4 (b) A transfer of a property interest to a government entity, or to
5 a nonprofit historic preservation corporation or nonprofit nature
6 conservancy corporation, as defined in RCW 64.04.130, to protect or
7 enhance public resources, or to preserve, maintain, improve, restore,
8 limit the future use of, or otherwise to conserve for public use or
9 enjoyment, the property interest being transferred. At such time as
10 the property interest is not used for the purposes enumerated, the
11 compensating tax shall be imposed upon the current owner.

12 **Sec. 14.** RCW 77.12.203 and 1990 1st ex.s. c 15 s 11 are each
13 amended to read as follows:

14 (1) Notwithstanding RCW 84.36.010 or other statutes to the
15 contrary, the director shall pay by April 30th of each year on game
16 lands in each county, if requested by an election under RCW 77.12.201,
17 an amount in lieu of real property taxes equal to that amount paid on
18 similar parcels of open space land taxable under chapter 84.34 RCW or
19 the greater of seventy cents per acre per year or the amount paid in
20 1984 plus an additional amount for control of noxious weeds equal to
21 that which would be paid if such lands were privately owned. This
22 amount shall not be assessed or paid on department buildings,
23 structures, facilities, game farms, fish hatcheries, tidelands, or
24 public fishing areas of less than one hundred acres.

25 (2) "Game lands," as used in this section and RCW 77.12.201, means
26 those tracts one hundred acres or larger owned in fee by the department
27 and used for wildlife habitat and public recreational purposes. All
28 lands purchased for wildlife habitat, public access or recreation
29 purposes with federal funds in the Snake River drainage basin shall be
30 considered game lands regardless of acreage.

31 (3) This section shall not apply to lands transferred after April
32 23, 1990, to the department from other state agencies.

33 (4) The county shall distribute the amount received under this
34 section in lieu of real property taxes to all property taxing districts
35 except the state in appropriate tax code areas the same way it would
36 distribute local property taxes from private property. The county

1 shall distribute the amount received under this section for weed
2 control to the appropriate weed district.

3 NEW SECTION. Sec. 15. (1) The interagency committee for outdoor
4 recreation may apply up to three percent of the funds appropriated for
5 chapter 79A.15 RCW for the administration of the programs and purposes
6 specified in chapter 79A.15 RCW.

7 (2) Habitat and recreation land and facilities acquired or
8 developed with moneys appropriated for chapter 79A.15 RCW may not,
9 without prior approval of the interagency committee for outdoor
10 recreation, be converted to a use other than that for which funds were
11 originally approved. The interagency committee for outdoor recreation
12 shall adopt rules and procedures governing the approval of such a
13 conversion.

14 (3) This section expires July 1, 2007.

15 NEW SECTION. Sec. 16. (1) The interagency committee for outdoor
16 recreation, the department of fish and wildlife, the department of
17 natural resources, and counties shall work together to obtain necessary
18 information to complete a report on the fiscal impact of payments in
19 lieu of taxes provided for in this act.

20 (2) The report shall include a financial analysis determining the
21 difference by county, for those counties having less than thirty
22 percent of their total land in private ownership, of assessing property
23 taxes on lands acquired under chapter 79A.15 RCW by state agencies
24 based on one hundred percent of a property's true and fair value
25 compared to assessing property as open space under chapter 84.34 RCW.
26 The analysis shall also compare the fiscal impacts of using these
27 different property tax rates by those counties for existing game lands
28 held by the department of fish and wildlife and natural areas managed
29 by the department of natural resources.

30 (3) The interagency committee for outdoor recreation shall provide
31 the report to the appropriate committees of the legislature by December
32 1, 2005.

33 NEW SECTION. Sec. 17. Sections 1 through 14 of this act take
34 effect July 1, 2007.

1 NEW SECTION. **Sec. 18.** Section 15 of this act is necessary for the
2 immediate preservation of the public peace, health, or safety, or
3 support of the state government and its existing public institutions,
4 and takes effect July 1, 2005.

 Passed by the Senate April 19, 2005.

 Passed by the House April 14, 2005.

 Approved by the Governor May 6, 2005.

 Filed in Office of Secretary of State May 6, 2005.