
HOUSE BILL 1492

State of Washington 55th Legislature 1997 Regular Session

By Representatives Buck, Kessler and Schoesler

Read first time 01/28/97. Referred to Committee on Natural Resources.

1 AN ACT Relating to natural area preserves; amending RCW 79.70.040
2 and 79.70.010; adding new sections to chapter 79.70 RCW; and adding a
3 new section to chapter 43.98A RCW.

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

5 **Sec. 1.** RCW 79.70.040 and 1972 ex.s. c 119 s 4 are each amended to
6 read as follows:

7 (1) The department is further authorized to purchase, lease, set
8 aside or exchange any public land or state-owned trust lands which are
9 deemed to be natural areas: PROVIDED, That the appropriate state land
10 trust receives the fair market value for any interests that are
11 disposed of: PROVIDED, FURTHER, That such transactions are approved by
12 the board of natural resources.

13 (2) An area consisting of public land or state-owned trust lands
14 designated as a natural area preserve shall be held in trust and shall
15 not be alienated except to another public use upon a finding by the
16 department of natural resources of imperative and unavoidable public
17 necessity.

18 (3) The department shall not purchase, lease, set aside, or
19 exchange any public land or state-owned trust lands which are deemed to

1 be natural areas where such an action would deny a right of way to any
2 privately owned property, unless the department grants an easement
3 across the proposed natural area preserve to the affected property
4 owner. The department may negotiate with a willing adjoining private
5 property owner for the granting of a private way of necessity for the
6 affected property owner, but may not seek a private way of necessity
7 through condemnation of land.

8 NEW SECTION. Sec. 2. A new section is added to chapter 79.70 RCW
9 to read as follows:

10 (1) If a landowner has lost his or her right of way due to a
11 natural area preserve created since January 1, 1972, the department
12 shall provide a private way of necessity across the natural area
13 preserve that created the lack of access. If an alternative route is
14 available on, across, over, or through an adjoining property owned by
15 a private landowner, the department may negotiate for a private way of
16 necessity for the landowner who has lost his or her right of way due to
17 the creation of a natural area preserve. If an agreement can be
18 reached with a willing adjoining property owner, the department shall
19 provide and construct a replacement road on the adjoining property.

20 (a) The department may not condemn land that is privately owned for
21 the creation of a private way of necessity.

22 (b) The department may enter into an agreement with a willing
23 adjoining property owner for the creation of a private way of
24 necessity. The department shall pay reasonable attorney fees and
25 related costs for the establishment of the private way of necessity.

26 (2) The term "private way of necessity," as used in this chapter,
27 includes a right of way on, across, over, or through a natural area
28 preserve for means of ingress and egress, and the construction and
29 maintenance thereon of roads and logging roads upon which timber,
30 stone, minerals, or other valuable materials and products may be
31 transported and carried.

32 (3) If it is determined an owner, or one entitled to the beneficial
33 use of land, is entitled to a private way of necessity and there is
34 more than one possible route for the private way of necessity, the
35 selection of the route shall be weighed to establish an equitable
36 balance between the economic benefits to the land for which the private
37 way of necessity is sought and the environmental impacts to the land
38 over which the private way of necessity is to run.

1 (4) In an action seeking a private way of necessity, if the owner
2 of the landlocked property and the department prefer different routes,
3 the route preferred by the department prevails unless the owner of the
4 landlocked property can prove by a preponderance of the evidence that
5 either: (a) The economic benefits derived from the landlocked owner's
6 preferred route are substantially greater than the economic benefits
7 derived from the department's preferred route; or (b) the department's
8 preferred route is substantially more financially expensive than the
9 route preferred by the landlocked owner.

10 NEW SECTION. **Sec. 3.** A new section is added to chapter 79.70 RCW
11 to read as follows:

12 The department shall pay the legal and related court costs for
13 landowners who successfully sue to enforce the private way of necessity
14 requirement under this chapter and chapter 8.24 RCW, or pay to provide
15 and construct a private way of necessity.

16 NEW SECTION. **Sec. 4.** A new section is added to chapter 79.70 RCW
17 to read as follows:

18 The department shall hold a public hearing in the county where the
19 majority of the land in the proposed natural area preserve is located
20 prior to establishing the boundary. At the hearing the department
21 shall distribute to all who attend an accurate map showing the affected
22 land and containing the exact legal description. At least fourteen
23 days prior to the public hearing, the department shall send notice
24 specifying the date, location, time, and purpose of the public hearing
25 to each local newspaper of general circulation and to each local radio
26 and television station.

27 **Sec. 5.** RCW 79.70.010 and 1972 ex.s. c 119 s 1 are each amended to
28 read as follows:

29 The purpose of this chapter is to establish a state system of
30 natural area preserves and a means whereby the preservation of these
31 aquatic and land areas can be accomplished.

32 All areas within the state, except those which are expressly
33 dedicated by law for preservation and protection in their natural
34 condition, are subject to alteration by human activity. Natural lands,
35 together with the plants and animals living thereon in natural
36 ecological systems, are valuable for the purposes of scientific

1 research, teaching, as habitats of rare and vanishing species, as
2 places of natural historic and natural interest and scenic beauty, and
3 as living museums of the original heritage of the state.

4 It is, therefore, the public policy of the state of Washington to
5 secure for the people of present and future generations the benefit of
6 an enduring resource of natural areas by establishing a system of
7 natural area preserves, and to provide for the protection of these
8 natural areas.

9 Further, it is also the public policy of the state of Washington to
10 secure, protect, and defend private property rights. An action to
11 acquire and protect a natural area preserve may not supersede or
12 restrict the rights of adjoining property owners.

13 NEW SECTION. Sec. 6. A new section is added to chapter 43.98A RCW
14 to read as follows:

15 Lands may not be purchased, leased, set aside, exchanged, or
16 otherwise acquired under this chapter for natural area preserves where
17 the action would deny a right of way to any privately owned property,
18 unless a right of way across the proposed natural area preserve is
19 granted to the affected property owner. A private way of necessity may
20 be sought for the affected property owner through a willing adjoining
21 private property owner, but a private way of necessity may not be
22 sought through condemnation of land.

--- END ---