
HOUSE BILL 2069

State of Washington

64th Legislature

2015 Regular Session

By Representative Blake

Read first time 02/10/15. Referred to Committee on Agriculture & Natural Resources.

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; reenacting and amending
4 RCW 43.30.411; 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 **Sec. 2.** RCW 43.30.411 and 2003 c 334 s 108 and 2003 c 312 s 1
2 are each reenacted and amended to read as follows:

3 (1) The department shall exercise all of the powers, duties, and
4 functions now vested in the commissioner of public lands and such
5 powers, duties, and functions are hereby transferred to the
6 department. However, nothing contained in this section shall
7 (~~effect~~) affect the commissioner's ex officio membership on any
8 committee provided by law.

9 (2)(a) Except as provided in (b) of this subsection, and subject
10 to the limitations of RCW 4.24.115, the department, in the exercise
11 of any of its powers, may include in any authorized contract a
12 provision for indemnifying the other contracting party against loss
13 or damages.

14 (b) When executing a right-of-way or easement contract over
15 private land that involves forest management activities, the
16 department shall indemnify the private landowner if the landowner
17 does not receive a direct benefit from the contract.

18 (3) The department may not officially enter into a habitat
19 conservation plan, or other multiyear agreement with the federal
20 government under the endangered species act, 16 U.S.C. Sec. 1531 et
21 seq., that commits the state to future action or constrains future
22 state options relating to the management of aquatic lands as it
23 affects overwater structures and log storage. However, this
24 subsection does not limit the authority of the department to pursue
25 other proprietary or legal options to achieve these goals.

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