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**SUBSTITUTE HOUSE BILL 1957**

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**State of Washington                      61st Legislature                      2009 Regular Session**

**By** House Capital Budget (originally sponsored by Representatives Jacks, Warnick, and Van De Wege)

READ FIRST TIME 02/23/09.

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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