

HOUSE BILL REPORT

HB 1281

As Reported By House Committee On:
Natural Resources

Title: An act relating to providing incentives for nonindustrial private forest landowners with landscape planning, technical assistance, carbon storage markets, and rural design assistance.

Brief Description: Creating the family forestry support act.

Sponsors: Representatives Regala, Anderson, Doumit, Haigh, Rockefeller, Eickmeyer, Hatfield, O'Brien, Kessler, Kenney and Lantz; by request of Commissioner of Public Lands.

Brief History:

Committee Activity:

Natural Resources: 2/3/99, 3/2/99 [DPS].

Brief Summary of Substitute Bill

- Provides incentives for nonindustrial private forest owners to maintain forest uses.
- Contains four components including: landscape management planning, stewardship technical assistance, a rural design demonstration project, and acquisition of conservation easements.

HOUSE COMMITTEE ON NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Buck, Republican Co-Chair; Regala, Democratic Co-Chair; Anderson, Democratic Vice Chair; Sump, Republican Vice Chair; G. Chandler; Clements; Doumit; Eickmeyer; Ericksen; Pennington; Rockefeller and Stensen.

Staff: Carole Richmond (786-7114) and Josh Weiss (786-7129).

Background:

I. Landscape Management Plans: The Forest Practices Act calls for the protection of forest soils, fisheries, water quantity and quality, air quality, recreation, and scenic beauty coincident with the maintenance of a viable forest products industry. The act defines "public resources" as "water, fish and wildlife, and in addition [...] capital improvements of the state or its subdivisions." (RCW 76.09.020(13)). Four classes of forest practice permits are established, with class I permits having the least potential for damage to public resources, and class IV permits having the most potential for damage to public resources, in that the forest land is intended to be converted to another use, or the forest practice may have a substantial impact on the environment and, therefore, requires environmental review under the State Environmental Policy Act (SEPA). Applications for forest practice permits are made to the Department of Natural Resources (DNR), which reviews them for compliance with the Forest Practices Act, and which may impose conditions on the permits. A permit is normally issued for two years.

The concept behind landscape management plans is to allow a long term plan to substitute for the requirement to obtain permits for separate forest practices and to undergo possible environmental review. The concept has evolved to mean wildlife habitat planning on private forest lands.

Current law (RCW 76.09.350) authorizes DNR to establish seven pilot projects intended to result in the development of plans that will: (1) provide better protection of public resources than current laws; (2) not result in poorer conditions for species listed as threatened or endangered under the federal Endangered Species Act, or for candidate species; and (3) measurably improve habitat for species selected for special consideration under the plan. Prior to approval, plans are subject to a public review process.

II. Stewardship Technical Assistance: The DNR currently provides technical assistance to nonindustrial forestland owners, but funding is provided from federal sources.

III. Carbon Storage: While scientific debate does exist, it is widely thought that global atmospheric carbon levels have risen in recent years. Some scientists argue that this increase in carbon has been caused by the burning of fossil fuels which emit carbon dioxide, and by changing land-use patterns which eliminate naturally occurring "carbon sinks" such as forests.

Living forests absorb carbon dioxide from the atmosphere, storing carbon in the wood mass of the trees themselves, and facilitating the storage of carbon in forest soils. It is thought that forests can mitigate recent increases in atmospheric carbon levels.

A carbon emission trading program would provide a financial incentive for landowners to maintain long term forest production. Such a program would allow landowners to sell credits on a free market to persons who emit carbon. This could only be accomplished through a state standardized and certified program.

Several other states, including Oregon, Montana, California, Hawaii, Georgia, Maine, Minnesota, and Ohio, are exploring the implementation of carbon sequestration programs. Some countries, such as Germany, have very active carbon markets.

IV. Rural Design Demonstration: Between 1970 and 1997, 2,300,000 acres of land were converted from forest land to other uses, mostly for urban expansion. Many strategies at controlling this conversion have been used, including density controls, critical area protections, development regulations, and development clustering. Rarely are these strategies used in conjunction.

V. Conservation Easements: During the 1980s, 322,000 acres of western Washington's forest lands were converted to other uses. Much of this conversion occurred in riparian zones, thereby effecting salmon habitat.

Conservation easements have been utilized for many years to provide an incentive for landowners to maintain agricultural, forest, or general open space on private lands. This method occurs when a third party purchases the development rights to the property, and a contractual agreement that the land will not be developed is agreed upon. The land is then taxed at a lower assessment, resulting in a tax break for the landowner.

Currently, counties, cities, towns, metropolitan park districts, metropolitan municipal corporations, nonprofit historic preservation corporations and nonprofit nature conservancy corporations are allowed to acquire conservation easements, including any other contractual right necessary to conserve open space, farmland, and timberland. Such land may be conveyed back to the original owner under covenants limiting the future use of the property. These same entities may acquire land which is taxed at current use assessment, and are allowed to forbid or restrict building on any land upon which they have acquired a conservation easement. Such land may be alienated by the owner of the property, subject to the terms of the agreement made with the entity.

