

SENATE BILL REPORT

SB 6829

As of February 4, 2010

Title: An act relating to the forestry riparian easement program.

Brief Description: Concerning the forestry riparian easement program.

Sponsors: Senators Fraser, Tom and Rockefeller.

Brief History:

Committee Activity: Natural Resources, Ocean & Recreation: 2/03/10.

SENATE COMMITTEE ON NATURAL RESOURCES, OCEAN & RECREATION

Staff: Sherry McNamara (786-7402)

Background: In 1999 the Legislature created the Forestry Riparian Easement Program (FREP), which included a Small Landowner Assistance Office (SFLO) within the Department of Natural Resources (DNR). The FREP was created to prevent small forest landowners from being disproportionately affected by the riparian buffer requirements outlined in the Forests and Fish Report.

SFLO acquires 50-year easements along riparian and other sensitive aquatic areas from small forest landowners who are willing to sell or donate easements to the state. Generally, compensation is offered for the trees that the landowner is unable to harvest due to the riparian restrictions in the forest practices rules.

Currently, to qualify for the FREP, an individual must:

- own land as an individual or as part of a partnership, corporation, or other nongovernmental legal entity:
 - one parcel of more than 20 contiguous acres; or
 - a parcel of less than 20 acres as part of a total ownership of multiple parcels in the state that, together, total more than 80 forested acres;
- have timber next to a river, stream, lake, pond, wetland, or unstable slope that the individual plans to harvest in the near future. Additionally, the timber harvest adjacent to the riparian area must not be intended to convert the land to a use that is incompatible with growing timber;
- have not harvested more than an average of two million board feet of timber per year from all of their lands over the past three years;

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- allow the state access to the property by foot or vehicle;
- own the property free and clear of any liens, mortgages, or other legal encumbrances, or obtain a subordination agreement from the mortgage holder;
- be willing to enter into a 50-year agreement with the state; and
- own land that was platted before 1960.

Summary of Bill: The state may not acquire FREP easements if:

- the harvest limitations are or would be a result of the requirements of the federal clean water act or the shoreline management act;
- the easement is eligible for compensation under the riparian open space program or the Washington Wildlife and Recreation Program;
- any parcel subject to the easement has not received an open space classification; and
- any parcel subject to the easement qualified for alternative management plans.

The definition of small forest landowner has been changed to mean a landowner who owns no more than 1,000 acres of forest land in the state and has harvested less than two million board feet of timber per year from all their other lands during the past three years.

To qualify as a small forest landowner, the landowner must have had legal ownership of the parcel subject to the easement prior to adoption of forest practices rules and provided that the partnership, corporate, or other nongovernmental legal entity was established for the purpose of long-term commercial timber production.

A small forest landowner is required to:

- not have any outstanding violations of the forest practices act;
- not be in default on a financial obligation to an agency of the state, including noncompliance with a child support order; and
- not have received compensation under the FREP in the previous three biennia.

During the term of the easement, if a small forest landowner changes the current use classification or any information in the application is determined to be false, the small forest landowner must in addition to penalties, refund the total compensation received for the easement plus a 20 percent penalty. The refund and penalty must be considered a lien upon the land.

Beginning in 2010 the SFLO must solicit FREP applications. For applications that have been previously submitted and not funded, the SFLO must obtain supplemental information from the landowner verifying the landowner's qualifications to participate in the program.

The SFLO, and the Small Forest Landowner Advisory Committee must prioritize the applications:

- first in descending order based on the ratio of qualifying timber impacts to the total merchantable stand of timber on the parcels subject to the easement; and
- second in descending order according to development potential.

The SFLO must submit the prioritized list to the Governor, Office of Financial Management, and the Legislature by October of every even-numbered year for funding consideration in the biennial budget.

The SFLO must determine the compensation to be offered to the small forest landowner and the final compensation must be based on the market value of timber at the time the application receives funding. The compliance and reimbursement costs are eliminated.

Eliminates the increased compensation available for landowners, in areas subject to high regulatory impact due to adopted rules.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: FREP is funded out of the capital budget and its purpose is to help small forest landowners who are being disproportionately affected by the regulatory requirements outlined in the Forests and Fish Report. Last session the Legislature did not fund the program. Currently, the applicant who files their application first gets their easement funded first. This is not the way it was intended. The program should pay and target those landowners who are clearly impacted the most. Some of the FREP payments have been to organizations like youth camps, an archery club, a nonprofit that preserves land, a church, and to pay for a recreational cabin in the woods. This bill would required a prioritized list to come to the Legislature to consider who should receive the funding. FREP is an important program for the small forest landowners and it is critical to keep working forests working.

CON: We are strongly opposed to this bill. As a family generation tree farmer I will accept a development offer in the future and sell my forestland; the state has broken its promise to the small forest landowner. This bill undermines the sustainability of small forest landowners in our state. We will work with the Legislature to tighten up and remove loopholes, however, this bill is not the answer. There should be unanimous agreement that the worst outcome of the regulatory impacts on small forest landowners is for the landowner to abandon forest management and allow conversion to happen. Several studies show the large buffer requirements in the Forest and Fish Agreement have disproportionate impacts on small forest landowners. The loss of FREP will substantially accelerate land conversions, producing a worst-case result.

OTHER: There are some technical issues with the bill as written. The concern is with Section 2, which requires compliance with the federal Clean Water Act. I believe as written there are unintended consequences that would make anyone providing riparian buffers ineligible for FREP.

Persons Testifying: PRO: Senator Fraser, prime sponsor; Peter Goldmark, Commissioner of Public Lands; Heath Packard and Darin Cramer, DNR; Stephen Bernath, Department of Ecology.

CON: Steve Stinson, Ken Miller, Rick Dunning, Michelle Blake, Washington Farm Forestry Association.

OTHER: Bruce Lippke, University of Washington.