

2 **SSB 5327 - H COMM AMD ADOPTED 4-9-97**  
3 By Committee on Natural Resources

4

5 Strike everything after the enacting clause and insert the  
6 following:

7 NEW SECTION. **Sec. 1.** In an effort to increase the amount of  
8 habitat available for fish and wildlife, the legislature finds that it  
9 is desirable for the department of fish and wildlife and other  
10 interested parties to work closely with private landowners to achieve  
11 habitat enhancements. In some instances, private landowners avoid  
12 enhancing habitat because of a concern that the presence of fish or  
13 wildlife may make future land management more difficult. It is the  
14 intent of this act to provide a mechanism that facilitates habitat  
15 development while avoiding an adverse impact on the landowner at a  
16 later date.

17 NEW SECTION. **Sec. 2.** (1) The department of fish and wildlife  
18 shall initiate a habitat incentives program in two phases. In creating  
19 this program, the department shall make use of and complement other  
20 study efforts underway relating to habitat protection and enhancement,  
21 including the department's own review of the hydraulic project approval  
22 process, the forestry module under development for the forest practices  
23 board dealing with practices within riparian areas, and the study on  
24 permitting requirements by the regional fisheries enhancement groups  
25 called for in chapter . . . (Second Substitute Senate Bill No. 5886),  
26 Laws of 1997.

27 (2) In phase one, the department of fish and wildlife shall work  
28 with affected federally recognized Indian tribes, landowners, the  
29 regional fisheries enhancement groups, the department of natural  
30 resources, and other interested parties to identify appropriate  
31 criteria and other factors necessary for implementation of the habitat  
32 incentives program. The department in concert with the interested  
33 parties shall identify at least the following elements for  
34 implementation of the program:

1 (a) The factors and the approach that the department should use in  
2 evaluating and weighing the benefits and concurrent risks of entering  
3 into a habitat incentives agreement with a landowner;

4 (b) The approach to be used in assigning responsibilities for  
5 implementation of the agreement to the landowner and to the department;

6 (c) Assignment of responsibility for documentation of the  
7 conditions on a landowner's property prior to the department's entering  
8 into a habitat incentives agreement;

9 (d) The process to be used when a landowner who has entered into a  
10 habitat incentives agreement applies for hydraulic project approval  
11 during the term of the agreement;

12 (e) The process to be used to monitor and evaluate whether actions  
13 taken as a part of the agreement actually enhance habitat for the  
14 target species and to amend the agreement if the existing agreement is  
15 not enhancing habitat;

16 (f) The conditions under which the department and the landowner may  
17 terminate the agreement and the remedies if either party breaches the  
18 terms of the agreement;

19 (g) The means for ensuring that the department is notified if the  
20 property covered by the agreement is sold or otherwise transferred into  
21 other ownership;

22 (h) The process to be used for reaching concurrence between the  
23 landowner, the department, the department of natural resources, and  
24 affected federally recognized Indian tribes; and

25 (i) The process to be used in prioritizing proposed agreements if  
26 the requests for agreements exceed the funding available for entering  
27 into and implementing such agreements.

28 The department and the interested parties may identify and propose  
29 solutions to other issues necessary in order to implement the habitat  
30 incentives program. The department and the interested parties shall  
31 report to the legislature on their findings as well as on any other  
32 recommendations for implementation and funding for the habitat  
33 incentives program by December 1, 1997.

