

HOUSE BILL REPORT

HB 2658

As Reported by House Committee On:
Community Development, Housing & Tribal Affairs

Title: An act relating to tribal cultural resources protection in the forest practices act.

Brief Description: Concerning tribal cultural resources protection in the forest practices act.

Sponsors: Representatives Ortiz-Self, Ryu, S. Hunt, Stanford and Reykdal.

Brief History:

Committee Activity:

Community Development, Housing & Tribal Affairs: 1/25/16, 2/2/16 [DPS].

Brief Summary of Substitute Bill

- Identifies the protection of tribal cultural resources in forest practices as a public interest.
- Makes forest practice rules requiring meeting with a tribe over cultural resource protection enforceable under the Forest Practices Act.

HOUSE COMMITTEE ON COMMUNITY DEVELOPMENT, HOUSING & TRIBAL AFFAIRS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Ryu, Chair; Robinson, Vice Chair; Appleton and Sawyer.

Minority Report: Do not pass. Signed by 3 members: Representatives Wilson, Ranking Minority Member; Zeiger, Assistant Ranking Minority Member; Hickel.

Staff: Sean Flynn (786-7124).

Background:

The Forest Practices Act gives the Forest Practices Board (Board) comprehensive rulemaking authority over the management and administration of timber-related activities. Rules adopted by the Board require the Department of Natural Resources (DNR) to notify tribes when it

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receives an application for timber-related activities and other forest practices in an area identified by the tribe that may contain cultural resources. The applicant must meet with the tribe before the application deadline to discuss a plan for cultural resource protection, unless the tribe chooses not to meet.

The Department of Archeology and Historic Preservation (DAHP) maintains a complete inventory of archeological resource sites and collections within the state. Archeological resources include historic and prehistoric objects, structures, artifacts, implements, and locations pertaining, but not limited to, American Indian or aboriginal sites.

The DAHP manages its inventory through a geographic information system database that helps agencies plan around archaeological and historic sites to avoid protected resources. The DAHP shares information with agencies that are required to consider the impact of activities on archaeological, historical, or cultural resources, including the DNR.

Summary of Substitute Bill:

Tribal cultural resource protection in forest practice regulation is declared to be a public interest of the state. A "tribal cultural resource" is defined as the ancient and spiritual, present and future cultural materials, objects, or sites that are significant to and perpetuate the living culture and history of a federally recognized tribe.

A forest practice is subject to the operational elements of a tribal-landowner agreement and the DNR may stop work and take immediate action to cease disturbance of a tribal cultural resource. Enforcement by the DNR is limited to the operational elements of an agreement reached between a tribe and a landowner that protects a "tribal cultural resource", as part of the forest practices rules application process.

Substitute Bill Compared to Original Bill:

The substitute bill clarifies the enforcement authority of the DNR to protect tribal cultural resources in a tribal-landowner agreement. Specifically, the substitute bill provides that a forest practice is subject to the operational elements of a tribal-landowner agreement and that the DNR may stop work and take immediate action to cease disturbance of a tribal cultural resource. The definitional language of tribal cultural resources that includes archeological areas recorded by the DAHP is removed.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: 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 includes a definition of tribal cultural resources and makes agreements to protect tribal cultural resources enforceable. The bill fixes a statutory gap in forest practice regulation by protecting tribal cultural resources. The definition used in the bill was agreed upon by the cultural resources roundtable. The enforcement provisions only apply if an agreement is reached.

This bill enforces the commitments set out in past agreements. The Timber Fish and Wildlife Agreement of 1987 (TFW) included a promise to protect cultural resources. The TFW is an offshoot of the protection of the tribal treaty rights to manage their natural resources. The rules were developed to implement this promise, but there has been a failure with enforcement since the DNR began to implement the rules differently. The forest practices rules do not receive the same level of enforcement as environmental regulatory protections.

This bill will not prevent large amounts of timber harvest activity. The predictive model prepared by the DAHP is a tool used to trigger a meeting. They mainly protect archeological resources.

(Opposed) None.

(Other) The bill attempts to codify the rules and grant state enforcement authority but it does not amend the enforcement authority of the DNR, so there is no guidance on how enforcement could occur. This new enforcement would affect over 70 percent of the forest practices applications.

Most tribal-landowner agreements are working. Though not required, most landowners voluntarily enter into agreements with tribes. Landowners use the DAHP, and extensive data is used to evaluate the existence of cultural resources on potential forest practice sites. Education will help to bridge gaps in understanding and cooperation and to solve issues. This bill confuses who upholds the agreements reached over years of negotiation.

Persons Testifying: (In support) Representative Ortiz-Self, prime sponsor; Dawn Vyvyan, Phil Rigdon, and David Powell, Yakama Nation; Jeffrey Thomas, Puyallup Tribe.

(Other) Stephen Bernath, Department of Natural Resources; Mark Doumit, Washington Forest Protection Association; Robert Bass, Hancock Forest Management; Norm Schaaf, Merrill & Ring; and Allyson Brooks, Department of Archaeology and Historic Preservation.

Persons Signed In To Testify But Not Testifying: None.