

***Local Government & Housing
Committee***

HB 1104

Brief Description: *Providing funding options for salmon recovery.*

Sponsors: *Representatives Jackley, Kirby, Rockefeller, Lantz, Haigh, Dunn, Pearson, Hunt and Edwards.*

Brief Summary of Bill

· Finds it in the public interest to provide funding options to assist counties with salmon recovery and shoreline master program updates and to assist private landowners in complying with these laws.

- Allows deposit of payments of additional tax or interest payable under RCW 84.34.108 [removal of current use classification] into county salmon habitat/shorelines protection/restoration account after payment of tax collection expenses.*
- Allows deposit of any compensating tax or interest payable under chapter 84.33 RCW [timber and forest tax] into the same fund after collection expenses are paid.*
- Allows a county legislative authority to establish a special salmon recovery/shoreline update fund to which it may credit all moneys collected for this purpose pursuant to RCW 82.46.070 [additional excise tax for conservation areas], RCW 84.34.230 [conservation futures tax] and this act.*
- Authorizes a tax deduction for banking and other mortgage entities of one percent of a mortgage balance for properties for which the entities' mortgage is subordinated to a non-profit nature conservancy organization's right to enforce conservation purposes– [defined regarding protection of listed species' habitat and shorelines] of the gift in perpetuity.*

Hearing Date: *2/14/01*

Staff: Scott MacColl (786-7106).

Background:

The Shoreline Management Act (SMA) governs all shorelines of the state,– including both "shorelines" and "shorelines of state-wide significance." Shorelines include all water areas, including reservoirs, and their associated shorelands– except: (1) shorelines of statewide significance [separately defined to include specific shoreline areas identified in statute]; (2) shorelines on segments of streams upstream of a point at which the mean annual flow is less than or equal to 20 cubic feet per second (cfs); and (3) shorelines on lakes fewer than 20 acres in size. Shorelands include the lands extending landward 200 feet in all directions from the ordinary high water mark as well as floodways and contiguous floodplain areas landward 200 feet from the floodways. Shorelands also include all wetlands and river deltas associated with streams, lakes and tidal waters subject to the SMA.

The SMA requires counties and cities with shorelines of the state to adopt local shoreline master programs regulating land use activities in shoreline areas of the state and to enforce those master programs within their jurisdictions. All 39 counties and more than 200 cities have enacted master programs.

The SMA also requires the Department of Ecology (DOE) to adopt guidelines for local governments to use when developing these local shoreline master programs. The DOE must provide an opportunity for local governments and others to comment on the proposed guidelines and must hold public hearings before the proposed guidelines are adopted. The DOE may propose amendments to the guidelines no more than once per year and must review the guidelines at least once every five years.

Local governments must develop or amend shoreline master programs consistent with the DOE guidelines within 24 months after the DOE guidelines are adopted. The DOE considers the adopted guidelines and SMA requirements when reviewing and approving local shoreline master programs.

The federal Endangered Species Act (ESA) establishes required actions and imposes certain responsibilities when a species is listed as either threatened or endangered by federal agencies administering the ESA. Federal agencies have the affirmative duty to conserve listed species and to avoid jeopardy to these species. Federal agencies must consult with the National Marine Fisheries Service (NMFS) or the United States Fish and Wildlife Service (USFWS), the federal agencies with ESA responsibility, if there is reason to believe a proposed action conducted or funded by a federal agency may affect a listed species.

The ESA includes a prohibition against "take" of a listed species, a broad term meaning to harass, harm, pursue, hunt, shoot, wound, kill, capture or collect, or to attempt any of these actions, with regard to a listed species. For threatened species, the take prohibitions are specified in federal regulations, which may also include exemptions from take determinations. The ESA also permits "incidental take" related to an otherwise lawful activity if a permit applicant meets specified conditions, including the submission of a habitat conservation plan.

The DOE adopted new guidelines in November 2000. The new guidelines include two approaches (Parts III and IV) from which local governments can choose in implementing their master programs. Local governments can satisfy the SMA requirements using either approach. According to a letter the DOE has received from the NMFS and the USFWS, compliance with Part IV will result in a take exemption under the ESA.

