

HOUSE BILL REPORT

SSB 5327

As Reported By House Committee On:
Natural Resources

Title: An act relating to fish and wildlife enhancement.

Brief Description: Creating a habitat incentive program through the department of fish and wildlife.

Sponsors: Senate Committee on Natural Resources & Parks (originally sponsored by Senators Hargrove, Morton, Loveland, Rossi, Stevens, Snyder and Oke).

Brief History:

Committee Activity:

Natural Resources: 4/2/97, 4/4/97 [DPA].

HOUSE COMMITTEE ON NATURAL RESOURCES

Majority Report: Do pass as amended. Signed by 11 members: Representatives Buck, Chairman; Sump, Vice Chairman; Thompson, Vice Chairman; Regala, Ranking Minority Member; Butler, Assistant Ranking Minority Member; Alexander; Anderson; Chandler; Hatfield; Pennington and Sheldon.

Staff: Linda Byers (786-7129).

Background: If a person wants to construct a project or perform other work that will use, divert, obstruct, or change the natural flow or bed of waters of the state, that person must first obtain hydraulic project approval from the Department of Fish and Wildlife. Protection of fish life is the only ground upon which approval may be denied or conditioned. Additional protection is required if fish are present in the area where the person wants to construct the project.

Depending on the activity, a person who wants to conduct a forest practice may need to apply for a forest practices permit from the Department of Natural Resources. Forest practices must be conducted in accordance with state forest practice regulations. One of the purposes of having these regulations is to provide protection to forest soils and public resources, which are defined to include water, fish, wildlife, and capital improvements of the state and its political subdivisions. Additional protection is required when forest practices are conducted in or near bodies of water where fish are present.

Summary of Amended Bill: The Department of Fish and Wildlife must create a habitat incentives program in two phases. In the first phase, the department is to work with affected federally-recognized Indian tribes, landowners, the regional fisheries enhancement groups, the Department of Natural Resources, and other interested parties to identify appropriate criteria and other factors necessary to implement the habitat incentives program. The department and the interested parties must report back to the Legislature by December 1, 1997, on their efforts as well as on any other recommendations for implementation and funding of the program.

Beginning in January 1998, the department must implement the new habitat incentives program. The overall goal of the program is to provide a mechanism that facilitates habitat development on private property while avoiding an adverse state regulatory impact to the landowner at some future date. The program must allow a private landowner to enter into an agreement with the department to enhance habitat on the landowner's property for food fish, game fish, or other wildlife species. In exchange, the landowner will receive more state regulatory certainty with regard to future applications for hydraulic project approval on the property covered by the agreement. A single agreement between a landowner and the department may encompass up to 1,000 acres. A landowner may enter into multiple agreements with the department, provided that the total acreage covered by such agreements with a single landowner does not exceed 10,000 acres. The department is not obligated to enter into an agreement unless the department finds that the agreement is in the best interest of protecting fish or wildlife species or habitat. If the department receives multiple requests for agreements under the habitat incentives program, the department must prioritize the requests and enter into as many agreements as possible within available budgetary resources.

As part of the agreement, the department may stipulate the factors that will be considered when the department evaluates a landowner's application for hydraulic project approval on property covered by the agreement. The department's identification of these factors must be in concurrence with the Department of Natural Resources and affected federally-recognized Indian tribes. In general, future decisions on hydraulic project approval must be based on the conditions present on the landowner's property at the time of the agreement, unless all parties agree otherwise.

A habitat incentive agreement must be in writing and must contain certain prescribed elements. If, during the course of the agreement, the landowner or the department must alter some terms of the agreement in order to comply with federal laws or regulations, the remaining terms of the agreement are binding on the parties. The agreement may be used by only the landowner who entered into the agreement with the department. The agreement is not appurtenant to the property. However, if a new landowner chooses to maintain the habitat enhancement efforts on the property, the new landowner and the department may jointly choose to retain the agreement.

The department and the Department of Natural Resources, in conjunction with the Timber-Fish-Wildlife cooperators, must investigate the feasibility of providing private landowners more state regulatory certainty with regard to forest practices regulations in exchange for a landowner's enhancement of habitat for fish or wildlife on the landowner's property. The agencies must report back to the Legislature on this effort by December 1, 1997. If the agencies and the interested parties find it expedient to do so, this investigation and the phase one investigation may be combined into one effort.

Amended Bill Compared to Substitute Bill: The underlying bill directs the Department of Fish and Wildlife to initiate two habitat incentive programs, one for food fish and one for wildlife. The amended bill directs the department to initiate one habitat incentives program for food fish, game fish, and other wildlife species. The program in the amended bill is in two phases, with the department and interested parties reporting to the Legislature by December 1, 1997, on factors necessary for implementation of the program and the department implementing the program beginning in January 1998. The underlying bill applies to landowners owning less than a total of 1,000 acres of land. The amended bill provides that a single agreement between the department and a landowner may encompass up to 1,000 acres, and the landowner may enter into multiple agreements if the total acreage covered by such agreements does not exceed 10,000 acres. The underlying bill requires the Department of Natural Resources to use the forest practices rules in effect on the date that property was accepted into the habitat incentives program and to base permit decisions on the conditions present on the property at the time of the agreement, unless jointly agreed otherwise. The amended bill directs the departments of Fish and Wildlife and Natural Resources to work in conjunction with the Timber-Fish-Wildlife cooperators to investigate the feasibility of providing more state level regulatory certainty with regard to forest practices regulations in exchange for habitat improvements. The underlying bill contains a \$43,000 general fund appropriation; the amended bill is null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

Testimony For (Bill and Proposed Alternative): This will allow a landowner to enter into a habitat improvement contract. If a landowner voluntarily improves fish habitat, for example, by removing a stream blockage, this will keep the landowner from having additional regulations from removing the blockage. The proposed alternative addresses concerns about the underlying bill. The department supports the idea of incentives. The alternative helps to spell out expectations so a landowner would know

what is involved with these agreements. The alternative provides enough criteria for a good evaluation. The department should embrace these kinds of habitat improvements.

Testimony Against: There are concerns about process and endangered species-related concerns with regard to the underlying bill. It would be helpful to have enough funding for a full FTE, or a half-FTE for the first year and a full FTE for the second year. It would be helpful to expand the acreage above 1,000 acres. There are landowners with larger acreages who would be interested in this program.

Testified: Senator Jim Hargrove, prime sponsor (in favor of bill); Ed Owens, Coalition of Coastal Fisheries; Willy O'Neill, Stilly Snohomish Task Force and Trout Unlimited; Dawn Vyvyan, Washington Association of Professional Biologists and Yakama Indian Nation (all in favor of alternative); Cyreis Schmitt, Washington State Department of Fish and Wildlife (in favor, preferring alternative); and Laura Overton, Rural Landowner Forestry Coalition and Noah Bay Land Company (in favor of bill and alternative).