

HOUSE BILL REPORT

SSB 6141

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to forest health.

Brief Description: Regarding forest health.

Sponsors: Senate Committee on Natural Resources, Ocean & Recreation (originally sponsored by Senators Jacobsen and Morton).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 3/19/07, 3/22/07 [DPA].

**Brief Summary of Substitute Bill
(As Amended by House Committee)**

- Repeals the bulk of the laws dealing with forest health and the relationship between the Department of Natural Resources and landowners and replaces them with voluntary measures based on a three-tier approach.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass as amended. Signed by 14 members: Representatives B. Sullivan, Chair; Blake, Vice Chair; Kretz, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Dickerson, Eickmeyer, Grant, Hailey, Kagi, Lantz, McCoy, Newhouse, Orcutt and Strow.

Staff: Jason Callahan (786-7117).

Background:

The Legislature declared in 1951 that forest insects and forest tree diseases that threaten permanent timber production in Washington are public nuisances. In response, the Department of Natural Resources (DNR) and the private forest landowners in the state were given specific direction by the Legislature as to how forest health should be protected.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The initial responsibility to protect forest health belongs to the landowner. Every forest landowner is required to make every reasonable effort to control or eradicate forest insect pests and diseases that threaten a stand of timber. If a landowner fails in this duty, the DNR may involve itself in forest health maintenance operations.

The DNR is required to declare an Infestation Control District for any area of timber lands that is threatened with insect or disease infestations, or that has already become infested. Once an Infestation Control District is established, the DNR must notify all landowners within the district that they are required to control or destroy the pests or diseases.

If the landowner within an Infestation Control District is unable or unwilling to address the infestation, the DNR has the duty to proceed with infestation control and eradication efforts, even if the landowner does not provide consent. Up to 25 percent of any expenses incurred by the DNR in conducting a pest or disease control operation on private land, that is not otherwise funded, becomes the responsibility of the landowner.

In 2004, the Legislature created a work group to look at the issue of forest health in Washington and provide recommendations to the Legislature. The Forest Health Strategy Work Group (Work Group) produced findings, recommendations, and draft legislation modifying Washington's forest health statutes. In 2006, the Legislature reconvened the Work Group, instructing it to conduct public meetings regarding its legislative recommendations.

Summary of Amended Bill:

The bulk of the laws dealing with forest health and the relationship between the DNR and landowners is repealed and replaced with voluntary measures based on a three-tier approach. The DNR's authority to conduct forest health operations on private property is repealed, as is the authority to collect partial reimbursement for work done from the landowner. In its place is language that encourages landowners to maintain their forest lands in a healthy condition.

The three-tier approach to forest health management breaks down as follows:

First Tier

The first tier of forest health management is the default and desired status. Forest lands in tier one status are to be managed to maintain and protect forest health and to limit forest health disturbance agents to non-epidemic levels. If funding allows, the DNR may offer information and technical assistance to forest landowners for help with forest health maintenance.

Second Tier

Forest lands in the second tier of forest health management are to be managed in a way that contains a developing threat to forest health or that addresses an existing threat. Except for fire control, all landowner actions are voluntary. However, suggested actions for a landowner to take may be outlined in a forest health hazard warning (warning) issued by the Commissioner of Public Lands (Commissioner).

The Commissioner may issue a warning when he or she determines that a warning is necessary to address a developing or existing threat to forest health. The decision to issue a warning must be based on a situation determined by the Commissioner to be a threat, including the presence of uncharacteristic insect or disease outbreaks and extensive physical damage from wind or ice.

Prior to issuing a warning, the Commissioner must conduct a local public hearing, consult local interested parties, and consider the findings of a technical advisory committee (TAC) established by the Commissioner when he or she first determines that forest lands in a particular area are threatened. The TAC must be composed of a forester and multiple scientists, with technical support provided by various state agencies and the invited participation of the federal government and, when appropriate, local Indian tribes. The TAC is to be assigned with the task of evaluating the threat to forest health, recommending potential threats that can be taken, and monitoring progress towards addressing the hazard.

If funding allows, the DNR may offer technical assistance, site-specific information, and project coordination services to landowners in tier two status.

