
SUBSTITUTE SENATE BILL 5843

State of Washington

61st Legislature

2009 Regular Session

By Senate Natural Resources, Ocean & Recreation (originally sponsored by Senators Pridemore and Swecker)

READ FIRST TIME 02/20/09.

1 AN ACT Relating to qualified applicants and procedures within the
2 Washington wildlife and recreation program; and amending RCW
3 79A.15.010, 79A.15.030, 79A.15.060, 79A.15.120, 79A.15.130, and
4 84.34.250.

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

6 **Sec. 1.** RCW 79A.15.010 and 2007 c 241 s 26 are each amended to
7 read as follows:

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

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

14 (2) "Board" means the recreation and conservation funding board.

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

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

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

7 (6) "Natural areas" means areas that have, to a significant degree,
8 retained their natural character and are important in preserving rare
9 or vanishing flora, fauna, geological, natural historical, or similar
10 features of scientific or educational value.

11 (7) "Nonprofit nature conservancy corporation or association" means
12 an organization as defined in RCW 84.34.250.

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

18 ~~((+8))~~ (9) "Special needs populations" means physically restricted
19 people or people of limited means.

20 ~~((+9))~~ (10) "State agencies" means the state parks and recreation
21 commission, the department of natural resources, the department of
22 general administration, and the department of fish and wildlife.

23 ~~((+10))~~ (11) "Trails" means public ways constructed for and open
24 to pedestrians, equestrians, or bicyclists, or any combination thereof,
25 other than a sidewalk constructed as a part of a city street or county
26 road for exclusive use of pedestrians.

27 ~~((+11))~~ (12) "Urban wildlife habitat" means lands that provide
28 habitat important to wildlife in proximity to a metropolitan area.

29 ~~((+12))~~ (13) "Water access" means boat or foot access to marine
30 waters, lakes, rivers, or streams.

31 **Sec. 2.** RCW 79A.15.030 and 2007 c 241 s 28 are each amended to
32 read as follows:

33 (1) Moneys appropriated for this chapter shall be divided as
34 follows:

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

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

14 (2) Except as otherwise provided in chapter 303, Laws of 2005,
15 moneys deposited in these accounts shall be invested as authorized for
16 other state funds, and any earnings on them shall be credited to the
17 respective account.

18 (3) All moneys deposited in the habitat conservation, outdoor
19 recreation, riparian protection, and farmlands preservation accounts
20 shall be allocated as provided under RCW 79A.15.040, 79A.15.050,
21 79A.15.120, and 79A.15.130 as grants to state or local agencies or
22 nonprofit nature conservancy organizations or associations for
23 acquisition, development, and renovation within the jurisdiction of
24 those agencies, subject to legislative appropriation. The board may
25 use or permit the use of any funds appropriated for this chapter as
26 matching funds where federal, local, or other funds are made available
27 for projects within the purposes of this chapter. Moneys appropriated
28 to these accounts that are not obligated to a specific project may be
29 used to fund projects from lists of alternate projects from the same
30 account in biennia succeeding the biennium in which the moneys were
31 originally appropriated.

32 (4) Projects receiving grants under this chapter that are developed
33 or otherwise accessible for public recreational uses shall be available
34 to the public.

35 (5) The board may make grants to an eligible project from the
36 habitat conservation, outdoor recreation, riparian protection, and
37 farmlands preservation accounts and any one or more of the applicable

1 categories under such accounts described in RCW 79A.15.040, 79A.15.050,
2 79A.15.120, and 79A.15.130.

3 (6) The board may accept private donations to the habitat
4 conservation account, the outdoor recreation account, the riparian
5 protection account, and the farmlands preservation account for the
6 purposes specified in this chapter.

7 (7) The board may apply up to three percent of the funds
8 appropriated for this chapter for its office for the administration of
9 the programs and purposes specified in this chapter.

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

15 **Sec. 3.** RCW 79A.15.060 and 2007 c 241 s 31 are each amended to
16 read as follows:

17 (1) The board may adopt rules establishing acquisition policies and
18 priorities for distributions from the habitat conservation account.

19 (2) Except as provided in RCW 79A.15.030(7), moneys appropriated
20 for this chapter may not be used by the board to fund staff positions
21 or other overhead expenses, or by a state, regional, or local agency to
22 fund operation or maintenance of areas acquired under this chapter.

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

26 ~~(4) ((Moneys appropriated for this section may be used to fund~~
27 ~~mitigation banking projects involving the restoration, creation,~~
28 ~~enhancement, or preservation of critical habitat and urban wildlife~~
29 ~~habitat, provided that the parties seeking to use the mitigation bank~~
30 ~~meet the matching requirements of subsection (5) of this section. The~~
31 ~~moneys from this section may not be used to supplant an obligation of~~
32 ~~a state or local agency to provide mitigation. For the purposes of~~
33 ~~this section, a mitigation bank means a site or sites where critical~~
34 ~~habitat or urban wildlife habitat is restored, created, enhanced, or in~~
35 ~~exceptional circumstances, preserved expressly for the purpose of~~
36 ~~providing compensatory mitigation in advance of authorized project~~
37 ~~impacts to similar resources.~~

1 ~~(5)~~) The board may not approve a local project where the local
2 agency share is less than the amount to be awarded from the habitat
3 conservation account.

