
SENATE BILL 5272

State of Washington

62nd Legislature

2011 Regular Session

By Senators Fraser, Swecker, Hargrove, Regala, Sheldon, Nelson, and Ranker; by request of Commissioner of Public Lands

Read first time 01/19/11. Referred to Committee on Natural Resources & Marine Waters.

1 AN ACT Relating to providing the authority to create a community
2 forest trust to be managed by the department of natural resources;
3 amending RCW 79.17.210, 43.30.385, 79.64.020, and 79.64.040; reenacting
4 and amending RCW 79.02.010; and adding a new chapter to Title 79 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that since the
7 1980s, about seventeen percent of Washington's commercial forests have
8 been converted to other land uses.

9 (2) The legislature further finds that as these forests vanish, so
10 do the multiple benefits they provide to our communities like local
11 timber jobs, clean air and water, carbon storage, fish and wildlife
12 habitat, recreation areas, and open space.

13 (3) The legislature further finds that in addition to the
14 department of natural resources' obligation to manage the state's
15 fiduciary trust lands in the interest of the trust beneficiaries, the
16 legislature has provided policy direction to the department of natural
17 resources to protect working forest and natural resource lands at risk
18 of conversion.

1 (4) The legislature further finds that there are numerous tools
2 available to acquire open space and recreation lands, but limited tools
3 to protect working forest lands.

4 (5) The legislature further finds that currently the department of
5 natural resources lacks a full complement of policy and management
6 tools necessary to protect or manage working forest lands at high risk
7 of conversion.

8 (6) The legislature further finds that through modest enhancements
9 to existing department of natural resources' programs and authorities,
10 the legislature can expand Washington's ability to protect communities'
11 working forest lands and improve the revenue generating performance of
12 fiduciary trust lands managed by the department of natural resources.

13 (7) The legislature further finds that there has been past and
14 present legislative intent to ensure continued public access for
15 recreation compatible with the purposes of the lands involved.

16 (8) The legislature further finds that there exists an interest by
17 local communities, governments, and conservation organizations in
18 cooperating in the establishment of working community forests.

19 NEW SECTION. **Sec. 2.** (1) If deemed practicable by the
20 commissioner, the department is authorized to create and manage,
21 consistent with the provisions of this chapter, a discrete category of
22 natural resource lands in a nonfiduciary community forest land trust.
23 The department is authorized to assemble, hold title to, and manage
24 directly or through mutual agreement with other landowners land
25 suitable for sustainable forest management, to be held in the community
26 forest trust.

27 (2) All land held in the community forest trust must be held by the
28 department and actively managed, consistent with a community working
29 forest management plan developed under section 8 of this act, to
30 generate financial support for the management of the community forest
31 trust and to advance and sustain the working forest conservation
32 objectives established in the management plan.

33 NEW SECTION. **Sec. 3.** (1) The department must identify lands for
34 inclusion into the community forest trust, and manage the resulting
35 community forest trust lands, in furtherance of goals that must be

1 identified by the department prior to the creation of a community
2 forest.

3 (2) In addition to any goals for a community forest identified by
4 the department, the community forest trust program must satisfy the
5 following minimum program management principles:

6 (a) Protecting in perpetuity working forest lands that are at a
7 significant risk of conversion to another land use;

8 (b) Securing financial and social viability through sound
9 management plans and objectives that are consistent with the values of
10 the local community;

11 (c) Maintaining the land in a working status, through traditional
12 forestry, management of specialized forest products harvest consistent
13 with chapter 76.48 RCW, land leases, renewable energy opportunities,
14 ecosystem services such as clean water protection or carbon storage,
15 and other sources of revenue appropriate for the community forest to
16 generate;

17 (d) Generating revenue at levels that are, at a minimum, capable of
18 reimbursing the department for management costs and providing for some
19 reinvestment into the management objectives of the community forest;

20 (e) Providing for ongoing, sustainable public recreational access,
21 local timber jobs, clean air and water, carbon storage, fish and
22 wildlife habitat, and open space in a manner that is compatible with
23 management plans and objectives adopted for the community forest; and

24 (f) Providing educational opportunities for local communities
25 regarding the benefits that working forests provide to Washington's
26 economy, communities, environment, and quality of life.

