

HOUSE BILL REPORT

SHB 2219

As Passed House:

January 30, 2008

Title: An act relating to forest practices regulations applicable to small forest landowners.

Brief Description: Regarding forest practices regulations that apply to small forest landowners.

Sponsors: By House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Orcutt, B. Sullivan, Kessler and Kretz).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/22/07, 2/26/07 [DPS];

Capital Budget: 3/2/07 [DPS(AGNR)].

Floor Activity:

Passed House: 1/30/08, 97-0.

Brief Summary of Substitute Bill

- Requires the Small Forest Landowner Office to determine the compensation to be offered to a landowner for an easement as soon as possible after the landowner's application for the Forest Riparian Easement Program (FREP).
- Specifies that the unharvested trees eligible for coverage in the FREP includes trees that were not harvested due to their location in unstable slopes.
- Requires a landowner participating in the FREP to be compensated for the cost of hiring a geotechnologist to complete required studies or reports.
- Requires the Small Forests Landowner Office to complete compensation estimates and execute forest riparian easement contracts for all pending applications during the 2007-2009 fiscal biennium.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 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, Strow and VanDeWege.

Staff: Jason Callahan (786-7117).

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: The substitute bill by Committee on Agriculture & Natural Resources be substituted therefor and the substitute bill do pass. Signed by 22 members: Representatives Fromhold, Chair; Ormsby, Vice Chair; Schual-Berke, Vice Chair; McDonald, Ranking Minority Member; Newhouse, Assistant Ranking Minority Member; Blake, Chase, Dunshee, Eickmeyer, Flannigan, Goodman, Hankins, Hasegawa, Kelley, McCune, Orcutt, Pearson, Pedersen, Sells, Skinner, Strow and Upthegrove.

Staff: Nona Snell (786-7153).

Background:

The Forest Riparian Easement Program

The Forest Riparian Easement (FREP) is a program managed by the Department of Natural Resources' (DNR) Small Forest Landowner Office (SFLO) to acquire 50-year easements along riparian and other sensitive aquatic areas from small forest landowners that are willing to sell or donate easements to the state. The DNR is authorized to purchase easements from small forest landowners and hold the easements in the name of the state. The easements are restrictive only, and allow all landowner activities except as necessary to protect the riparian functions of the habitat for the term of the easement.

Easements entered into through the FREP are intended to represent 50 percent of the value of the unharvested trees, plus participation compliance costs. Once an FREP contract is executed, the DNR is required to reimburse the landowner for the actual costs involved with the establishment of streamside buffers and timber marking.

The value of the easement is determined by the DNR based on the fair market value of the timber volume covered by the easement. This calculation is made by the DNR after it conducts a timber cruise of 100 percent of the proposed easement. The data gathered in the timber cruise is then applied to a stumpage value table to calculate the fair market value. Value is calculated only on qualifying timber. This is timber that is located within a commercially reasonable harvest unit that cannot be harvested because of regulatory limitations.

Exceptions to Riparian Buffers

Although the state's Forest Practice Rules generally have specific restrictions on the amount of harvest allowed near streams and creeks, there is an exemption available from these

restrictions for certain landowners. Parcels that are 20 contiguous acres or less are exempt from the modern riparian buffers rule, as long as the owner of the parcel does not own a cumulative total of more than 80 acres. Instead, these landowners can opt to either follow the Forest Practice Rules in place prior to 1999, or work with the DNR to establish an alternative management plan for the riparian portion of the harvest area.

Summary of Substitute Bill:

The Forest Riparian Easement Program

The unharvested trees eligible for coverage in the FREP are specified to include trees that were not harvested due to their location on unstable slopes, and are not limited to trees left unharvested due to their location in a riparian buffer area. In addition, participation in the FREP is expanded to include landowners who qualify for the 20-acre exemption to the current Forest Practices Rules, but who chooses to abide by the standard Forest Practices Rules as though no exception existed.

