

SHB 1957 - S COMM AMD

By Committee on Natural Resources, Ocean & Recreation

ADOPTED 03/31/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 79A.15.010 and 2007 c 241 s 26 are each amended to
4 read as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

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

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

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

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

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

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

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

29 (8) "Riparian habitat" means land adjacent to water bodies, as well
30 as submerged land such as streambeds, which can provide functional

1 habitat for salmonids and other fish and wildlife species. Riparian
2 habitat includes, but is not limited to, shorelines and near-shore
3 marine habitat, estuaries, lakes, wetlands, streams, and rivers.

4 ~~((+8+))~~ (9) "Special needs populations" means physically restricted
5 people or people of limited means.

6 ~~((+9+))~~ (10) "State agencies" means the state parks and recreation
7 commission, the department of natural resources, the department of
8 general administration, and the department of fish and wildlife.

9 ~~((+10+))~~ (11) "Trails" means public ways constructed for and open
10 to pedestrians, equestrians, or bicyclists, or any combination thereof,
11 other than a sidewalk constructed as a part of a city street or county
12 road for exclusive use of pedestrians.

13 ~~((+11+))~~ (12) "Urban wildlife habitat" means lands that provide
14 habitat important to wildlife in proximity to a metropolitan area.

15 ~~((+12+))~~ (13) "Water access" means boat or foot access to marine
16 waters, lakes, rivers, or streams.

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

19 (1) Moneys appropriated for this chapter shall be divided as
20 follows:

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

24 (b) If appropriations for a biennium total more than forty million
25 dollars, the money must be allocated as follows: (i) Twenty million
26 dollars to the habitat conservation account and twenty million dollars
27 to the outdoor recreation account; (ii) any amount over forty million
28 dollars up to fifty million dollars shall be allocated as follows: (A)
29 Ten percent to the habitat conservation account; (B) ten percent to the
30 outdoor recreation account; (C) forty percent to the riparian
31 protection account; and (D) forty percent to the farmlands preservation
32 account; and (iii) any amounts over fifty million dollars must be
33 allocated as follows: (A) Thirty percent to the habitat conservation
34 account; (B) thirty percent to the outdoor recreation account; (C)
35 thirty percent to the riparian protection account; and (D) ten percent
36 to the farmlands preservation account.

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

5 (3) All moneys deposited in the habitat conservation, outdoor
6 recreation, riparian protection, and farmlands preservation accounts
7 shall be allocated as provided under RCW 79A.15.040, 79A.15.050,
8 79A.15.120, and 79A.15.130 as grants to state or local agencies or
9 nonprofit nature conservancy organizations or associations for
10 acquisition, development, and renovation within the jurisdiction of
11 those agencies, subject to legislative appropriation. The board may
12 use or permit the use of any funds appropriated for this chapter as
13 matching funds where federal, local, or other funds are made available
14 for projects within the purposes of this chapter. Moneys appropriated
15 to these accounts that are not obligated to a specific project may be
16 used to fund projects from lists of alternate projects from the same
17 account in biennia succeeding the biennium in which the moneys were
18 originally appropriated.

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

22 (5) The board may make grants to an eligible project from the
23 habitat conservation, outdoor recreation, riparian protection, and
24 farmlands preservation accounts and any one or more of the applicable
25 categories under such accounts described in RCW 79A.15.040, 79A.15.050,
26 79A.15.120, and 79A.15.130.

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

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

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

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

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

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

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

12 (4) ~~((Moneys appropriated for this section may be used to fund
13 mitigation banking projects involving the restoration, creation,
14 enhancement, or preservation of critical habitat and urban wildlife
15 habitat, provided that the parties seeking to use the mitigation bank
16 meet the matching requirements of subsection (5) of this section. The
17 moneys from this section may not be used to supplant an obligation of
18 a state or local agency to provide mitigation. For the purposes of
19 this section, a mitigation bank means a site or sites where critical
20 habitat or urban wildlife habitat is restored, created, enhanced, or in
21 exceptional circumstances, preserved expressly for the purpose of
22 providing compensatory mitigation in advance of authorized project
23 impacts to similar resources.~~

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

27 ~~((+6))~~) (5) In determining acquisition priorities with respect to
28 the habitat conservation account, the board shall consider, at a
29 minimum, the following criteria:

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

31 (i) Community support for the project;

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

36 (iii) Recommendations as part of a watershed plan or habitat
37 conservation plan, or a coordinated regionwide prioritization effort,

1 and for projects primarily intended to benefit salmon, limiting
2 factors, or critical pathways analysis;

3 (iv) Immediacy of threat to the site;

4 (v) Uniqueness of the site;

5 (vi) Diversity of species using the site;

6 (vii) Quality of the habitat;

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

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

9 (x) Enhancement of existing public property;

10 (xi) Consistency with a local land use plan, or a regional or
11 statewide recreational or resource plan, including projects that assist
12 in the implementation of local shoreline master plans updated according
13 to RCW 90.58.080 or local comprehensive plans updated according to RCW
14 36.70A.130;

