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**Agriculture & Natural  
Resources Committee**

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**HB 1095**

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

**Sponsors:** Representatives Rockefeller, Sump, Linville, Orcutt, Schoesler, Pearson, Holmquist, Haigh and Kristiansen; by request of Commissioner of Public Lands.

**Brief Summary of Bill**

- Alters the road maintenance and abandonment plan requirements for small forest landowners.
- Establishes a cost-share program to provide financial assistance to small forest landowners for the removal of fish blockages.
- Instructs the Forest Practices Board to issue emergency rules that clarifies defined terms.
- Exempts road maintenance and abandonment plans from the continuing obligation requirements of the Forest and Fish Law.

**Hearing Date:** 1/22/03

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

**Background:**

**History of the Forests and Fish Law**

The Forest and Fish report was presented to the Forest Practices 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. The report was authored by various stakeholders, including the federal government, state government, tribal governments, and various interest and constituency groups. The rules proposed in the Forest and Fish report were designed to provide compliance with the

Endangered Species Act, restore and maintain minimum riparian habitat to support a harvestable supply of fish, meet Clean Water Act standards, and keep the timber industry economically viable.

In 1999 the Legislature recognized the Forest and Fish report by passing the Forests and Fish Law (Chapter 004, Laws of 1999, 1st Sp. Sess.). The law directed the Forest Practices 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 (WAC 222-24-051). Landowners that own more than 500 acres of forest land must, at a minimum, submit annual RMAP's for 20 percent of their holdings for the five years leading up to 2005. 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 (WAC 222-24-051(6)).

Submitted RMAP's must prioritize the work that is to be done over the 15-year planning period. These priorities include:

- Removing fish blockages;
- Preventing sediment delivery;
- Preventing road surface runoff;
- Minimizing the interruption of water flow from one basin to another (known as hydrologic connectivity); and
- Work that can be done with maximum operational efficiency (WAC 222-24-051(7))

On each anniversary date of an RMAP's 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 (WAC 222-24-051(9)). If the landowner decides not to maintain a road, he or she must indicate in the RMAP plans 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 (RCW 76.09.390).

RMAP's are required for all forest roads. The term "forest roads" has been defined by the Forest Practices Board to mean ways, lanes, and driveways on forest land used since 1974 for forest practices or forest management activities (WAC 222-16-010). The term "forest land" is defined by the Legislature to mean all land which is capable of supporting a merchantable stand of timber and is not being used actively for an incompatible use (RCW

76.09.020).

## **Summary of Bill:**

### **RMAP Reporting Requirements**

The Board of Natural Resources (board) is instructed to adopt emergency rules for road maintenance and abandonment plans (RMAP's) 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 any tract of land that is 20 contiguous acres or less in size.

Landowners that do not meet the twenty-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. The checklist RMAP is a reporting mechanism with abbreviated content that is to be designed by the Department of Natural Resources (DNR), in consultation with the Small Forest Landowners Advisory Committee. Unlike standard RMAP's, checklist RMAP's do not need to be filed until the landowner files a forest practice application.

The DNR must provide both landowners who are exempted from the RMAP requirement, and landowners who qualify for a checklist RMAP, with an educational brochure outlining road maintenance standards and requirements. In addition, the DNR must conduct a series of educational workshops on the same subject. Attendance at the workshops is voluntary.

### **Cost-Share Funding**

The Small Forest Landowners Office (SFLO) must seek out state, federal, or private 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, all costs of a fish blockage removal project not covered by public funding is the responsibility of the landowner.

Limited funds are directed to be applied first to known fish blockages that are causing the greatest harm to public resources. 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 (DFW) 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, including the limited factors analysis and other existing science-based assessments, be gathered and synthesized. Any information collected by the DNR from submitted RMAP's must be shared with the DFW for the purposes of reflecting all known data in the ranked inventory. 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

## **Definitions**

The board is instructed to promulgate a series of emergency rules by October 31, 2003. In addition to the twenty-acre exemption and checklist RMAP rules, the board must adopt rules that relate to how certain existing definitions effect small forest landowners.

The board must redefine the term "forest road" to ensure a narrow interpretation. The new definition must expressly exclude residential driveways that are not used for forest practices. The rule must also clarify that existing forest roads must only be maintained to the extent necessary to prevent potential or actual damage to public resources.

Certain elements of the statutorily defined term "forest land" must also be clarified by the board. The clarifications must expressly exclude agricultural crop lands, pastures, and orchards.

The term "small forest landowner" is also defined consistently with other locations in the Revised Code of Washington. The definition of small forest landowner is a person or entity that harvested two million board feet or less in the three-year period before filing an RMAP, and that certifies that the annual board feet harvest will not exceed two million board feet in the decade after an RMAP is filed. A landowner can harvest greater than two million board feet if the DNR is satisfied that the harvest limits were exceeded to raise funds for estate taxes or other unexpected obligations.

## **Continuing Obligations**

The 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 RMAP requirement. The RMAP requirement is also removed from the express requirement that the seller pay for any continuing obligations that were not disclosed to the buyer.

## **Reports to the Legislature**

The DNR is instructed to monitor the rates of checklist RMAP compliance. These reports must measure the success of the checklist approach and make recommendations for change when warranted. The DNR must also monitor and make recommendations concerning the cost-share program.

**Appropriation:** None.

**Fiscal Note:** Requested on January 16, 2003.

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