27 NEW SECTION. **Sec. 4.** (1)(a) Except as limited by section 7 of
28 this act, the department is authorized to acquire by purchase, gift,
29 donation, grant, transfer, or other means other than eminent domain fee
30 interest or a partial interest, including conservation easements, in
31 lands or other real property suitable for management as part of the
32 community forest trust and that are appropriate to further the goals of
33 the community forest trust.

34 (b) The fair market value of any real property, and the associated
35 valuable materials, of any land transferred into the community forest
36 trust from state lands must be provided to the beneficiaries of the
37 transferee trust or used for the furtherance of the transferee trust.

1 (2) The department is authorized to receive funds for purposes of
2 establishing the community forest trust from grants, gifts, bequests,
3 or loans, whether public or private, as well as from legislative
4 appropriation.

5 (3) All acquisitions of real property for the community forest
6 trust must be approved by the board.

7 NEW SECTION. **Sec. 5.** (1) The department shall, if it establishes
8 a community forest trust program, develop criteria to be used for the
9 identification and prioritization of forest land that is suitable for
10 potential inclusion in the community forest trust due to its ability to
11 most closely satisfy the goals of the community forest trust outlined
12 in section 3 of this act.

13 (2) In prioritizing forest land for inclusion in the community
14 forest trust, the department shall give priority consideration to lands
15 that are:

16 (a) Encompassed in community forest management plans developed by
17 a diverse array of community partners;

18 (b) At greatest risk of conversion;

19 (c) Helping buffer commercial public or private forest lands from
20 encroaching development;

21 (d) Helping to block up other community forest assets to be managed
22 consistently with the community forest trust acquisition;

23 (e) Able to be managed, considering surrounding current or expected
24 future land use, as economically sustainable working forest land either
25 alone or in combination with adjacent and nearby working forest land,
26 including other lands incorporated into a community forest by the
27 department, a local governmental entity, or a not-for-profit
28 conservation organization managing forest lands;

29 (f) Eligible for trust land transfer capital appropriations;

30 (g) Available for acquisition through existing or new programs or
31 funding;

32 (h) Supporting existing or expanded forest product manufacturing
33 infrastructure;

34 (i) Useful in leveraging funds to match available acquisition
35 moneys;

36 (j) Positioned to have their development rights extinguished

1 through transfer, purchase, conservation easement, lease, or by some
2 other comparable mechanism; or

3 (k) Enhancing state fiduciary trust land revenues by repositioning
4 underperforming state trust lands to provide short and long-term
5 revenues to that trust.

6 NEW SECTION. **Sec. 6.** (1) The department shall, if it establishes
7 a community forest trust program, submit biennially to the office of
8 financial management and the appropriate committees of the legislature
9 a prioritized list that identifies nominated parcels of state land or
10 state forest land that are suitable for transfer into the community
11 forest trust. The department shall solicit and consider input from the
12 board on a draft list before submitting a final prioritized list.

13 (2) The list of nominated parcels must reflect consideration of
14 local nominations and the priorities outlined in section 5 of this act
15 and be delivered to the required recipients by November 1st of each
16 even-numbered year.

17 NEW SECTION. **Sec. 7.** (1) The department must, prior to using the
18 authority provided in section 4 of this act to acquire land for
19 inclusion in a community forest, obtain from the local community a
20 commitment to preserving the land as a working forest.

21 (2) The local commitment to preserving the land as a working forest
22 must be demonstrated by the county, city, or other local entity
23 providing a financial contribution to the community forest of at least
24 fifty percent of the affected parcel's highest and best use development
25 value. The local community contribution may be provided through any
26 means deemed acceptable by the department and the local contributor,
27 including:

- 28 (a) Traditional financing or bonding;
- 29 (b) The purchase of conservation easements; or
- 30 (c) The purchase or transfer of development rights.

31 (3) The management plan developed for the associated community
32 forest under section 8 of this act must outline a process for
33 reimbursing the entity providing the local contribution under this
34 section from revenues generated from the community forest. All
35 reimbursement procedures must be approved by the board.

1 NEW SECTION. **Sec. 8.** (1) All lands transferred into community
2 forest trust status must be managed in accordance with a
3 postacquisition management plan developed by the department consistent
4 with this section and section 7(3) of this act.