Third Tier

Forest lands in the third tier of forest health management are properties experiencing significant threats to forest health due to increased forest fuel loads or disturbance agents that have spread to multiple forest ownerships. Property owners in tier three may be subject to a forest health hazard order (order) issued by the Commissioner.

Orders may be issued by the Commissioner if he or she deems that issuing the order is necessary to address a significant threat to forest health. The decision to issue an order is to be based on the same factors to be considered before issuing a warning, except that the Commissioner can also consider insufficient action by a landowner subject to a warning as a reason to issue an order. The same public hearing, stakeholder consultation, and TAC formation requirements that are required for a warning to be issued also applies to the issuance of an order. In addition, the issuance of an order must be publicized in a local newspaper and on the DNR's internet website, and written notice must be delivered by personal service or mail to the landowners of affected properties.

The actual order must specify the boundaries of the impacted area, the forest stand conditions that have led to the order's issuance, actions that landowners within the affected areas should take to address the forest health deficiency, and the timeline within which the actions should occur.

A landowner who has been served an order may, within 15 days of service, request that the DNR remit or mitigate the order for his or her property. Remission or mitigation of the order shall be allowed by the DNR on whatever terms are deemed proper by the DNR. If a landowner does not apply to the DNR for a remission or mitigation of the order, he or she may, within 30 days of service, file an appeal with the Forest Practices Appeals Board (FPAB). The appeal to the FPAB must contain a statement of facts and allegations of errors committed by the DNR.

Orders that are not appealed become effective 30 days after service. Appealed orders become effective 30 days after the final disposition of the appeal.

If funding allows, the DNR may offer technical assistance, site-specific information, and project coordination services to landowners in tier three status. A landowner who is provided with an order is not required to take the actions listed in the order. However, a landowner in tier three status may be found liable for contributing to a forest fire if there is a fire on the property, unless the fire spread from state or federal lands or the existing condition of nearby state or federal lands would limit the effectiveness of activities recommended in the order.

The responsibilities of landowners with a fire danger on their property is limited to landowners subject to a Commissioner's order. A landowner may, however, petition the DNR to inspect their property and provide a written notice that the forest health risk on the property has been abated. The DNR has the sole discretion to issue a notice excusing the landowner from additional fire hazard responsibilities.

Amended Bill Compared to Substitute Bill:

The amended bill removes the term "ecosystem" from the scope of the forest vitality intended to be maintained, specifies that "uncharacteristic" forest health events do not include normal and expected levels of fire, disease, or pests, makes technical changes, and renumbers a subsection.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) Washington has some of the most pest-infested forests on the continent, and any proposed actions to help address the situation must be enacted prior to the coming dry season. The forest health crisis is real, and the state needs to act now, especially east of the crest of the Cascade Mountains.

Healthy forests are the first line of defense against catastrophic fires. Smaller fires mean less state expense to fight fires. The state cannot stop lightning from causing fires, but taking action to reduce fuel loads in the forests will stop small fires from growing into large devastating and expensive fires. Large fires are not only costly to the state, they are also a threat to public health and safety, and they destroy valuable resources that can never be fully compensated.

This bill has been three years in the making and was developed under legislative mandate to research possible options. It is one step forward along a long road. The legislation contains

ecological, economical, and sociological benefits. Although the current law has sharper teeth, it is largely unenforceable.

Proper forest health management requires a comprehensive approach. Although the state cannot mandate action on federal land, including federal land in a warning or order does send a strong message to Washington DC that stewardship actions are required on federal ownerships.

(With concerns) The word "ecosystem" that is used in the bill is seen as a fighting word by many people and should be removed. It is possible that the word "uncharacteristic" has been given too much weight in the bill, as many people consider fires a characteristic element of the natural landscape.

(Opposed) None.

Persons Testifying: (In support) Senator Morton; Vicki Christiansen, Department of Natural Resources; Miguel Perez-Gibson, Audubon Washington; Peter Heidi, Washington Forest Protection Association; Tim Boyd, Vaagen Brothers, Boise Cascade, and Port Blakeley; Melodie Selby, Department of Ecology; and David Whipple, Department of Fish and Wildlife.

(With concerns) John Stuhlmiller, Washington Farm Bureau.

Persons Signed In To Testify But Not Testifying: None.