Summary of Substitute Bill:

Landscape Management Plans

The Legislature recognizes that with current economic factors, many nonindustrial private forest landowners will need incentives to help them remain in forestry. Such incentives are identified as including long term landscape planning and associated permits.

Terms are defined: a "landowner landscape plan" means an individual landowner plan prepared according to the act's requirements and approved by the department; a "landscape level permit" means a single forest practices permit issued upon approval of a landowner landscape plan for a term not to exceed 25 years; and, a "nonindustrial

private forest landowner" means an owner of 15,000 acres or fewer of forest land who does not own or operate a forest products manufacturing facility.

The department, in consultation with the departments of Ecology and Fish and Wildlife, is authorized to select up to 20 nonindustrial landowners for the purpose of a pilot project to develop individual landscape management plans. Participation in the pilot projects is voluntary.

The department is directed to approve a landscape management plan when it contains all of the required provisions, provides better protection than current state law for the ecological functions expected to be provided by the landscape, does not result in poorer habitat conditions over the life of the plan for any species listed as threatened or endangered under the federal Endangered Species Act, and would measurably improve habitat conditions for the majority of species expected to be found in the planning area.

The elements of an landscape management plan include:

- a termination date not to exceed 25 years;
- short and long term management objectives for the property;
- assessment of current habitat conditions;
- management strategies for the following resources:
 - « forest health
 - « timber and wood production
 - « soils
 - « water quality, riparian and wetland areas
 - « fish and wildlife habitat
 - « threatened and endangered species
 - « aesthetics and recreation and
 - « road maintenance and abandonment

The plan must also include maps identifying natural resource features, and must include reporting requirements.

Pilot plans approved by the department confer the same benefits as those approved under the existing pilot program; that is, the issuance of a single forest practices permit valid for the term of the plan, which, in this case, is not to exceed 25 years. An approved plan also exempts a landowner from the requirement to obtain permits for specific forest practices identified in the plan, and exempts landowners from the need for a hydraulic project approval under RCW 75.2.100. Unlike plans under the existing pilot program, pilot plans developed under this act are subject to environmental review under SEPA. An agreement implementing an approved plan runs with the property.

After a landscape management plan has been approved, the landowner is required to meet with the department and with the departments of Fish and Wildlife and of Ecology to review specific forest practices planned for the next 12 months for compliance with the

plan. The landowner is also required to provide written notice 10 days before the conduct of any forest practices authorized in the plan.

The agreement implementing the plan is an agreement that runs with the property and is to be recorded with the real property records maintained by the county in which the affected properties are located. The plans may be terminated or modified only under conditions that are identified in the plan, but those conditions may not measurably impair the achievement of the plan's stated public resource purpose objectives.

The department is required to provide the Forest Practices Board with an evaluation of the pilot projects created under this act no later than December 31, 2002, and every two years thereafter. The department is also required to recommend whether a permanent landscape planning process should be established.

II. Stewardship Assistance

Funding is appropriated to provide expanded technical assistance to nonindustrial forest landowners. Such assistance is to be used for technical assistance, landowner education, and implementation of stewardship activities including the development of stewardship plans, planting of trees and shrubs, forest stand improvement, riparian and wetland establishment or enhancement, and control of sedimentation. Fish and wildlife enhancement will be covered by the stewardship assistance program.

III. Rural Design Demonstration

The DNR and Department of Community Trade and Economic Development are required to develop and implement a rural design demonstration which is applicable to nonindustrial forestlands. The demonstration will include: drafting design principles, compatibility with existing county plans, and rural design standards. Nonindustrial forestlands that are zoned residential must be included in the demonstration. The demonstration must develop less than 40 percent of the site, maximize salmon habitat protection, and protect for perpetuity forest practices on a majority of the site.

IV. Conservation Easements

The DNR may acquire conservation easements in riparian areas from nonindustrial forest landowners. Such easements are for the purpose of preserving forested conditions along riparian areas to provide habitat for fish and other wildlife.

State agencies are allowed to acquire conservation easements, including any other contractual rights necessary to conserve open space, farm land, and timber land. Such land may be conveyed back to the original owner under covenants limiting the future use of the property. State agencies may acquire land which is taxed at current use assessment. Agencies are allowed to forbid or restrict building on any land upon which

it has acquired a conservation easement. Such land may be alienated by the owner of the property, subject to the terms of the agreement made with the state agency.

Substitute Bill Compared to Original Bill: The substitute bill removes the carbon sequestration portion of the original bill. The substitute also retains the authority of the Department of Fish and Wildlife to approve hydraulic project permits for landscape management plans. The substitute clarifies that technical assistance is not limited to technical assistance, and expands on how funds will be used through this program.

