

# HOUSE BILL REPORT

## SHB 1110

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### As Amended by Senate

**Title:** An act relating to the department of natural resources.

**Brief Description:** Prohibiting the department of natural resources from entering into certain agreements with the federal government without prior legislative and gubernatorial approval.

**Sponsors:** By House Committee on Natural Resources (originally sponsored by Representatives Buck, Fuhrman, Pennington, Silver, Johnson, Brumsickle, Stevens, Hargrove and Benton).

**Brief History:**

**Committee Activity:**

Natural Resources: 1/24/95, 1/27/95 [DPS].

**Floor Activity:**

Passed House: 2/20/95, 68-27.

Senate Amended.

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### HOUSE COMMITTEE ON NATURAL RESOURCES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Fuhrman, Chair; Buck, Vice Chair; Pennington, Vice Chair; Basich, Ranking Minority Member; Beeksma; Cairnes; Elliot; Sheldon; Stevens; B. Thomas and Thompson.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Regala, Assistant Ranking Minority Member; Jacobsen and Romero.

**Staff:** Linda Byers (786-7129).

**Background:** Statute defines the Department of Natural Resources to include the Board of Natural Resources and the Commissioner of Public Lands. The department manages some 2.1 million acres of state forest lands. The department's management decisions must be in compliance with its trust responsibilities as well as with applicable state and federal laws.

One federal law with which the department must be in compliance is the Endangered Species Act (ESA). The ESA provides that it is unlawful to take any species that is listed as endangered or threatened under the act. The ESA also provides an exception

to this policy under certain conditions. The ESA allows the incidental taking of an endangered or threatened species if an entity has received from the Secretary of the Interior an incidental take permit and approval of a habitat conservation plan. In evaluating a proposed plan and a permit application, the Secretary is to consider whether the taking of a listed species will be incidental; whether the applicant will minimize and mitigate the impacts of the taking to the maximum extent practicable; whether the applicant will ensure adequate funding for the plan; whether the taking will appreciably reduce the likelihood of the survival and recovery of the listed species, and whether any other measures that the Secretary requires will be implemented. The planning horizon for these efforts is generally long-term in nature (for example, 30 years). The concept behind incidental take permits and habitat conservation plans is to allow activities which might cause harm to an individual member of a listed species so long as an overall, long-range management strategy conserves the species as a whole.

The Department of Natural Resources has initiated a habitat conservation planning effort for approximately 1.6 million acres of state forest land. Species particularly emphasized in the planning effort are the northern spotted owl, the marbled murrelet, and species in riparian zones, including salmon. The plan is also to include conservation assessments of a number of additional species, as well as consideration of forest health. There are a number of steps involved in the development of the habitat conservation plan, including preparation of an Environmental Impact Statement. Before implementation, the plan would require the approval of the Board of Natural Resources and the U.S. Fish and Wildlife Service, the latter acting on behalf of the Secretary of the Interior.

**Summary of Bill:** The Department of Natural Resources is prohibited from entering into any agreement or from making any commitment in order to induce a permit from the Federal government which would affect more than 10,000 acres of state and/or public forest lands for five or more years unless the department has obtained express approval from the Legislature and the Governor. Approval is to be in the form of enacted legislation. Prior to seeking such approval, the department is to provide to the Legislature and the Governor copies of all proposed plans, agreements and commitments as well as an analysis demonstrating that the proposed agreement or commitment is in the best interests of the affected entities, trust beneficiaries, federally recognized Indian tribes, other public entities, or the public at large.

This provision applies to conservation plans, incidental take permits, and all other agreements or management plans relating to the federal Endangered Species Act.

#### **EFFECT OF SENATE AMENDMENT(S):**

**The Department of Natural Resources must report any agreements or commitments to induce a permit from the federal government affecting more**

**than 10,000 acres of state or public forest land for 5 years or more to the natural resource standing committees of the Senate and the House of Representatives. The Legislature establishes its oversight of this Department of Natural Resources activity. The department must submit copies of proposed agreements, plans, and commitments to the legislative standing committees along with an analysis that indicates whether or not the action is in the best interests of the trust beneficiaries. This provision applies to agreements, plans, and commitments relating to the federal Endangered Species Act. The department must submit an analysis with each biennial budget request that includes the impacts of these agreements on state land, the cost of implementation for the biennium and an accounting of expenditures during the current biennium. Funds will be appropriated as separate budget items and money cannot be spent for this purpose unless appropriated.**

**Appropriation:** None.

**Fiscal Note:** Not Requested.

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

**Testimony For:** It is the Legislature that should be setting the policy for management of state lands. The board has exceeded the scope of its authority in proposing to lock up thousands of acres. The Endangered Species Act is in a state of flux and is a moving target; a state agency is rushing to comply with something that may no longer be required when the act changes. The concern is not that the department is doing a habitat conservation plan, but in how they are doing it. The department's plan is grandiose, and the time frame is so compressed that the department cannot negotiate a contract that is favorable to the trusts. The process is suspect, excluding private timber representatives from the advisory committee. So far there is little hard information about science team findings and department directives and management direction. The department is providing a higher protection standard than is required. The revenue source for new school construction might be depleted further.

**Testimony Against:** A habitat conservation plan will allow the state to move out of crisis-by-crisis, species-by-species management. This bill would derail a pro-active effort, eventually leading to more control being handed over to the federal government. The planning approach avoids the lawsuit approach to management. Four of the six members of the Board of Natural Resources are elected officials, and the members represent beneficiaries of the trusts. The board must have undivided loyalty to the beneficiaries. In the past, the Legislature has occasionally attempted to take direct control of management of state lands, only to have its decisions overthrown in court. Habitat conservation plans promote efficiency in resource and

land management and provide certainty through long-term stability in income to the trusts. There is no language in the bill about how the Legislature would review the plan. There is no language about the effect to Indian tribes. The Legislature looks out after the interests of the whole state; it cannot provide the same undivided loyalty to the trusts that the board can.

**Testified:** Representative Jim Buck, prime sponsor; Gus Kuehne, Western Forest Industries Association; Bob Dick, Northwest Forestry Association; John Jones, Quileute Unified School District (all in favor); Naki Stevens, People for Puget Sound; Judy Turpin, Washington Environmental Council; Steve Robinson, Northwest Indian Fisheries Commission; Dawn Vyvyan and Lisa Ganuelas, Yakima Indian Nation; Jennifer Belcher, Commissioner of Public Lands (all opposed); and Cyreis Schmidt, Department of Fish and Wildlife.

**Votes on Final Passage:**

Yeas 68; Nays 27; Excused 3

Nays: Appelwick, Brown, Chopp, Cody, Cole, Conway, Costa, Dellwo, Dickerson, Ebersole, G. Fisher, R. Fisher, Jacobsen, Mason, Ogden, Patterson, Poulsen, Quall, Regala, Romero, Rust, Sommers, Thibaudeau, Tokuda, Valle, Veloria,, Wolfe

Excused: Beeksma, Benton, Hickel