4 ~~((6))~~ (5) In determining acquisition priorities with respect to
5 the habitat conservation account, the board shall consider, at a
6 minimum, the following criteria:

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

8 (i) Community support for the project;

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

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

17 (iv) Immediacy of threat to the site;

18 (v) Uniqueness of the site;

19 (vi) Diversity of species using the site;

20 (vii) Quality of the habitat;

21 (viii) Long-term viability of the site;

22 (ix) Presence of endangered, threatened, or sensitive species;

23 (x) Enhancement of existing public property;

24 (xi) Consistency with a local land use plan, or a regional or
25 statewide recreational or resource plan, including projects that assist
26 in the implementation of local shoreline master plans updated according
27 to RCW 90.58.080 or local comprehensive plans updated according to RCW
28 36.70A.130;

29 (xii) Educational and scientific value of the site;

30 (xiii) Integration with recovery efforts for endangered,
31 threatened, or sensitive species;

32 (xiv) For critical habitat proposals by local agencies, the
33 statewide significance of the site.

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

36 (i) Population of, and distance from, the nearest urban area;

37 (ii) Proximity to other wildlife habitat;

38 (iii) Potential for public use; and

1 (iv) Potential for use by special needs populations.

2 ((+7)) (6) Before November 1st of each even-numbered year, the
3 board shall recommend to the governor a prioritized list of all state
4 agency and local projects to be funded under RCW 79A.15.040(1) (a),
5 (b), and (c). The governor may remove projects from the list
6 recommended by the board and shall submit this amended list in the
7 capital budget request to the legislature. The list shall include, but
8 not be limited to, a description of each project and any particular
9 match requirement, and describe for each project any anticipated
10 restrictions upon recreational activities allowed prior to the project.

11 **Sec. 4.** RCW 79A.15.120 and 2007 c 241 s 37 are each amended to
12 read as follows:

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

17 (2) Moneys appropriated for this chapter to the riparian protection
18 account must be distributed for the acquisition or enhancement or
19 restoration of riparian habitat. All enhancement or restoration
20 projects, except those qualifying under subsection ((+10)) (9)(a) of
21 this section, must include the acquisition of a real property interest
22 in order to be eligible.

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

31 (4) The board may adopt rules establishing acquisition policies and
32 priorities for distributions from the riparian protection account.

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

1 (6) 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 ~~(7) ((Moneys appropriated for this section may be used to fund
6 mitigation banking projects involving the restoration, creation,
7 enhancement, or preservation of riparian habitat, provided that the
8 parties seeking to use the mitigation bank meet the matching
9 requirements of subsection (8) of this section. The moneys from this
10 section may not be used to supplant an obligation of a state or local
11 agency to provide mitigation. For the purposes of this section, a
12 mitigation bank means a site or sites where riparian habitat is
13 restored, created, enhanced, or in exceptional circumstances, preserved
14 expressly for the purpose of providing compensatory mitigation in
15 advance of authorized project impacts to similar resources.~~

16 ~~(8))~~ The board may not approve a local project where the local
17 agency or nonprofit nature conservancy organization or association
18 share is less than the amount to be awarded from the riparian
19 protection account. In-kind contributions, including contributions of
20 a real property interest in land, may be used to satisfy the local
21 agency's or nonprofit nature conservancy organization's or
22 association's share.

23 ~~((9))~~ (8) State agencies receiving grants for acquisition of land
24 under this section must pay an amount in lieu of real property taxes
25 equal to the amount of tax that would be due if the land were taxable
26 as open space land under chapter 84.34 RCW except taxes levied for any
27 state purpose, plus an additional amount for control of noxious weeds
28 equal to that which would be paid if such lands were privately owned.
29 The county assessor and county legislative authority shall assist in
30 determining the appropriate calculation of the amount of tax that would
31 be due.

32 ~~((10))~~ (9) In determining acquisition priorities with respect to
33 the riparian protection account, the board must consider, at a minimum,
34 the following criteria:

35 (a) Whether the project continues the conservation reserve
36 enhancement program. Applications that extend the duration of leases
37 of riparian areas that are currently enrolled in the conservation

1 reserve enhancement program shall be eligible. Such applications are
2 eligible for a conservation lease extension of at least twenty-five
3 years of duration;

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

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

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

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

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

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

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

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

27 ~~((+11+))~~ (10) Before November 1st of each even-numbered year, the
28 board will recommend to the governor a prioritized list of projects to
29 be funded under this section. The governor may remove projects from
30 the list recommended by the board and will submit this amended list in
31 the capital budget request to the legislature. The list must include,
32 but not be limited to, a description of each project and any particular
33 match requirement.