Appropriation: The sums of \$943,500 per biennium for Stewardship Technical Assistance, \$300,000 per biennium for Rural Design Demonstration, and \$1.5 million per biennium for Conservation Easements.

Fiscal Note: Available.

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

Testimony For: (Original Bill) Conversion pressure is on nonindustrial forest landowners. The landscape pilot plans that are underway are similar, but different. Landscape planning provides certainty; no other program provides certainty under the Forest Practices Act. We support landscape planning; this moves us toward planning for whole ecosystems. Long term plans should provide fish and wildlife benefits. Forest lands are under increasing development pressure and this bill is intended to alleviate some of that pressure to maintain forest lands. Better protection is required for these lands. This is a win-win situation for rural landowners because it provides financial incentives for protecting sensitive areas. The rural design element and the clustering concept are particularly good. The concepts in the bill should be used as an option for landowners, and shouldn't be mandatory. With increased pressure coming from the Endangered Species Act it is more important to keep lands in forest. The Bullitt Foundation supports this bill, and this is high support. An expansion of the riparian zones should require compensation to the landowner. The Washington Environmental Council has the same concerns with the carbon storage issue as it addressed in its testimony to HB 1229; however, the issue deserves study. The definition of a "small" landowner should be consistent with the forest practices statute. Growth is happening in rural areas. Forest lands provide economic, social, and environmental value to society. The bill focuses on nonindustrial lands, the majority of which are located on the outskirts of developed areas. These areas are those in which there are economic incentives to convert. One-third of the forest lands in the state are owned by nonindustrial owners. In the stewardship technical assistance program the department has more demand than it can keep up with. The rural design program is intended to encourage the use of lots of individual tools that currently exist, in order to encourage

development while preserving the rural nature of an area. The conservation easement element will provide a tax incentive to keep lands in private ownership while also preserving critical salmon habitat. Amendments are needed to the bill since it currently affects the Department of Fish and Wildlife's hydraulic permit authority. The forestry module isn't here yet, though there is going to be some overlap, mainly with conservation easements, that will need to get worked out. The Department of Fish and Wildlife supports keeping small landowners economically viable. There are some changes needed to address the department's hydraulic permit authority and hydraulic permit programs.

(With Concerns) This bill builds up DNR's bureaucracy and is not funding consultants who can do the job cheaper. I'm not supportive of landscape planning. Landscape planning is not a new concept. The existing pilot programs should be interviewed to see how they're doing. Why only 20 plans? DNR estimates that each plan will cost \$40,000 on the state's side, but no estimate is provided on the private side. We can't endorse landscape planning at this time until answers are provided. The technical assistance program run by the DNR has been a good program. Education is necessary and the technical assistance program provides this. The program has been good because it involves forest consultants. Landscape management plans and conservation easements are needed to protect habitat. The buffers section of the upcoming forestry module is not great, and this would be better. The carbon storage section in this bill is not needed. The state needs to decide how much land and wildlife are really needed, because providing beyond this level is a misallocation of our resources.

The private landowner doesn't get anything for protecting the salmon. There are going to be two major forestry bills this session, the forestry module being the second after this one. Wait until the forestry module comes forward before acting on landscape management plans. Stewardship technical assistance has been a joint venture, and is a very successful program. The DNR deserves compliments on the program. The carbon storage idea would have global benefits. Since we don't know exactly how to deal with the problem, we should study it. Congress and the President's administration are dabbling in this concept too. Efforts should be made on rural design demonstration projects, and this is a worthwhile attempt. The forestry module will hinge on the conservation easement concept, but it puts together a better package. The Washington Farm Forestry Association is pleased to support anything that the DNR does to help small landowners, however, this bill doesn't necessarily address the same priorities as small landowners would. Maintaining viability is more important to a small landowner than planning is. Wait until the forestry module comes out. Carbon storage is an interesting concept and worthy of study. The study should include all of the stakeholders including the manufacturing community. In implementing the rural design element it is necessary to recognize the market forces at work when lands are converted and to help landowners to find ways to use their lands. Conversion can only occur within designated urban growth boundaries which have been determined by the community itself. Recognize that there is a limited amount of land available for growth and that if we take

land out then we need to replace it and allow growth. As the bill reads now there is no incentive for landowners to cluster development. The bill should include density unit waivers as such an incentive. There are mechanisms at the local level to accomplish the rural development element of the bill.

Testimony Against: None.

Testified: (In support) Representative Debbie Regala, prime sponsor; Peter Overton; Roy Famsson, Washington Farm Forestry Association; Josh Baldi, Washington Environmental Council; Amy Bell, Department of Natural Resources; and Greg Hueckel, Washington Department of Fish and Wildlife.

(With concerns) Frank Shirley; Chan Noerenberg, Washington Farm Forestry Association; Nels Hanson, Washington Farm Forestry Association; and Scott Hazlegrove, Washington Association of Business.