

# HOUSE BILL REPORT

## 2SHB 1095

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### As Passed Legislature

**Title:** An act relating to assisting small forest landowners with the forest road maintenance and abandonment plan elements of the forest practices rules.

**Brief Description:** Limiting the impact on small forest landowners caused by forest road maintenance and abandonment requirements.

**Sponsors:** By House Committee on Appropriations (originally sponsored by Representatives Rockefeller, Sump, Linville, Orcutt, Schoesler, Pearson, Holmquist, Haigh and Kristiansen; by request of Commissioner of Public Lands).

#### **Brief History:**

##### **Committee Activity:**

Agriculture & Natural Resources: 1/22/03, 2/4/03, 2/19/03 [DPS];  
Appropriations: 3/6/03, 3/8/03 [DP2S(w/o sub AGNR)].

##### **Floor Activity:**

Passed House: 3/18/03, 78-20.  
Senate Amended.  
Passed Senate: 4/9/03, 49-0.  
House Concurred.  
Passed House: 4/21/03, 96-0.  
Passed Legislature.

#### **Brief Summary of Second Substitute Bill**

- Alters the road maintenance and abandonment plan requirements for small forest landowners, including the creation of a simplified checklist plan.
- Establishes a cost-share program to provide financial assistance to small forest landowners for the removal of fish blockages.
- Defines certain terms as they affect road maintenance and abandonment plans.
- Exempts checklist road maintenance and abandonment plans from the continuing obligation requirements of the Forest Practices Rules.

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### HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do

pass. Signed by 11 members: Representatives Linville, Chair; Rockefeller, Vice Chair; Schoesler, Ranking Minority Member; Kristiansen, Assistant Ranking Minority Member; Eickmeyer, Grant, Hunt, McDermott, Orcutt, Quall and Sump.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Holmquist, Assistant Ranking Minority Member; and Chandler.

**Staff:** Jason Callahan (786-7117).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Agriculture & Natural Resources. Signed by 27 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Sehlin, Ranking Minority Member; Pearson, Assistant Ranking Minority Member; Alexander, Boldt, Buck, Clements, Cody, Conway, Cox, DeBolt, Dunshee, Grant, Hunter, Kagi, Kenney, Kessler, Linville, McDonald, McIntire, Miloscia, Pflug, Ruderman, Schual-Berke, Sump and Talcott.

**Staff:** Patricia Linehan (786-7178).

### **Background:**

#### History of the Forests and Fish Law

The Forest and Fish Report was presented to the Forest Practices Board (Board) and the Governor's Salmon Recovery Office on February 22, 1999. The report represented the recommendations of the authors for the development and implementation of rules, statutes, and programs designed to improve and protect riparian habitat on non-federal forest lands in Washington.

In 1999 the Legislature recognized the Forest and Fish Report by passing the Forests and Fish Law. The law strongly encouraged the Board to adopt emergency rules implementing the recommendations of the Forest and Fish Report. These recommendations included the requirement that all forest landowners be required to file a road maintenance and abandonment plan (RMAP).

#### RMAP Requirements

All forest landowners must submit an RMAP to the Department of Natural Resources (DNR) by December 31, 2005, or concurrent with an application for a forest practice, whichever is sooner. The RMAP must contain ownership maps, a schedule to complete necessary road work within 15 years, standard road maintenance practices, a storm maintenance strategy, and an assessment of risks to public resources.

On each anniversary date of an RMAPs submission, the owner must file with the DNR a detailed description of the work that was accomplished the previous year and the work that is scheduled for the upcoming year. If the landowner decides not to maintain a road, he or she must indicate in the RMAP a schedule for abandoning the road.

If a landowner fails to submit an RMAP, or to comply with the work schedule outlined in the RMAP, the DNR may deny future forest practice applications made by that landowner. In addition, the RMAP requirement is considered a continuing forest land obligation. All such obligations must be disclosed by the seller of forest land to the buyer prior to sale. If the seller fails to disclose these obligations, the seller is responsible for paying the costs incurred by the buyer for compliance with the obligations. All written notifications are required to be sent to the DNR.

### **Summary of Second Substitute Bill:**

#### Definitions

The term "small forest landowner" is defined consistently with other locations in the Revised Code of Washington. The definition of small forest landowner is generally a person or entity that harvests an average of two million board feet or less each year.

The term "forest road" is generally defined to mean any road or road segment that does cross over forest land. "Forest land" is defined to exclude residential home sites and agricultural land. Fish passage barrier– is defined to mean artificial instream structures.

#### RMAP Reporting Requirements

The Board is instructed to adopt emergency rules for RMAPs that are different from the recommendations of the Forest and Fish Report by October 31, 2003. Forest landowners that own a total of 80 acres or less of forest land are not required to submit an RMAP for blocks of forest land that are 20 contiguous acres or less in size.