34 NEW SECTION. **Sec. 3.** A new section is added to chapter 77.12 RCW  
35 to read as follows:

36 (1) Beginning in January 1998, the department shall implement a  
37 habitat incentives program based on the recommendations of federally  
38 recognized Indian tribes, landowners, the regional fisheries

1 enhancement groups, the department of natural resources, and other  
2 interested parties. The program shall allow a private landowner to  
3 enter into an agreement with the department to enhance habitat on the  
4 landowner's property for food fish, game fish, or other wildlife  
5 species. In exchange, the landowner shall receive more state  
6 regulatory certainty with regard to future applications for hydraulic  
7 project approval on the property covered by the agreement. The overall  
8 goal of the program is to provide a mechanism that facilitates habitat  
9 development on private property while avoiding an adverse state  
10 regulatory impact to the landowner at some future date. A single  
11 agreement between the department and a landowner may encompass up to  
12 one thousand acres. A landowner may enter into multiple agreements  
13 with the department, provided that the total acreage covered by such  
14 agreements with a single landowner does not exceed ten thousand acres.  
15 The department is not obligated to enter into an agreement unless the  
16 department finds that the agreement is in the best interest of  
17 protecting fish or wildlife species or habitat.

18 (2) A habitat enhancement agreement shall be in writing and shall  
19 contain at least the following: A description of the property covered  
20 by the agreement, an expiration date, a description of the condition of  
21 the property prior to the implementation of the agreement, and other  
22 information needed by the landowner and the department for future  
23 reference and decisions.

24 (3) As part of the agreement, the department may stipulate the  
25 factors that will be considered when the department evaluates a  
26 landowner's application for hydraulic project approval under RCW  
27 75.20.100 or 75.20.103 on property covered by the agreement. The  
28 department's identification of these evaluation factors shall be in  
29 concurrence with the department of natural resources and affected  
30 federally recognized Indian tribes. In general, future decisions  
31 related to the issuance, conditioning, or denial of hydraulic project  
32 approval shall be based on the conditions present on the landowner's  
33 property at the time of the agreement, unless all parties agree  
34 otherwise.

35 (4) The agreement is binding on and may be used by only the  
36 landowner who entered into the agreement with the department. The  
37 agreement shall not be appurtenant with the land. However, if a new  
38 landowner chooses to maintain the habitat enhancement efforts on the

1 property, the new landowner and the department may jointly choose to  
2 retain the agreement on the property.

3 (5) If, during the course of the agreement, the landowner or the  
4 department must alter some terms of the agreement in order to comply  
5 with federal laws or regulations, the remaining terms of the agreement  
6 shall continue to remain binding on the parties.

7 (6) If the department receives multiple requests for agreements  
8 with private landowners under the habitat incentives program, the  
9 department shall prioritize these requests and shall enter into as many  
10 agreements as possible within available budgetary resources.

11 NEW SECTION. **Sec. 4.** A new section is added to chapter 75.20 RCW  
12 to read as follows:

13 When a private landowner is applying for hydraulic project approval  
14 under this chapter and that landowner has entered into a habitat  
15 incentives agreement with the department as provided in section 3 of  
16 this act, the department shall comply with the terms of that agreement  
17 when evaluating the request for hydraulic project approval.

18 NEW SECTION. **Sec. 5.** The department of fish and wildlife and the  
19 department of natural resources, in conjunction with the timber-fish-  
20 wildlife cooperators, shall investigate the feasibility of providing  
21 private landowners with more state level regulatory certainty with  
22 regard to forest practices regulations in exchange for a landowner's  
23 enhancement of habitat for fish or wildlife on the landowner's  
24 property. The agencies shall focus their efforts on possible  
25 agreements with landowners covering not more than one thousand acres  
26 per agreement, but the agencies shall consider the possibility of  
27 multiple agreements with a single landowner, not to exceed a total of  
28 ten thousand acres per landowner. The agencies shall evaluate the  
29 possibility of including provisions relating to forest practices  
30 regulations into the habitat incentives program being developed under  
31 this act. The agencies shall report to the legislature by December 1,  
32 1997, the same time frame as the phase one report from the department  
33 of fish and wildlife. If the agencies and other interested parties  
34 find it expedient to do so, the studies in this section and in section  
35 2 of this act may be combined into one effort.

1        NEW SECTION.   **Sec. 6.**   If specific funding for the purposes of this  
2 act, referencing this act by bill or chapter number, is not provided by  
3 June 30, 1997, in the omnibus appropriations act, this act is null and  
4 void."

5        Correct the title.

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