5 (2) After exercising the authority provided in section 4 of this
6 act to acquire land for inclusion in a community forest, the department
7 must establish a local advisory committee in cooperation with any
8 interested and affected local government.

9 (3) The department must use the local advisory committee as a
10 source of advice and comment on a postacquisition management plan.
11 Comments and advice should, at a minimum, include plans for how the
12 department will maintain the land's working status and economic
13 viability objectives through revenue-generating activities that are
14 sufficient to generate ongoing revenue at a level that reimburses
15 administrative costs while satisfying, or contributing to, identified
16 community conservation and recreation objectives.

17 (4) If, after a good faith effort by all parties, the department
18 and the local advisory committee fail to reach a consensus on a
19 conceptual postacquisition management plan for the parcel in question,
20 the department may either adopt a management plan informed by the
21 community or recommend to the board that the parcel be divested through
22 the existing authority of the department and the board.

23 NEW SECTION. **Sec. 9.** By September 1, 2014, and periodically, but
24 at least once every ten years thereafter, the department shall provide
25 to the board a review and update of the community forest trust program.
26 The review must include updates on the performance of the community
27 forest trust statewide and notification of any community forest trust
28 parcels not performing according to their management plan. The
29 department is authorized to recommend to the board action to divest
30 itself of nonperforming community forest trust parcels using existing
31 policies and mechanisms available to the department and the board.

32 NEW SECTION. **Sec. 10.** (1) The commissioner may establish and
33 maintain a statewide advisory committee to assist the department in the
34 implementation of this chapter.

35 (2) If a statewide advisory committee is established, the
36 commissioner shall appoint a balanced representation of interests on

1 the committee, including representatives of state fiduciary trust land
2 beneficiaries, tribal governments, local governments, relevant state
3 agencies, commercial forest landowners, land trusts, and conservation
4 organizations.

5 (3) The statewide advisory committee shall provide consultation on
6 issues and questions presented by the commissioner and may be dissolved
7 by the commissioner at any time.

8 (4) Participation on the statewide advisory committee is voluntary
9 and members are not eligible for any form of compensation nor for
10 reimbursement for expenses incurred due to service on the committee.

11 NEW SECTION. **Sec. 11.** (1) The commissioner may, if deemed
12 practicable and beneficial by the commissioner, cooperate with
13 interested local governments in establishing community forest districts
14 or local working forest districts that are compatible with the goals
15 identified in this chapter for the community forest trust. Cooperative
16 districts would attempt to voluntarily synchronize the management of
17 community forest trust lands, other public lands, and private lands
18 located within a certain geographic area to further a common set of
19 community goals. If a working forest district encompasses state lands
20 or state forest lands, then their voluntary management to further a
21 common set of community goals must be consistent with the department's
22 fiduciary and other legal obligations to the trust, including the
23 multiple use act in chapter 79.10 RCW.

24 (2)(a) The department may, in its sole discretion and if it deems
25 sufficient funding to be available, provide technical assistance grants
26 to local communities for the purpose of enabling or furthering the
27 development of community forest management plans consistent with this
28 chapter.

29 (b) This subsection does not create a private right of action.

30 **Sec. 12.** RCW 79.17.210 and 2003 c 334 s 118 are each amended to
31 read as follows:

32 (1) The legislature finds that the department has a need to
33 maintain the real property asset base it manages and needs an
34 accounting mechanism to complete transactions without reducing the real
35 property asset base.

1 (2) The natural resources real property replacement account is
2 created in the state treasury. This account shall consist of funds
3 transferred or paid for the disposal or transfer of real property by
4 the department under RCW 79.17.200 and the transfer of state lands or
5 state forest lands into community forest trust lands under section 4 of
6 this act. The funds in this account shall be used solely for the
7 acquisition of replacement real property and may be spent only when,
8 and as, authorized by legislative appropriation.

9 **Sec. 13.** RCW 43.30.385 and 2009 c 354 s 9 are each amended to read
10 as follows:

11 (1) The park land trust revolving fund is to be utilized by the
12 department for the purpose of acquiring real property, including all
13 reasonable costs associated with these acquisitions, as a replacement
14 for the property transferred to the state parks and recreation
15 commission, as directed by the legislature in order to maintain the
16 land base of the affected trusts or under RCW 79.22.060 and to receive
17 voluntary contributions for the purpose of operating and maintaining
18 public use and recreation facilities, including trails, managed by the
19 department.