Landowners that do not meet the 20-acre exemption, but still satisfy the definition of a small forest landowner, are only required to file a checklist RMAP and are exempted from the annual reporting requirement. Unlike standard RMAPs, checklist RMAPs do not need to be filed until the landowner files a forest practice application for a final or intermediate harvest, or for a tree salvage. The checklist RMAP must be limited in scope to the current law, and may only apply to forest roads affected by a forest practice application.

#### Cost-Share Funding

The Small Forest Landowners Office (SFLO) must seek out funding to implement a

cost-sharing program to assist small forest landowners with the costs of removing and replacing culverts and other man-made fish blockages.

The SFLO is directed to seek the highest possible proportion of public funding available; however, a small forest landowner is only required to contribute 25 percent of the cost of any fish barrier or culvert removal. In no instance will a small forest landowner be required to contribute more than \$5,000 towards a particular fish barrier. If a small forest landowner is required to remove a culvert that was lawfully installed, the cost-share program will pay for 100 percent of that culvert's removal costs. In addition, the annual amount that a small forest landowner can be required to pay for fish barrier removal is calculated from the amount of timber he or she harvested in the three years leading to the fish barrier removal.

If a small forest landowner is required to pay for a portion of a road maintenance project, that landowner can satisfy his or her share by providing in-kind services. In-kind services can include labor, equipment, and materials.

Limited funds for the cost-share program are directed to be applied in a worst-first manner within a watershed. The DNR is responsible for establishing an order for providing funds that is aimed at first addressing the priority blockages. In establishing this order, the DNR must coordinate with the Department of Fish and Wildlife and salmon recovery lead entities to establish an annually-updated ranked inventory of fish barriers on land owned by small forest landowners. This process first requires that all known data about the locations and impacts of fish blockages be gathered and synthesized. The funding order may be altered to reflect the addition of new information.

#### Forest Practices Application Approvals

Small forest landowners will not have a forest practices application denied solely on the grounds that fish blockages have not been removed if the landowner agrees to remove the fish blockages when cost-share funding is available. The participating landowner will be able to conduct all otherwise permissible forest practices until the cost-share program provides funding for the removal of blockages on his or her land.

#### Continuing Obligations

The checklist RMAP requirement is exempted from the continuing forest land obligations provision of the Forests and Fish Law. The seller of forest land is not required to notify the buyer in writing of the existence of the checklist RMAP requirement. The checklist RMAP requirement is also removed from the express requirement that the seller pay for any continuing obligations that were not disclosed to the buyer.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** (Agriculture & Natural Resources) (Original bill) Concerns about the RMAP requirements surfaced early in 2002 at a series of well-attended public meetings. The Forests and Fish Law proved to have some unintended results for small forest landowners, so the Governor and Commissioner of Public Lands called together a policy team of concerned stakeholders to negotiate this landmark bill. This bill is generally the consensus recommendations of that stakeholder group.

The RMAP requirements of the Forests and Fish agreement are vague and causing fear in the real world. It is important that the Legislature pass a bill that allows small forest landowners to remain in business, while still protecting the environment. Small forest landowners provide a critical buffer between urban sprawl and the state's publicly-owned forests. Without this legislation, a lot of expensive culverts will have to be replaced at a high cost to the landowner.

The keystone of the Forests and Fish Law is the obtaining of assurance from the federal government that the state's forest products industry can continue to operate with certainty for the next 50 years. As important as the federal assurances are, the family forest landowners must be able to survive in order to take advantage of the federal assurances. This bill eases the burdens on small forest landowners while still maintaining the federal assurances that the Forests and Fish Law promised.

As currently enacted, RMAPs require a landowner to invest in land years before he or she had planned. The DNR has up until now used a soft hand with enforcement, concentrating on voluntary compliance; however, relief is necessary for the small forest landowners to remain competitive.

The Forests and Fish Law is a very complex piece of legislation. Complex legislation often needs to be amended through time. This mid-course correction is necessary because of the underlying law's sheer complexity. Changes to the Forests and Fish Law can only come from the Legislature, the courts, or an independent scientific review board, making legislative action necessary.

When repairing roads on a worst-first basis, as the Forests and Fish agreement requires, it makes sense to small landowners if those priorities are done on a watershed basis, as opposed to a landowner-by-landowner basis. Some small landowners may only have one defective road on his or her property, and that road's priority should be considered in the context of the watershed it effects. This bill allows that to occur, while relying primarily on existing information about habitat.

**Testimony For:** (Appropriations) In 1999 the Legislature adopted the Forests and Fish

Act, with support from the timber community, in response to the Endangered Species Act, so that logging could continue in Washington. This was a large and encompassing plan that has had unintended consequences. Engrossed Substitute House Bill 2091 was adopted and it urged the Forest Practices Board to adopt rules that were laid out in the Forests and Fish Act. The proposed bill attempts to address the unintended consequences of the implementation bill, ESHB 2091. It is an agreed-to document, by both sides, and there are some additional amendments that will be offered tomorrow. The proposed bill has come a long way and it is hoped that you will support it.