The SFLO is required to determine the compensation for all qualifying timber to be offered to a landowner for an easement as soon as possible following the landowner's application for the FREP. However, the determination is to serve only as an appraisal, and no duty to present an actual offer is created until an appropriation exists to fund the offer. In order to provide timely estimates, the SFLO is directed to use any funding provided to it from the state's Capital Construction Budget to complete the compensation estimates and execute the resulting FREP contracts for all pending applications during the 2007-2009 fiscal biennium. In addition, the Forests Practices Board is directed to amend an existing administrative rule that requires the SFLO to send a landowner a notice of compensation within 60 days of a completed timber cruise.

The compensation that the DNR must reimburse FREP applicants is expressly made to include the cost of hiring a geotechnologist to complete required studies or reports.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony: (Agriculture & Natural Resources)

(In support) This is a clean-up bill addressing loose ends in the FREP. Language is being simplified and clarified. A healthy and functioning FREP keeps small forest landowners, and the land they own, in forestry, which benefits both people and critters.

The FREP currently does not do a good job of capturing the actual value of timber that is left unharvested by a landowner because the compensation value is not determined until sometime after the actual harvest occurs. This makes the landowner vulnerable to not being compensated for trees that are lost due to wind storms or ice damage. The estimate of

compensation should be done before the money to enter into an easement contract is available.

The current Forest Practices Rules are designed, in part, to protect fish habitat. One aspect of that protection is limitations on timber harvest on unstable slopes. This limitation is in place to protect streams from siltation, and if a landowner cannot harvest on a slope in order to protect fish habitat, he or she should be eligible to participate in the FREP.

If the intent of the law is for a landowner to be reimbursed for the costs of gathering information required of a FREP applicant, and that process requires an analysis conducted by a geotechnologist, then the expense of hiring a geotechnologist should be a reimbursable expense. Technical information is important, but can be expensive to obtain.

The intent of the current 20-acre exemption in the Forest Practices Rules is clarified by adding the word "forested" to the description of the parcels covered by the exemption.

(With concerns) Conducting estimates for FREP applicants at the time of application provides more certainty to the landowner, but the sooner the estimate is prepared and the more detailed that it is, the more staffing commitment is required.

The current Forest Practices Rules have received assurances from the federal government that the Endangered Species Act and the Clean Water Act are not being violated by forest practices in the state. The federal government showed some skepticism about the 20-acre exemption as the assurances process moved forward, and changing the language in that exemption may destabilize the federal assurances granted to the entire suite of Forest Practices Rules.

(Opposed) None.

Staff Summary of Public Testimony: (Capital Budget)

(In support) The sponsor's first priority is honoring promises. When the forest and fish rules were adopted, the small forest landowners made sacrifices. The Legislature made promises to those land owners, and this bill fulfills those promises. It eliminates the Forest Riparian Easement Program (FREP) application backlog and will lead to better information for writing a budget.

The FREP is unique in that there were no other programs to use as a model when it was created in Washington State. As the program has evolved, needed changes have emerged. The bill address those changes.

Fully funding of the FREP is important to small landowners so that the backlog of applications is eliminated and so that owners, who often must wait one-to-two years for appraisals or funding, are compensated.

Unstable lands require geotechnical reports that are costly. Inclusion of the reports in the bill will be helpful to landowners.

(Opposed) None.

Persons Testifying: (Agriculture & Natural Resources) (In support) Representative Orcutt, prime sponsor; and Ken Miller, Washington Farm Forestry Association.

(With concerns) Leonard Young, Department of Natural Resources; and Melodie Selby, Department of Natural Resources.

Persons Testifying: (Capital Budget) Representative Orcutt, prime sponsor; and Sherry Fox, Washington Farm Forestry Association.

Persons Signed In To Testify But Not Testifying: (Agriculture & Natural Resources) None.

Persons Signed In To Testify But Not Testifying: (Capital Budget) None.