20 (2) In addition to the other purposes identified in this section,
21 the park land trust revolving fund may be utilized by the department to
22 hold funding for future acquisition of lands for the community forest
23 trust program from willing sellers under section 4 of this act.

24 (3)(a) Proceeds from transfers of real property to the state parks
25 and recreation commission or other proceeds identified from transfers
26 of real property as directed by the legislature shall be deposited in
27 ~~((this))~~ the park land trust revolving fund.

28 (b) The proceeds from real property transferred or disposed under
29 RCW 79.22.060 must be used solely to purchase replacement forest land,
30 that must be actively managed as a working forest, within the same
31 county as the property transferred or disposed.

32 (c) Disbursement from the park land trust revolving fund to acquire
33 replacement property and for operating and maintaining public use and
34 recreation facilities shall be on the authorization of the department.
35 ~~((The proceeds from real property transferred or disposed under RCW~~
36 ~~79.22.060 must be solely used to purchase replacement forest land, that~~

1 ~~must be actively managed as a working forest, within the same county as~~
2 ~~the property transferred or disposed.))~~

3 (4) In order to maintain an effective expenditure and revenue
4 control, the park land trust revolving fund is subject in all respects
5 to chapter 43.88 RCW, but no appropriation is required to permit
6 expenditures and payment of obligations from the fund.

7 ((+2)) (5) The department is authorized to solicit and receive
8 voluntary contributions for the purpose of operating and maintaining
9 public use and recreation facilities, including trails, managed by the
10 department. The department may seek voluntary contributions from
11 individuals and organizations for this purpose. Voluntary
12 contributions will be deposited into the park land trust revolving fund
13 and used solely for the purpose of public use and recreation facilities
14 operations and maintenance. Voluntary contributions are not considered
15 a fee for use of these facilities.

16 **Sec. 14.** RCW 79.64.020 and 2008 c 328 s 6004 are each amended to
17 read as follows:

18 A resource management cost account in the state treasury is created
19 to be used solely for the purpose of defraying the costs and expenses
20 necessarily incurred by the department in managing and administering
21 state lands, community forest trust lands, and aquatic lands and the
22 making and administering of leases, sales, contracts, licenses,
23 permits, easements, and rights-of-way as authorized under the
24 provisions of this title. Appropriations from the resource management
25 cost account to the department shall be expended for no other purposes.
26 Funds in the resource management cost account may be appropriated or
27 transferred by the legislature for the benefit of all of the trusts
28 from which the funds were derived. ~~((For the 2007-2009 biennium,~~
29 ~~moneys in the account may be used for the purposes identified in~~
30 ~~section 3044, chapter 328, Laws of 2008.))~~

31 **Sec. 15.** RCW 79.64.040 and 2009 c 564 s 957 are each amended to
32 read as follows:

33 (1) The board shall determine the amount deemed necessary in order
34 to achieve the purposes of this chapter and shall provide by rule for
35 the deduction of this amount from the moneys received from all leases,
36 sales, contracts, licenses, permits, easements, and rights-of-way

1 issued by the department and affecting state lands, community forest
2 trust lands, and aquatic lands, provided that no deduction shall be
3 made from the proceeds from agricultural college lands.

4 (2) Moneys received as deposits from successful bidders, advance
5 payments, and security under RCW 79.15.100, 79.15.080, and 79.11.150
6 prior to December 1, 1981, which have not been subjected to deduction
7 under this section are not subject to deduction under this section.

8 (3) Except as otherwise provided in subsection (~~(5)~~) (6) of this
9 section, the deductions authorized under this section shall not exceed
10 twenty-five percent of the moneys received by the department in
11 connection with any one transaction pertaining to state lands and
12 aquatic lands other than second-class tide and shore lands and the beds
13 of navigable waters, and fifty percent of the moneys received by the
14 department pertaining to second-class tide and shore lands and the beds
15 of navigable waters.

16 (4) Deductions authorized under this section for transactions
17 pertaining to community forest trust lands must be established
18 consistent with the management costs prescribed in a parcel's
19 management plan adopted pursuant to section 8 of this act.

