

# SENATE BILL REPORT

## ESHB 1509

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As Reported by Senate Committee On:  
Natural Resources & Marine Waters, March 23, 2011  
Ways & Means, April 1, 2011

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

**Brief Description:** Concerning the forestry riparian easement program.

**Sponsors:** House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Blake, Dunshee and Ryu; by request of Commissioner of Public Lands).

**Brief History:** Passed House: 3/04/11, 97-0.

**Committee Activity:** Natural Resources & Marine Waters: 3/17/11, 3/23/11 [DPA-WM].  
Ways & Means: 3/31/11, 4/01/11 [DPA(NRMW)].

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### SENATE COMMITTEE ON NATURAL RESOURCES & MARINE WATERS

**Majority Report:** Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Ranker, Chair; Regala, Vice Chair; Morton, Ranking Minority Member; Fraser, Hargrove and Swecker.

**Staff:** Sherry McNamara (786-7402)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass as amended by Committee on Natural Resources & Marine Waters.

Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Zarelli, Ranking Minority Member; Parlette, Ranking Minority Member Capital; Baumgartner, Baxter, Brown, Conway, Fraser, Hewitt, Holmquist Newbry, Honeyford, Keiser, Kohl-Welles, Pflug, Pridemore, Regala, Rockefeller and Schoesler.

**Staff:** Chris Godwin (786-7441)

**Background:** In 1999 the Legislature created the Forest Riparian Easement Program (FREP) – a program which is administered by the Department of Natural Resources (DNR) Small Forest Landowner Office (SFLO). The program involves DNR acquiring and holding 50 year easements for riparian and other sensitive areas as granted by small forest

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landowners. Small forest landowners maintain the ability to utilize property subject to an easement, so long as those activities do not impair riparian function.

Compensation. Upon application, the SFLO must determine the compensation appropriate for a riparian easement based on the fair market value of qualifying timber. The SFLO gathers data necessary to determine fair market value by conducting timber cruises. The SFLO must generally provide small forest landowners 50 percent of the fair market value of the qualifying timber, plus compliance and reimbursement costs. Such costs include the cost of entering into the easement, and the costs of laying out stream side buffers and marking qualified timber.

Qualifying Timber. The term qualifying timber, for purposes of determining the easement size and value, includes trees that a small forest landowner must leave unharvested, or where harvest becomes uneconomical, due to the rules adopted pursuant to the Forest and Fish Agreement.

**Summary of Bill (Recommended Amendments):** Changes Who Qualifies as a Small Forest Landowner. The minimum requirements for participation in the FREP are changed. All landowners applying for the FREP must still show that they satisfy the definition of small harvester in the tax code; however, in order to participate in the FREP, the landowner must be a nongovernmental, for-profit legal entity.

Expands the Definition of Qualifying Timber. In addition to the existing unharvested trees that are eligible for FREP compensation, certain other forest trees are added. These include forest trees located within riparian habitats, channel migration zones, and on potentially unstable slopes or landforms.

The DNR must verify, before compensation can be received, that any trees located on unstable slopes are addressed by a forest practices application, are adjacent to a commercially reasonable harvest area, and have the potential to deliver sediment into a public resource or threaten public safety. Compensation for trees left unharvested on unstable slopes may not exceed \$50,000 during any two-year period.

Changes to Compensation. The value of compensation determined by the SFLO is to be calculated at the time the FREP application was completed and not at the time of the underlying harvest. The DNR must not use more than 50 percent of the funding dedicated to the FREP for determining the volume of qualifying timber left unharvested. The resulting easement may not be recorded by the DNR until all compensation is paid to the landowner.

A recipient of funding from the FREP must repay the total amount received if the recipient sells his or her land within ten years to someone who would not qualify for participation in the FREP.

List of FREP Applications. By November 1 of each even-numbered year, DNR must submit a list to the Governor of all FREP applications. The Governor must determine the number of FREP applications to receive funding and then submit the list in the capital budget request to the Legislature.

Participation in Recommending Long-Term Funding Sources. The chair of the Forest Practices Board must invite relevant stakeholders to recommend potential long-term funding sources for the FREP. These recommendations must be delivered to the Legislature by May 31, 2012.

**EFFECT OF CHANGES MADE BY NATURAL RESOURCES & MARINE WATERS COMMITTEE (Recommended Amendments):**

- Adds a new section requiring DNR, by November 1 of each even-numbered year, to submit a list of all FREP applications to the Governor and the Legislature for funding in the capital budget.
- Changes the date from October 31, 2011, to May 31, 2012, for when DNR must report the findings and recommendations to the Legislature on potential long-term funding sources for FREP.
- Adds an emergency clause with an effective date of July 1, 2011, to coincide with the biennial capital budget.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on March 14, 2011.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill contains an emergency clause and takes effect on July 1, 2011.

**Staff Summary of Public Testimony on Engrossed Substitute House Bill (Natural Resources & Marine Waters):** PRO: We recognize this bill as a beginning step in reforming FREP. The next step is securing long-term dedicated funding for the program. This bill will fix some of the process problems with the program. There are issues with not fulfilling the promises made for small forest landowners at the time of the Forest and Fish Agreement. Chronic underfunding of FREP is one of those issues.

**Persons Testifying (Natural Resources & Marine Waters):** PRO: Rick Dunning, Ken Miller, Washington Farm Forestry Association; Sherry Fox, Washington Tree Farm Program; Debora Munguia, Washington Forest Protection Association; Bridget Moran, DNR; Bill Robinson, The Nature Conservancy; Miguel Perez-Gibson, Washington Environmental Council.

**Staff Summary of Public Testimony on Recommended Amendments (Ways & Means):** PRO: This bill enacts changes to the Forest Riparian Easement Program that have been needed for quite some time. Provides a higher level of accountability and is supported by all stakeholders.

**Persons Testifying (Ways & Means):** PRO: Sam Comstock, Washington Farm Forest Assn.; Bridget Moran, DNR; Debora Munguia, Washington Forest Protection Assn.