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**SENATE BILL 5102**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senator Sheldon

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

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

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

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

(1) If the department is seeking to acquire private lands through adverse possession, the claim must rely on the actions of the requesting party and not the actions of the general public. Any claim for adverse possession brought by the department must include fair and clear notice that the land is being used by the department and include evidence of physical occupation of the property sufficient to provide a property owner constructive or actual notice of the claim.

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

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

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

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

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

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

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

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

(3)(a) Consistent with the plan, acquire by gift, devise, purchase, grant, dedication, or means other than eminent domain, adverse possession, or equitable apportionment, the fee or any lesser right or interest in real property which shall be held and managed as a natural area;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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