20 (5) In the event that the department sells logs using the contract
21 harvesting process described in RCW 79.15.500 through 79.15.530, the
22 moneys received subject to this section are the net proceeds from the
23 contract harvesting sale.

24 (~~(5)~~) (6) During the 2009-2011 fiscal biennium, the twenty-five
25 percent limitation on deductions set in subsection (3) of this section
26 may be increased up to thirty percent by the board.

27 **Sec. 16.** RCW 79.02.010 and 2010 c 126 s 6 are each reenacted and
28 amended to read as follows:

29 The definitions in this section apply throughout this title unless
30 the context clearly requires otherwise.

31 (1) "Aquatic lands" means all state-owned tidelands, shorelands,
32 harbor areas, and the beds of navigable waters as defined in RCW
33 79.105.060 that are administered by the department.

34 (2) "Board" means the board of natural resources.

35 (3) "Commissioner" means the commissioner of public lands.

36 (4) "Community and technical college forest reserve lands" means
37 lands managed under RCW 79.02.420.

1 (5) "Department" means the department of natural resources.

2 (6)(a) "Forest biomass" means the by-products of: Current forest
3 management activities; current forest protection treatments prescribed
4 or permitted under chapter 76.04 RCW; or the by-products of forest
5 health treatment prescribed or permitted under chapter 76.06 RCW.

6 (b) "Forest biomass" does not include wood pieces that have been
7 treated with chemical preservatives such as: Creosote,
8 pentachlorophenol, or copper-chrome-arsenic; wood from existing old
9 growth forests; wood required to be left on-site under chapter 76.09
10 RCW, the state forest practices act; and implementing rules, and other
11 legal and contractual requirements; or municipal solid waste.

12 (7) "Improvements" means anything considered a fixture in law
13 placed upon or attached to lands administered by the department that
14 has changed the value of the lands or any changes in the previous
15 condition of the fixtures that changes the value of the lands.

16 (8) "Land bank lands" means lands acquired under RCW 79.19.020.

17 (9) "Person" means an individual, partnership, corporation,
18 association, organization, cooperative, public or municipal
19 corporation, or agency of a federal, state, or local governmental unit,
20 however designated.

21 (10) "Public lands" means lands of the state of Washington
22 administered by the department including but not limited to state
23 lands, state forest lands, and aquatic lands.

24 (11) "State forest lands" means lands acquired under RCW 79.22.010,
25 79.22.040, and 79.22.020.

26 (12) "State lands" includes:

27 (a) School lands, that is, lands held in trust for the support of
28 the common schools;

29 (b) University lands, that is, lands held in trust for university
30 purposes;

31 (c) Agricultural college lands, that is, lands held in trust for
32 the use and support of agricultural colleges;

33 (d) Scientific school lands, that is, lands held in trust for the
34 establishment and maintenance of a scientific school;

35 (e) Normal school lands, that is, lands held in trust for state
36 normal schools;

37 (f) Capitol building lands, that is, lands held in trust for the

1 purpose of erecting public buildings at the state capital for
2 legislative, executive, and judicial purposes;

3 (g) Institutional lands, that is, lands held in trust for state
4 charitable, educational, penal, and reformatory institutions; and

5 (h) Land bank, escheat, donations, and all other lands, except
6 aquatic lands, administered by the department that are not devoted to
7 or reserved for a particular use by law.

8 (13) "Valuable materials" means any product or material on the
9 lands, such as forest products, forage or agricultural crops, stone,
10 gravel, sand, peat, and all other materials of value except: (a)
11 Mineral, coal, petroleum, and gas as provided for under chapter 79.14
12 RCW; and (b) forest biomass as provided for under chapter 79.150 RCW.

13 (14) "Community forest trust lands" means those lands acquired and
14 managed under the provisions of chapter 79.--- RCW (the new chapter
15 created in section 18 of this act).

16 NEW SECTION. Sec. 17. The authorities granted under Title 79 RCW
17 for the management of state lands apply to the community forest trust
18 to the extent consistent with the purposes of this act. The department
19 may develop management procedures deemed necessary by the department to
20 implement this act.

21 NEW SECTION. Sec. 18. Sections 1 through 11 and 17 of this act
22 constitute a new chapter in Title 79 RCW.

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