Conservation Futures

Any city, county, metropolitan park district, or nonprofit nature conservancy corporation, among others, may acquire the development rights or easement necessary to protect and conserve open space, farm and agricultural, or timber land for public use and enjoyment. Authority is also granted to these entities to convey or lease the property back to its original owner under arrangements that will limit the future use of the property. Specifically, entities are authorized to acquire rights in perpetuity to future development of such land, or to acquire conservation futures--.

A conservation easement, or conservation future--, is where a landowner sells the right to develop certain uses of the property in perpetuity (such as subdivision, development, harvesting, and grazing) to a governmental entity listed above, but retains ownership and property uses not inconsistent with the conservation values of the property. A property owner must own the property outright in order to sell the property easement.

A county is authorized for the purposes of acquiring conservation futures to levy up to 6.25 cents per thousand to all taxable property within the county. The county legislative authority is authorized to create a special conservation futures fund to receive taxes collected under the conservation futures levy for the purpose of acquiring rights and interests in real property.

Removal of Current Use Classification

Land that has been classified as open space land--, farm and agricultural land--, or timber land-- and assessed under that classification means the assessor must only consider the current use of the property, and not any future use of the property.

When such land has the 'current use' classification removed, the assessor notifies the owner and revalues the affected land to full market value. The owner must then pay the difference between the current use classification and full market value taxation, and must pay any additional tax, applicable interest and penalties within 30 days of receiving the assessors' notice.

Conservation Areas Real Estate Excise Tax

The legislative authority of any county may impose an additional excise tax on each sale of real property of one percent of the sale price. The tax revenues must be used for the acquisition and maintenance of conservation areas.

Timber and Forest Tax

The legislative body of a county may impose an excise tax equal to the stumpage value of timber harvested from privately owned land multiplied by a rate of four percent, which is imposed on every person harvesting timber on public or private lands. Monies received from this tax are deposited in the timber tax distribution account.

Summary of Bill:

County legislative authorities are authorized to create a special fund for salmon recovery or for updating shoreline master programs. Monies generated for the fund may be used for:

- Salmon habitat projects, including planning, implementing, and monitoring results from these projects;*
 - Salmon– includes salmon, steelhead, and bull trout;*
 - Salmon habitat projects– include habitat restoration, and protection, projects to improve or protect water quality, habitat-related mitigation projects, restoration and protection of coastal marine habitat, and habitat project maintenance;*
- Updating shoreline master programs;*
- Assisting private landowners to comply with shoreline management laws or endangered species act requirements;*
- Enforcement of existing laws that protect salmon or shorelines;*
- Necessary data collection and analysis to determine adequacy of stream buffers, streamflows for fish, and the general health of the streams, lakes, and rivers in the watershed; and*
- Upgrades in computers and systems to improve compliance with shoreline or salmon related laws.*

Authority is granted to generate monies for the newly created salmon recovery/shorelines funding fund by expanding the allowable uses of the following tax revenue:

The additional tax, applicable interest, and penalty payments collected as a result of a removal of current use classification for open space or agriculture after payment of tax collection expenses;Any compensating tax or interest payable under the timber and forest tax;Any funds generated from the additional 1 percent excise tax on the sale of property for conservation areas; andfunds generated by a conservation futures levy.

An incentive is created for banks and other mortgage entities to allow property owners that wish to sell a conservation easement, but owe a mortgage to a mortgage holder. This option would allow a property owner to sell a conservation easement to a non-profit nature conservancy organization, as long as the mortgage holder also agrees to subordinate its rights in the property to the conservancy organization.

The incentive for the banking, loan, security, or other financial businesses, as mortgage holders, is that they are granted a state business and occupation tax deduction equal to one percent of the outstanding mortgage balance on properties for which the entities' mortgage is subordinated. The property must be subordinated, and only to a non-profit nature conservancy organization to enforce the conservation purposes of the gift in perpetuity.

Conservation purposes– means the protection of relatively natural habitat of salmon, steelhead, or bull trout, or the protection of shorelines.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.