
HOUSE BILL 2286

State of Washington

62nd Legislature

2012 Regular Session

By Representatives Blake and Chandler

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

1 AN ACT Relating to the authority of the department of fish and
2 wildlife to finalize administrative processes for programs related to
3 agreements with the federal government under the endangered species
4 act; amending RCW 77.12.047; adding a new section to chapter 77.55 RCW;
5 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 77.55 RCW
29 to read as follows:

30 (1) The department may not, after the effective date of this
31 section, do either of the following without prior express direction
32 from the legislature:

33 (a) Officially enter into a habitat conservation plan, or other
34 multiyear agreement with the federal government under the endangered
35 species act, 16 U.S.C. Sec. 1531 et seq., for the hydraulics project
36 approval program created under this chapter that commits the state to

1 future action or constrains future state options without prior express
2 direction from the legislature; or

3 (b) Finalize any rule-making processes related to the hydraulic
4 project approval program that is or was funded in part or whole by a
5 grant from any branch of the federal government.

6 (2) Nothing in this section prohibits the department from seeking
7 funding for the development of a habitat conservation plan or
8 underlying rules, negotiating the provisions of a habitat conservation
9 plan with the federal government, or taking other steps towards
10 finalizing the provisions of a habitat conservation plan short of
11 committing the state to the provisions of the negotiated habitat
12 conservation plan or finalizing any rules related to the hydraulic
13 project approval program that is or was funded in part or whole by a
14 grant from any branch of the federal government.

15 (3) For the purposes of this section, express direction from the
16 legislature is limited to the passage of a bill that is either signed
17 by the governor or allowed to take effect absent a gubernatorial
18 signature that includes express direction to the department to enter
19 into a specific habitat conservation plan or finalize any rule-making
20 processes related to the hydraulic project approval program that is or
21 was funded in part or whole by a grant from any branch of the federal
22 government.

23 **Sec. 3.** RCW 77.12.047 and 2001 c 253 s 14 are each amended to read
24 as follows:

25 (1) Except as provided in section 2 of this act, the commission may
26 adopt, amend, or repeal rules as follows:

27 (a) Specifying the times when the taking of wildlife, fish, or
28 shellfish is lawful or unlawful.

29 (b) Specifying the areas and waters in which the taking and
30 possession of wildlife, fish, or shellfish is lawful or unlawful.

31 (c) Specifying and defining the gear, appliances, or other
32 equipment and methods that may be used to take wildlife, fish, or
33 shellfish, and specifying the times, places, and manner in which the
34 equipment may be used or possessed.

35 (d) Regulating the importation, transportation, possession,
36 disposal, landing, and sale of wildlife, fish, shellfish, or seaweed
37 within the state, whether acquired within or without the state.

1 (e) Regulating the prevention and suppression of diseases and pests
2 affecting wildlife, fish, or shellfish.

3 (f) Regulating the size, sex, species, and quantities of wildlife,
4 fish, or shellfish that may be taken, possessed, sold, or disposed of.

5 (g) Specifying the statistical and biological reports required from
6 fishers, dealers, boathouses, or processors of wildlife, fish, or
7 shellfish.

8 (h) Classifying species of marine and freshwater life as food fish
9 or shellfish.

10 (i) Classifying the species of wildlife, fish, and shellfish that
11 may be used for purposes other than human consumption.

12 (j) Regulating the taking, sale, possession, and distribution of
13 wildlife, fish, shellfish, or deleterious exotic wildlife.

14 (k) Establishing game reserves and closed areas where hunting for
15 wild animals or wild birds may be prohibited.

16 (l) Regulating the harvesting of fish, shellfish, and wildlife in
17 the federal exclusive economic zone by vessels or individuals
18 registered or licensed under the laws of this state.

19 (m) Authorizing issuance of permits to release, plant, or place
20 fish or shellfish in state waters.

21 (n) Governing the possession of fish, shellfish, or wildlife so
22 that the size, species, or sex can be determined visually in the field
23 or while being transported.

24 (o) Other rules necessary to carry out this title and the purposes
25 and duties of the department.

26 (2) Subsections (1)(a), (b), (c), (d), and (f) of this section do
27 not apply to private tideland owners and lessees and the immediate
28 family members of the owners or lessees of state tidelands, when they
29 take or possess oysters, clams, cockles, borers, or mussels, excluding
30 razor clams, produced on their own private tidelands or their leased
31 state tidelands for personal use.

32 "Immediate family member" for the purposes of this section means a
33 spouse, brother, sister, grandparent, parent, child, or grandchild.

34 (3) Except for subsection (1)(g) of this section, this section does
35 not apply to private sector cultured aquatic products as defined in RCW
36 15.85.020. Subsection (1)(g) of this section does apply to such

1 products.

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