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

16 (xiii) Integration with recovery efforts for endangered,
17 threatened, or sensitive species;

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

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

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

23 (ii) Proximity to other wildlife habitat;

24 (iii) Potential for public use; and

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

26 (~~(7)~~) (6) Before November 1st of each even-numbered year, the
27 board shall recommend to the governor a prioritized list of all state
28 agency and local projects to be funded under RCW 79A.15.040(1) (a),
29 (b), and (c). The governor may remove projects from the list
30 recommended by the board and shall submit this amended list in the
31 capital budget request to the legislature. The list shall include, but
32 not be limited to, a description of each project and any particular
33 match requirement, and describe for each project any anticipated
34 restrictions upon recreational activities allowed prior to the project.

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

37 (1) The riparian protection account is established in the state

1 treasury. The board must administer the account in accordance with
2 chapter 79A.25 RCW and this chapter, and hold it separate and apart
3 from all other money, funds, and accounts of the board.

4 (2) Moneys appropriated for this chapter to the riparian protection
5 account must be distributed for the acquisition or enhancement or
6 restoration of riparian habitat. All enhancement or restoration
7 projects, except those qualifying under subsection ~~((+10+))~~ (9)(a) of
8 this section, must include the acquisition of a real property interest
9 in order to be eligible.

10 (3) State and local agencies and lead entities under chapter 77.85
11 RCW, nonprofit nature conservancy organizations or associations, and
12 the conservation commission may apply for acquisition and enhancement
13 or restoration funds for riparian habitat projects under subsection (1)
14 of this section. Other state agencies not defined in RCW 79A.15.010,
15 such as the department of transportation and the department of
16 corrections, may enter into interagency agreements with state agencies
17 to apply in partnership for funds under this section.

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

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

24 (6) Moneys appropriated for this section may be used by grant
25 recipients for costs incidental to restoration and acquisition,
26 including, but not limited to, surveying expenses, fencing, and
27 signing.

28 ~~((Moneys appropriated for this section may be used to fund~~
29 ~~mitigation banking projects involving the restoration, creation,~~
30 ~~enhancement, or preservation of riparian habitat, provided that the~~
31 ~~parties seeking to use the mitigation bank meet the matching~~
32 ~~requirements of subsection (8) of this section. The moneys from this~~
33 ~~section may not be used to supplant an obligation of a state or local~~
34 ~~agency to provide mitigation. For the purposes of this section, a~~
35 ~~mitigation bank means a site or sites where riparian habitat is~~
36 ~~restored, created, enhanced, or in exceptional circumstances, preserved~~
37 ~~expressly for the purpose of providing compensatory mitigation in~~
38 ~~advance of authorized project impacts to similar resources.~~

1 ~~(8)~~) The board may not approve a local project where the local
2 agency or nonprofit nature conservancy organization or association
3 share is less than the amount to be awarded from the riparian
4 protection account. In-kind contributions, including contributions of
5 a real property interest in land may be used to satisfy the local
6 agency's or nonprofit nature conservancy organization's or
7 association's share.

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

17 ~~((10))~~ (9) In determining acquisition priorities with respect to
18 the riparian protection account, the board must consider, at a minimum,
19 the following criteria:

20 (a) Whether the project continues the conservation reserve
21 enhancement program. Applications that extend the duration of leases
22 of riparian areas that are currently enrolled in the conservation
23 reserve enhancement program shall be eligible. Such applications are
24 eligible for a conservation lease extension of at least twenty-five
25 years of duration;

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

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

32 (d) Whether the proposal includes an ongoing stewardship program
33 that includes control of noxious weeds, detrimental invasive species,
34 and that identifies the source of the funds from which the stewardship
35 program will be funded;

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

37 (f) Whether the quality of the habitat is improved or, for projects

1 including restoration or enhancement, the potential for restoring
2 quality habitat including linkage of the site to other high quality
3 habitat;

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

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

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

12 (~~((11))~~) (10) Before November 1st of each even-numbered year, the
13 board will recommend to the governor a prioritized list of projects to
14 be funded under this section. The governor may remove projects from
15 the list recommended by the board and will submit this amended list in
16 the capital budget request to the legislature. The list must include,
17 but not be limited to, a description of each project and any particular
18 match requirement.

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

21 (1) The farmlands preservation account is established in the state
22 treasury. The board will administer the account in accordance with
23 chapter 79A.25 RCW and this chapter, and hold it separate and apart
24 from all other money, funds, and accounts of the board. Moneys
25 appropriated for this chapter to the farmlands preservation account
26 must be distributed for the acquisition and preservation of farmlands
27 in order to maintain the opportunity for agricultural activity upon
28 these lands.

