

***Local Government & Housing
Committee***

HB 1965

Brief Description: *Requiring local shoreline master plan compliance with the endangered species act.*

Sponsors: *Representatives McIntire, Dickerson, Kenney, Poulsen, Cody, Lantz, Edmonds, Hurst, Ruderman, Keiser, Miloscia, Wood, Darneille, Lovick, Romero and Rockefeller.*

Brief Summary of Bill

- *Requires a local government containing any area with a species listed as endangered or threatened under the Endangered Species Act to either: (1) use the Guidelines section approved to protect the species (i.e., Part IV) to develop or amend its master program; or (2) obtain an approved habitat conservation plan under the ESA or an exemption in a 4(d) rule before Department of Ecology approval of the master program.*

Hearing Date: *2/14/01*

Staff: *Caroleen Dineen (786-7156).*

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.

Summary of Bill:

If a local shoreline master program covers an area with a species listed as threatened or endangered under the federal Endangered Species Act (ESA), the local government must either:

- use the section of the shoreline master program guidelines adopted by the Department of Ecology (DOE) that has been approved as sufficient to protect the listed species; or*

- *obtain an approved habitat conservation plan according to ESA requirements or an exemption from federal ESA rules before DOE approval of the master program.*

Appropriation: *None.*

Fiscal Note: *Requested on February 13, 2001.*

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