The Department of Natural Resources (DNR) recognizes that there is fiscal impact to the state in terms of developing and implementing a fix to the RMAP problems. The bill brings forth a process to lessen the fiscal impacts of RMAPs on the small landowners, and anticipates that there will be public costs to be borne. The DNR has scrubbed cost estimates in order to develop a viable low cost program. \$1.3 million general fund costs are indicated and both the Fish and Wildlife (WDFW) and the DNR expect to absorb some of the costs, from within existing authority, to implement this program. The cost estimates are based upon the worst-first basis and give the "biggest bang for the buck" in the short term and then build over the long term. Nearly 20 percent of the costs are for the Administrative Procedures Act rule making process. The DNR is seeking federal funding sources that could be used for this program.

The WDFW supports this bill. The WDFW continues to make progress in recovering the state's listed salmon and trout stocks by restoring passage to spawning areas. The WDFW provides a cost share program for non-industrial landowners to help defray their costs. Costs associated with this bill are for the requirements that the WDFW: 1) Develop and implement a cost share program, with the DNR, to find, prioritize, and fix barriers; 2) assist lead entities in acquiring current fish barrier information and conduct additional assessments where no data exists; and 3) provide data management and technical assistance. Additionally, the WDFW estimates that other work that is equal to 1.5 FTE is needed for implementing this bill, and that it can be supported from within current staff and previous Forests and Fish funding.

This bill does fix unintended consequences, it is a work in progress, and we urge you to pass it out of this committee. One important issue in this bill is to allow the DNR to look for funding from grant sources. We are anxious to locate additional funds for the replacement of culverts.

**Testimony Against:** (Agriculture & Natural Resources) (Original bill) This bill does nothing to actually assist small forest landowners. It is better for landowners to receive no fix to the law at all, than to receive merely half of a fix. This bill could have unintended consequences on private landowners. Farmers do not trust the process that led to the Forests and Fish agreement and its implementation. The bill's ambiguity, evidenced by the checklist RMAP idea, is very concerning. It is also very hard to know where forest land ends and non-forest land begins. Promises are made and broken to

landowners, but they never get relief.

If the public wants a forest road maintained, the public should pay for it, not the private landowner. Perhaps a statewide tax could relieve this burden. Money has not been provided to landowners to assist with the costs of the Forests and Fish Law, and this bill does not guarantee funding. If the state cannot afford the regulations, it should not expect landowners to find the money. The burden to carry the costs of the Forests and Fish Law are placed on those least able to pay by those most able to pay. Even if a landowner is only required to pay a small percentage of a fish blockage removal, that can still be an extremely high burden given the costs of new culverts.

RMAP compliance is not important enough to spend public tax dollars on. There are far more important uses of tax money than forest road upgrades.

Since most of the requirements of the Forests and Fish Law were aimed at industrial landowners, the non-industrial landowners should receive different treatment. Inactive roads should be allowed to remain untouched until they are used again.

The Legislature itself should assign definitions, and not defer that responsibility to the Forest Practices Board. When writing definitions, driveways should be excluded from the forest road definition. The Legislature should also not require regulations that are stricter than both the Clean Water and Endangered Species Acts where there are currently no fish.

The DNR should be able to deny a forests practices application if fish blockages are not fixed, especially after the 15-year deadline has passed. Perhaps a stumpage tax rebate could help with the blockage problems. The public should assist with the cost burden, but some costs should fall to the landowner.

Defining a small forest landowner as one that harvest less and two million board feet is too broad. That definition allows large areas of land to be treated differently.

(A summary of testimony generally opposed to RMAP requirements is available from staff.)

**Testimony Against:** (Appropriations) None.

**Testified:** (Agriculture & Natural Resources) (In support) Representative Rockefeller, prime sponsor; Representative Sump, secondary sponsor; Leonard Young, Department of Natural Resources; Bill Wilkerson, Washington Forest Protection Association; John Mankowski, Department of Fish and Wildlife; Shari Fox, Washington Farm Forestry Association; and Sue Pattillo.

(With concerns) Toni McKinley, Washington State Grange; and Josh Baldi, Washington

Environmental Council.

(Opposed) Pat Hamilton, Pacific County Commissioner; Sid Viebrock and Jane Rose, Washington Cattlemen's Association; Hertha Lund, Bob Rose, Joe Kretz, Kathy Power, Les Schertenleib, Chad Henneman, Steve Lorz, Mike Copenhefer, Paul Cozza, Dave Power, Dan Boeholt, and Wesley McCart, Washington Farm Bureau; Bill Pickell, Washington Contract Loggers Association; Bob Playfair, Washington Farm Forestry Association; Peter Revesz; Nick Abellera; Arne Wirkkala; Richard Gildz; Victoria Chiechi-Hinze; Susan Nelson; and Gary Nealey.

**Testified:** (Appropriations) Representative Sump, prime sponsor; John Mankowski, Department of Fish and Wildlife; Hertha Lund, Farm Bureau; Sherry Fox, Washington Farm Forest Bureau; and Pat McElroy, Department of Natural Resources.