

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 5327

Chapter 425, Laws of 1997

55th Legislature
1997 Regular Session

FISH AND WILDLIFE HABITAT INCENTIVES PROGRAM

EFFECTIVE DATE: 7/27/97

Passed by the Senate April 26, 1997
YEAS 44 NAYS 1

BRAD OWEN

President of the Senate

Passed by the House April 26, 1997
YEAS 94 NAYS 0

CLYDE BALLARD

**Speaker of the
House of Representatives**

Approved May 19, 1997

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5327** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MIKE O'CONNELL

Secretary

FILED

May 19, 1997 - 7:34 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5327

AS RECOMMENDED BY CONFERENCE COMMITTEE

Passed Legislature - 1997 Regular Session

State of Washington 55th Legislature 1997 Regular Session

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

Read first time 02/26/97.

1 AN ACT Relating to fish and wildlife enhancement; adding a new
2 section to chapter 77.12 RCW; adding a new section to chapter 75.20
3 RCW; adding a new section to chapter 76.09 RCW; creating new sections;
4 and making appropriations.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** In an effort to increase the amount of
7 habitat available for fish and wildlife, the legislature finds that it
8 is desirable for the department of fish and wildlife, the department of
9 natural resources, and other interested parties to work closely with
10 private landowners to achieve habitat enhancements. In some instances,
11 private landowners avoid enhancing habitat because of a concern that
12 the presence of fish or wildlife may make future land management more
13 difficult. It is the intent of this act to provide a mechanism that
14 facilitates habitat development while avoiding an adverse impact on the
15 landowner at a later date. The habitat incentives program is not
16 intended to supercede any federal laws.

17 NEW SECTION. **Sec. 2.** (1) The department of fish and wildlife and
18 the department of natural resources shall jointly initiate a habitat

1 incentives program in two phases. In creating this program, the
2 departments shall make use of and complement other study efforts
3 underway relating to habitat protection and enhancement, including the
4 department of fish and wildlife's review of the hydraulic project
5 approval process and the forestry module under development for the
6 forest practices board dealing with practices within riparian areas.

7 (2) In phase one, the department of fish and wildlife and the
8 department of natural resources shall work with affected federally
9 recognized Indian tribes, landowners, the regional fisheries
10 enhancement groups, the timber, fish, and wildlife cooperators, and
11 other interested parties to identify appropriate criteria and other
12 factors necessary for implementation of the habitat incentives program.
13 The departments in concert with the interested parties shall identify
14 at least the following elements for implementation of the program:

15 (a) The factors and the approach that the departments should use in
16 evaluating and weighing the benefits and concurrent risks of entering
17 into a habitat incentives agreement with a landowner;

18 (b) The approach to be used in assigning responsibilities for
19 implementation of the agreement to the landowner and to the
20 departments;

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

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

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

31 (f) The conditions under which the departments and the landowner
32 may terminate the agreement and the remedies if either party breaches
33 the terms of the agreement;

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

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

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

4 The departments and the interested parties may identify and propose
5 solutions to other issues necessary in order to implement the habitat
6 incentives program. The departments and the interested parties shall
7 report to the legislature on their findings as well as on any other
8 recommendations for implementation and funding for the habitat
9 incentives program by December 1, 1997.

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

12 (1) Beginning in January 1998, the department of fish and wildlife
13 and the department of natural resources shall implement a habitat
14 incentives program based on the recommendations of federally recognized
15 Indian tribes, landowners, the regional fisheries enhancement groups,
16 the timber, fish, and wildlife cooperators, and other interested
17 parties. The program shall allow a private landowner to enter into an
18 agreement with the departments to enhance habitat on the landowner's
19 property for food fish, game fish, or other wildlife species. In
20 exchange, the landowner shall receive state regulatory certainty with
21 regard to future applications for hydraulic project approval or a
22 forest practices permit on the property covered by the agreement. The
23 overall goal of the program is to provide a mechanism that facilitates
24 habitat development on private property while avoiding an adverse state
25 regulatory impact to the landowner at some future date. A single
26 agreement between the departments and a landowner may encompass up to
27 one thousand acres. A landowner may enter into multiple agreements
28 with the departments, provided that the total acreage covered by such
29 agreements with a single landowner does not exceed ten thousand acres.
30 The departments are not obligated to enter into an agreement unless the
31 departments find that the agreement is in the best interest of
32 protecting fish or wildlife species or their habitat.

33 (2) A habitat incentives agreement shall be in writing and shall
34 contain at least the following: A description of the property covered
35 by the agreement, an expiration date, a description of the condition of
36 the property prior to the implementation of the agreement, and other
37 information needed by the landowner and the departments for future
38 reference and decisions.

1 (3) As part of the agreement, the department of fish and wildlife
2 may stipulate the factors that will be considered when the department
3 evaluates a landowner's application for hydraulic project approval
4 under RCW 75.20.100 or 75.20.103 on property covered by the agreement.
5 The department's identification of these evaluation factors shall be in
6 concurrence with the department of natural resources and affected
7 federally recognized Indian tribes. In general, future decisions
8 related to the issuance, conditioning, or denial of hydraulic project
9 approval shall be based on the conditions present on the landowner's
10 property at the time of the agreement, unless all parties agree
11 otherwise.

12 (4) As part of the agreement, the department of natural resources
13 may stipulate the factors that will be considered when the department
14 evaluates a landowner's application for a forest practices permit under
15 chapter 76.09 RCW on property covered by the agreement. The
16 department's identification of these evaluation factors shall be in
17 concurrence with the department of fish and wildlife and affected
18 federally recognized Indian tribes. In general, future decisions
19 related to the issuance, conditioning, or denial of forest practices
20 permits shall be based on the conditions present on the landowner's
21 property at the time of the agreement, unless all parties agree
22 otherwise.

23 (5) The agreement is binding on and may be used by only the
24 landowner who entered into the agreement with the department. The
25 agreement shall not be appurtenant with the land. However, if a new
26 landowner chooses to maintain the habitat enhancement efforts on the
27 property, the new landowner and the departments may jointly choose to
28 retain the agreement on the property.

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

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

35 When a private landowner is applying for hydraulic project approval
36 under this chapter and that landowner has entered into a habitat
37 incentives agreement with the department and the department of natural
38 resources as provided in section 3 of this act, the department shall

1 comply with the terms of that agreement when evaluating the request for
2 hydraulic project approval.

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

5 When a private landowner is applying for a forest practices permit
6 under this chapter and that landowner has entered into a habitat
7 incentives agreement with the department and the department of fish and
8 wildlife as provided in section 3 of this act, the department shall
9 comply with the terms of that agreement when evaluating the permit
10 application.

11 NEW SECTION. **Sec. 6.** (1) The sum of twelve thousand one hundred
12 twenty-five dollars, or as much thereof as may be necessary, is
13 appropriated for the fiscal year ending June 30, 1998, from the general
14 fund to the department of fish and wildlife for the purposes of this
15 act.

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

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

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

Passed the Senate April 26, 1997.

Passed the House April 26, 1997.

Approved by the Governor May 19, 1997.

Filed in Office of Secretary of State May 19, 1997.