34 **Sec. 5.** RCW 79A.15.130 and 2007 c 241 s 38 are each amended to
35 read as follows:

36 (1) The farmlands preservation account is established in the state
37 treasury. The board will administer the account in accordance with

1 chapter 79A.25 RCW and this chapter, and hold it separate and apart
2 from all other money, funds, and accounts of the board. Moneys
3 appropriated for this chapter to the farmlands preservation account
4 must be distributed for the acquisition and preservation of farmlands
5 in order to maintain the opportunity for agricultural activity upon
6 these lands.

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

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

31 (3) Cities (~~and~~), counties, nonprofit nature conservancy
32 organizations or associations, and the conservation commission may
33 apply for acquisition and enhancement or restoration funds for farmland
34 preservation projects within their jurisdictions under subsection (1)
35 of this section.

36 (4) The board may adopt rules establishing acquisition and
37 enhancement or restoration policies and priorities for distributions
38 from the farmlands preservation account.

1 (5) The acquisition of a property right in a project under this
2 section by a county (~~(or)~~), city, nonprofit nature conservancy
3 organization or association, or the conservation commission does not
4 provide a right of access to the property by the public unless
5 explicitly provided for in a conservation easement or other form of
6 deed restriction.

7 (6) Except as provided in RCW 79A.15.030(7), moneys appropriated
8 for this section may not be used by the board to fund staff positions
9 or other overhead expenses, or by a city (~~(or)~~), county, nonprofit
10 nature conservancy organization or association, or the conservation
11 commission to fund operation or maintenance of areas acquired under
12 this chapter.

13 (7) Moneys appropriated for this section may be used by grant
14 recipients for costs incidental to restoration and acquisition,
15 including, but not limited to, surveying expenses, fencing, and
16 signing.

17 (8) The board may not approve a local project where the local
18 agency's or nonprofit nature conservancy organization's or
19 association's share is less than the amount to be awarded from the
20 farmlands preservation account. In-kind contributions, including
21 contributions of a real property interest in land, may be used to
22 satisfy the local agency's or nonprofit nature conservancy
23 organization's or association's share.

24 (9) In determining the acquisition priorities, the board must
25 consider, at a minimum, the following criteria:

26 (a) Community support for the project;

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

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

32 (d) Consistency with a local land use plan, or a regional or
33 statewide recreational or resource plan. The projects that assist in
34 the implementation of local shoreline master plans updated according to
35 RCW 90.58.080 or local comprehensive plans updated according to RCW
36 36.70A.130 must be highly considered in the process;

37 (e) Benefits to salmonids;

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

1 (g) Integration with recovery efforts for endangered, threatened,
2 or sensitive species;

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

5 (i) Soil types;

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

9 (iii) Suitability for producing different types or varieties of
10 crops;

11 (iv) Farm-to-market access;

12 (v) Water availability; and

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

15 (i) Viewshed;

16 (ii) Aquifer recharge;

17 (iii) Occasional or periodic collector for storm water runoff;

18 (iv) Agricultural sector job creation;

19 (v) Migratory bird habitat and forage area; and

20 (vi) Educational and curriculum potential.

21 (10) In allotting funds for environmental enhancement or
22 restoration projects, the board will require the projects to meet the
23 following criteria:

24 (a) Enhancement or restoration projects must further the ecological
25 functions of the farmlands;

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

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

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

35 (11) Before November 1st of each even-numbered year, the board will
36 recommend to the governor a prioritized list of all projects to be
37 funded under this section. The governor may remove projects from the
38 list recommended by the board and must submit this amended list in the

1 capital budget request to the legislature. The list must include, but
2 not be limited to, a description of each project and any particular
3 match requirement.

4 **Sec. 6.** RCW 84.34.250 and 1975-'76 2nd ex.s. c 22 s 4 are each
5 amended to read as follows:

6 As used in RCW 84.34.210, as now or hereafter amended, (~~and~~) RCW
7 84.34.220, as now or hereafter amended, and RCW 79A.15.010, "nonprofit
8 nature conservancy corporation or association" means an organization
9 which qualifies as being tax exempt under 26 U.S.C. section 501(c) (of
10 the Internal Revenue Code) as it exists on June 25, 1976 and one which
11 has as one of its principal purposes the conducting or facilitating of
12 scientific research; the conserving of natural resources, including but
13 not limited to biological resources, for the general public; or the
14 conserving of open spaces, including but not limited to wildlife
15 habitat to be utilized as public access areas, for the use and
16 enjoyment of the general public.

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