29 (2)(a) Moneys appropriated for this chapter to the farmlands
30 preservation account may be distributed for (i) the fee simple or less
31 than fee simple acquisition of farmlands; (ii) the enhancement or
32 restoration of ecological functions on those properties; or (iii) both.
33 In order for a farmland preservation grant to provide for an
34 environmental enhancement or restoration project, the project must
35 include the acquisition of a real property interest.

36 (b) If a city (~~((or))~~), county, nonprofit nature conservancy
37 organization or association, or the conservation commission acquires a

1 property through this program in fee simple, the city ((~~or~~)), county,
2 nonprofit nature conservancy organization or association, or the
3 conservation commission shall endeavor to secure preservation of the
4 property through placing a conservation easement, or other form of deed
5 restriction, on the property which dedicates the land to agricultural
6 use and retains one or more property rights in perpetuity. Once an
7 easement or other form of deed restriction is placed on the property,
8 the city ((~~or~~)), county, nonprofit nature conservancy organization or
9 association, or the conservation commission shall seek to sell the
10 property, at fair market value, to a person or persons who will
11 maintain the property in agricultural production. Any moneys from the
12 sale of the property shall either be used to purchase interests in
13 additional properties which meet the criteria in subsection (9) of this
14 section, or to repay the grant from the state which was originally used
15 to purchase the property.

16 (3) Cities ((~~and~~)), counties, nonprofit nature conservancy
17 organizations or associations, and the conservation commission may
18 apply for acquisition and enhancement or restoration funds for farmland
19 preservation projects within their jurisdictions under subsection (1)
20 of this section.

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

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

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

36 (7) Moneys appropriated for this section may be used by grant
37 recipients for costs incidental to restoration and acquisition,

1 including, but not limited to, surveying expenses, fencing, and
2 signing.

3 (8) The board may not approve a local project where the local
4 agency's or nonprofit nature conservancy organization's or
5 association's share is less than the amount to be awarded from the
6 farmlands preservation account. In-kind contributions, including
7 contributions of a real property interest in land, may be used to
8 satisfy the local agency's or nonprofit nature conservancy
9 organization's or association's share.

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

12 (a) Community support for the project;

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

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

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

23 (e) Benefits to salmonids;

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

25 (g) Integration with recovery efforts for endangered, threatened,
26 or sensitive species;

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

29 (i) Soil types;

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

33 (iii) Suitability for producing different types or varieties of
34 crops;

35 (iv) Farm-to-market access;

36 (v) Water availability; and

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

- 1 (i) Viewshed;
- 2 (ii) Aquifer recharge;
- 3 (iii) Occasional or periodic collector for storm water runoff;
- 4 (iv) Agricultural sector job creation;
- 5 (v) Migratory bird habitat and forage area; and
- 6 (vi) Educational and curriculum potential.

7 (10) In allotting funds for environmental enhancement or
8 restoration projects, the board will require the projects to meet the
9 following criteria:

10 (a) Enhancement or restoration projects must further the ecological
11 functions of the farmlands;

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

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

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

21 (11) Before November 1st of each even-numbered year, the board will
22 recommend to the governor a prioritized list of all projects to be
23 funded under this section. The governor may remove projects from the
24 list recommended by the board and must submit this amended list in the
25 capital budget request to the legislature. The list must include, but
26 not be limited to, a description of each project and any particular
27 match requirement.

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

30 As used in RCW 84.34.210, as now or hereafter amended, (~~and~~) RCW
31 84.34.220, as now or hereafter amended, and RCW 79A.15.010, "nonprofit
32 nature conservancy corporation or association" means an organization
33 which qualifies as being tax exempt under 26 U.S.C. section 501(c) (of
34 the Internal Revenue Code) as it exists on June 25, 1976 and one which
35 has as one of its principal purposes the conducting or facilitating of
36 scientific research; the conserving of natural resources, including but
37 not limited to biological resources, for the general public; or the

1 conserving of open spaces, including but not limited to wildlife
2 habitat to be utilized as public access areas, for the use and
3 enjoyment of the general public.

4 NEW SECTION. **Sec. 7.** (1) Within existing funds, the recreation
5 and conservation office must evaluate the use of land preservation
6 mechanisms such as fee simple acquisitions, conservation easements,
7 term conservation easements, and leases and the ability of each to
8 respond to future economic, social, and environmental changes. The
9 recreation and conservation office must compare the relative advantages
10 and disadvantages and costs of each of these land preservation
11 mechanisms. The recreation and conservation office must report its
12 findings and recommendations to the appropriate committees of the
13 legislature by January 1, 2010.

14 (2) This section expires June 30, 2010."

SHB 1957 - S COMM AMD

By Committee on Natural Resources, Ocean & Recreation

ADOPTED 03/31/2009

15 On page 1, line 2 of the title, after "program;" strike the
16 remainder of the title and insert "amending RCW 79A.15.010, 79A.15.030,
17 79A.15.060, 79A.15.120, 79A.15.130, and 84.34.250; creating a new
18 section; and providing an expiration date."

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