

2 SSB 5327 - CONF REPT
3 By Conference Committee

4 ADOPTED 4/26/97

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, the department of
10 natural resources, and other interested parties to work closely with
11 private landowners to achieve habitat enhancements. In some instances,
12 private landowners avoid enhancing habitat because of a concern that
13 the presence of fish or wildlife may make future land management more
14 difficult. It is the intent of this act to provide a mechanism that
15 facilitates habitat development while avoiding an adverse impact on the
16 landowner at a later date. The habitat incentives program is not
17 intended to supercede any federal laws.

18 NEW SECTION. **Sec. 2.** (1) The department of fish and wildlife and
19 the department of natural resources shall jointly initiate a habitat
20 incentives program in two phases. In creating this program, the
21 departments shall make use of and complement other study efforts
22 underway relating to habitat protection and enhancement, including the
23 department of fish and wildlife's review of the hydraulic project
24 approval process and the forestry module under development for the
25 forest practices board dealing with practices within riparian areas.

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

1 (a) The factors and the approach that the departments 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
6 departments;

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

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

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

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

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

23 (h) The process to be used for reaching concurrence between the
24 landowner, the departments, the timber, fish, and wildlife cooperators,
25 and affected federally recognized Indian tribes; and

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

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

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

37 (1) Beginning in January 1998, the department of fish and wildlife
38 and the department of natural resources shall implement a habitat

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

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

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

37 (4) As part of the agreement, the department of natural resources
38 may stipulate the factors that will be considered when the department
39 evaluates a landowner's application for a forest practices permit under

1 chapter 76.09 RCW on property covered by the agreement. The
2 department's identification of these evaluation factors shall be in
3 concurrence with the department of fish and wildlife and affected
4 federally recognized Indian tribes. In general, future decisions
5 related to the issuance, conditioning, or denial of forest practices
6 permits shall be based on the conditions present on the landowner's
7 property at the time of the agreement, unless all parties agree
8 otherwise.

9 (5) The agreement is binding on and may be used by only the
10 landowner who entered into the agreement with the department. The
11 agreement shall not be appurtenant with the land. However, if a new
12 landowner chooses to maintain the habitat enhancement efforts on the
13 property, the new landowner and the departments may jointly choose to
14 retain the agreement on the property.

15 (6) If the departments receive multiple requests for agreements
16 with private landowners under the habitat incentives program, the
17 departments shall prioritize these requests and shall enter into as
18 many agreements as possible within available budgetary resources.

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

21 When a private landowner is applying for hydraulic project approval
22 under this chapter and that landowner has entered into a habitat
23 incentives agreement with the department and the department of natural
24 resources as provided in section 3 of this act, the department shall
25 comply with the terms of that agreement when evaluating the request for
26 hydraulic project approval.

27 NEW SECTION. **Sec. 5.** A new section is added to chapter 76.09 RCW
28 to read as follows:

29 When a private landowner is applying for a forest practices permit
30 under this chapter and that landowner has entered into a habitat
31 incentives agreement with the department and the department of fish and
32 wildlife as provided in section 3 of this act, the department shall
33 comply with the terms of that agreement when evaluating the permit
34 application.

35 NEW SECTION. **Sec. 6.** (1) The sum of twelve thousand one hundred
36 twenty-five dollars, or as much thereof as may be necessary, is

1 appropriated for the fiscal year ending June 30, 1998, from the general
2 fund to the department of fish and wildlife for the purposes of this
3 act.

4 (2) The sum of twelve thousand one hundred twenty-five dollars, or
5 as much thereof as may be necessary, is appropriated for the fiscal
6 year ending June 30, 1999, from the general fund to the department of
7 fish and wildlife for the purposes of this act.

8 (3) The sum of twelve thousand one hundred twenty-five dollars, or
9 as much thereof as may be necessary, is appropriated for the fiscal
10 year ending June 30, 1998, from the general fund to the department of
11 natural resources for the purposes of this act.

12 (4) The sum of twelve thousand one hundred twenty-five dollars, or
13 as much thereof as may be necessary, is appropriated for the fiscal
14 year ending June 30, 1999, from the general fund to the department of
15 natural resources for the purposes of this act."

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19 On page 1, line 1 of the title, after "enhancement;" strike the
20 remainder of the title and insert "adding a new section to chapter
21 77.12 RCW; adding a new section to chapter 75.20 RCW; adding a new
22 section to chapter 76.09 RCW; creating new sections; and making
23 appropriations."

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