
HOUSE BILL 1009

State of Washington

62nd Legislature

2011 Regular Session

By Representatives Chandler, Blake, Takko, Kretz, Taylor, Orcutt, McCune, and Pearson

Prefiled 12/10/10. Read first time 01/10/11. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to the authority of state agencies to enter into
2 agreements with the federal government under the endangered species
3 act; adding a new section to chapter 77.12 RCW; adding a new section to
4 chapter 43.30 RCW; adding a new section to chapter 43.21A RCW; adding
5 a new section to chapter 79A.05 RCW; and creating a new section.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that the federal
8 endangered species act provides legal options for nonfederal parties to
9 engage in acts that would cause otherwise prohibited harm to a
10 threatened or endangered species. A commonly used option offered by
11 the federal government is the formulation of a habitat conservation
12 plan. These voluntary long-term agreements between the federal
13 government and a nonfederal party allow defined actions to occur,
14 despite potential harm to a threatened or endangered species, according
15 to agreed upon processes and limitations.

16 (2) The legislature further finds that habitat conservation plans
17 have been successfully entered into by private parties in Washington
18 and by the Washington state government itself. These agreements have

1 been instrumental in sustaining the working status of natural resource
2 lands and providing a degree of regulatory certainty to the nonfederal
3 signatories to the various habitat conservation plans.

4 (3) The legislature further finds that state agency participation
5 in habitat conservation plans is a potentially beneficial option for
6 state land managers and state regulatory programs. However,
7 participation in a habitat conservation plan often requires the state
8 to commit to taking certain actions, refrain from certain actions, or
9 be required to seek federal approval for actions that would otherwise
10 be within the state's inherent authority. The result of a state agency
11 entering into a habitat conservation plan could be to limit decision-
12 making options for future legislatures, governors, and executive branch
13 agency directors for an extended period of time.

14 (4) The legislature further finds that, given the potential long-
15 lasting ramifications on future legislative and executive branch
16 options, the decision to commit the state to the potential long-term
17 limitations of a habitat conservation plan should not be unilaterally
18 made by a state agency. Conversely, the role of the state agencies is
19 to identify the utility of a habitat conservation plan, but allow the
20 legislature and the governor to decide if the benefits of the habitat
21 conservation plan outweigh the potential sacrifice of future governing
22 options. This model was utilized when the legislature directed the
23 department of natural resources to negotiate a habitat conservation
24 plan in what is known as the forests and fish law (chapter 4, Laws of
25 1999), and it is a model that should be relied upon whenever a state
26 agency, or other party, decides that a habitat conservation plan is in
27 the best interest of the state.

28 NEW SECTION. **Sec. 2.** A new section is added to chapter 77.12 RCW
29 to read as follows:

30 (1) The department may not, after the effective date of this
31 section, officially enter into a habitat conservation plan, or other
32 multiyear agreement with the federal government under the endangered
33 species act, 16 U.S.C. Sec. 1531 et seq., that commits the state to
34 future action or constrains future state options without prior express
35 direction from the legislature.

36 (2) Nothing in this section prohibits the department from seeking
37 funding for the development of a habitat conservation plan, negotiating

1 the provisions of a habitat conservation plan with the federal
2 government, or taking other steps towards finalizing the provisions of
3 a habitat conservation plan short of committing the state to the
4 provisions of the negotiated habitat conservation plan.

5 (3) For the purposes of this section, express direction from the
6 legislature is limited to the passage of a bill that is either signed
7 by the governor or allowed to take effect absent a gubernatorial
8 signature that includes express direction to the department to enter
9 into a specific habitat conservation plan or enter into a habitat
10 conservation plan for a specific departmental function or landholding.

11 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.30 RCW
12 under the subchapter heading "PART 5" to read as follows:

13 (1) The department may not, after the effective date of this
14 section, officially enter into a habitat conservation plan, or other
15 multiyear agreement with the federal government under the endangered
16 species act, 16 U.S.C. Sec. 1531 et seq., that commits the state to
17 future action or constrains future state options without prior express
18 direction from the legislature.

19 (2) Nothing in this section prohibits the department from seeking
20 funding for the development of a habitat conservation plan, negotiating
21 the provisions of a habitat conservation plan with the federal
22 government, or taking other steps towards finalizing the provisions of
23 a habitat conservation plan short of committing the state to the
24 provisions of the negotiated habitat conservation plan.

25 (3) For the purposes of this section, express direction from the
26 legislature is limited to the passage of a bill that is either signed
27 by the governor or allowed to take effect absent a gubernatorial
28 signature that includes express direction to the department to enter
29 into a specific habitat conservation plan or enter into a habitat
30 conservation plan for a specific departmental function or landholding.

31 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.21A RCW
32 to read as follows:

33 (1) The department may not, after the effective date of this
34 section, officially enter into a habitat conservation plan, or other
35 multiyear agreement with the federal government under the endangered

1 species act, 16 U.S.C. Sec. 1531 et seq., that commits the state to
2 future action or constrains future state options without prior express
3 direction from the legislature.

4 (2) Nothing in this section prohibits the department from seeking
5 funding for the development of a habitat conservation plan, negotiating
6 the provisions of a habitat conservation plan with the federal
7 government, or taking other steps towards finalizing the provisions of
8 a habitat conservation plan short of committing the state to the
9 provisions of the negotiated habitat conservation plan.

10 (3) For the purposes of this section, express direction from the
11 legislature is limited to the passage of a bill that is either signed
12 by the governor or allowed to take effect absent a gubernatorial
13 signature that includes express direction to the department to enter
14 into a specific habitat conservation plan or enter into a habitat
15 conservation plan for a specific departmental function or landholding.

16 NEW SECTION. **Sec. 5.** A new section is added to chapter 79A.05 RCW
17 to read as follows:

18 (1) The commission may not, after the effective date of this
19 section, officially enter into a habitat conservation plan, or other
20 multiyear agreement with the federal government under the endangered
21 species act, 16 U.S.C. Sec. 1531 et seq., that commits the state to
22 future action or constrains future state options without prior express
23 direction from the legislature.

24 (2) Nothing in this section prohibits the commission from seeking
25 funding for the development of a habitat conservation plan, negotiating
26 the provisions of a habitat conservation plan with the federal
27 government, or taking other steps towards finalizing the provisions of
28 a habitat conservation plan short of committing the state to the
29 provisions of the negotiated habitat conservation plan.

30 (3) For the purposes of this section, express direction from the
31 legislature is limited to the passage of a bill that is either signed
32 by the governor or allowed to take effect absent a gubernatorial
33 signature that includes express direction to the commission to enter
34 into a specific habitat conservation plan or enter into a habitat
35 conservation plan for a specific commission function or landholding.

--- END ---