
**Agriculture & Natural Resources
Committee**

ESB 5959

Brief Description: Concerning agreements with the federal government, such as those available under the endangered species act, affecting the state's management of its natural resources.

Sponsors: Senator Hatfield.

Brief Summary of Engrossed Bill

- Requires the Department of Natural Resources (DNR) to withdraw the draft habitat conservation plan (HCP) for aquatic lands from further review by the federal government within 30 days of the effective date of the bill.
- Requires the DNR to take certain steps before it pursues a new HCP covering aquatic lands.

Hearing Date: 3/19/15

Staff: Jason Callahan (786-7117).

Background:

A habitat conservation plan (HCP) is a tool available to regulated parties under the federal Endangered Species Act (ESA). A HCP is a voluntary, long-term planning agreement between the federal government and a state, locality, private landowner, or other non-federal party that sets conditions under which certain actions are permitted to occur even though the actions may result in harm to an endangered species. A HCP commonly describes the effects the proposed actions will have on an endangered species, how those impacts will be minimized or mitigated, and how the mitigation will be funded. In addition, a HCP must provide elements which ensure any harm caused to a species will be incidental and that the harm will not appreciably reduce the likelihood of the survival or recovery of the affected species.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In return for agreeing to the provisions of a HCP, the non-federal party is eligible to receive an incidental take permit. This permit allows the non-federal party to proceed with the actions identified in the HCP with certainty that they will not be found in violation of the ESA. The incidental take permit makes the elements of the HCP binding. A violation of the incidental take permit may result in a violation of the ESA.

In August of 2014, the DNR released a draft HCP that would apply to the agency's management of approximately 2.6 million acres of state-owned aquatic lands. The comment period for the draft HCP closed on December 4, 2014.

Summary of Bill:

The DNR must withdraw the draft HCP for aquatic lands from further review by the federal government within 30 days of the effective date of the bill. The DNR may pursue a new HCP covering aquatic lands; however, if it does so, certain steps are mandated. These steps include formally considering the advantages and disadvantages of entering into a HCP, facilitating a stakeholder engagement process complete with a formal advisory committee, consulting with federally-recognized Indian tribes, developing a list of priority science projects to be addressed in the adaptive management section of a HCP, identifying implementation costs, crafting draft implementation rules for a HCP, considering any new compliance costs from regulatory associated conditions, and working with the Attorney General to ensure that a proposed HCP protects the DNR and its lessees from liability.

If the DNR decides to adopt an HCP for aquatic lands, it must do so before December 1 of a given year. After making the decision, the DNR must consult with the appropriate committees of the Legislature during the preceding legislative session. Any draft HCP may not be submitted for formal review until the end of that legislative session.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.