

HOUSE BILL REPORT

HB 1483

As Passed House:

February 23, 2009

Title: An act relating to protecting the ability of forest landowners to continue active forestry operations.

Brief Description: Concerning forestry operations.

Sponsors: Representatives Jacks, Chandler, Van De Wege, Takko, Kretz, Pearson, Hurst, Orcutt, McCoy, Blake and McCune.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/3/09, 2/10/09 [DP].

Floor Activity

Passed House: 2/23/09, 92-0.

Brief Summary of Bill

- Includes the act of owning land that has growing trees in the list of activities that qualify as reasonable forest practices that do not constitute a nuisance, provided that the land is capable of supporting a merchantable stand of timber and is not being used for a purpose that is incompatible with timber growing.
- Includes owning land where trees may passively grow until a customary forest practice activity is deemed timely by the owner to the definition of "forest practice," as used in the context of nuisance actions only.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass. Signed by 12 members: Representatives Blake, Chair; Jacks, Vice Chair; Chandler, Ranking Minority Member; Smith, Assistant Ranking Minority Member; Kretz, Liias, McCoy, Nelson, Ormsby, Pearson, Van De Wege and Warnick.

Staff: Anna Jackson (786-7190)

Background:

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.

Nuisance.

A nuisance is an activity that injures health, is indecent, offends the senses, or obstructs the free use of property so that it interferes with the comfortable enjoyment of life and property. A person may bring a civil suit to recover damages for a nuisance.

Agricultural activities conducted on farmland and forest practices are generally presumed to be reasonable and not a nuisance unless the activity or practice has a substantial adverse effect on public health and safety. In order to be considered reasonable and thus not a nuisance, the agricultural activities or forest practices must be consistent with good agricultural and forest practices and established prior to surrounding non-agricultural and non-forestry activities. Agricultural activities and forest practices that comply with all applicable laws and rules are presumed to be good agricultural and forest practices.

Forest Practices.

Forest practices are defined as any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber. Such activities include road and trail construction, final and intermediate harvesting, pre-commercial thinning, reforestation, fertilization, prevention and suppression of disease and insects, salvage of trees, and brush control. Forest practices do not include activities such as tree marking, surveying, road flagging, or the removal or harvesting of berries, ferns, greenery, herbs, mushrooms, and other products that cannot normally be expected to result in damage to forest soils, timber, or public resources.

Summary of Bill:

The act of owning land that has growing trees is added to the list of activities that qualify as reasonable forest practices that do not constitute a nuisance. This activity qualifies as a forest practice even if the tree growth is managed passively and the owner does not indicate the land's status as a working forest. The land in question must be capable of supporting a merchantable stand of timber and must not be used for another purpose that is incompatible with timber growing. If the activity of growing trees was established prior to surrounding non-forestry activities, then the act of tree growth is considered a necessary part of any other subsequent stages of forest practices necessary to bring a tree from its planting to final harvest and is included as a reasonable forest practice.

Owning land where trees may passively grow until a customary forest practice activity is deemed timely by the owner is added to the definition of "forest practice," as used in the context of nuisance actions only.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) This bill will aid in addressing the issue of conversion of forest lands. It stems from the Washington State Supreme Court decision *Alpental Community Club v. Seattle Gymnastics Society*, 154 Wn.2d 313 (2005), in which the court upheld a nuisance claim against a forest landowner because it was not apparent that the land in question was either part of an established logging practices area or that it was being held for logging purposes.

It may not be obvious by looking at forest land that forest practices are actually occurring on the land. It generally takes at least 40 years to grow a commercially mature stand of timber, and during that time there is little or no commercial activity associated with the land or timber. This bill protects and preserves a forest landowner's right to not only harvest timber, but to grow and cultivate timber as well. It addresses this problem by clarifying that the act of owning land upon which trees are growing is a forest practice that is protected from nuisance lawsuits.

(Opposed) None.

Persons Testifying: Representative Jacks, prime sponsor; Debora Munguia, Washington Forest Protection Association; Peter Goldmark, Commissioner of Public Lands; and Bill Robinson, The Nature Conservancy.

Persons Signed In To Testify But Not Testifying: None.