

# SENATE BILL REPORT

## SB 6362

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As of February 17, 2016

**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:** Senators Chase, Hasegawa and McCoy.

**Brief History:**

**Committee Activity:** Natural Resources & Parks: 1/28/16.

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### SENATE COMMITTEE ON NATURAL RESOURCES & PARKS

**Staff:** Bonnie Kim (786-7316)

**Background:** The Forest Practices Act (FPA). The purpose of the FPA is to provide for the maintenance of a viable forest products industry and afford protection to forest soils, fisheries, wildlife, water quantity and quality, air quality, recreation, and scenic beauty. The FPA establishes four classes of forest practices based on the potential for a proposed operation to adversely affect public resources. The Forest Practices Board (Board) establishes standards that determine which forest practices are included in each class.

A Board rule related to forest practices that may contain cultural resources to affected Indian tribes - WAC 222-22-110(2) - provides that "where an application is within a tribe's geographic area of interest and contains cultural resources: the landowner, at the tribe's discretion, shall meet with the affected tribe(s) prior to the application decision due date with the objective of agreeing on a plan for protecting the archaeological or cultural value."

Forest Practice Fees. Any owner of forest land who proposes to conduct a forest practice must pay an application fee. The fee for most forest practices applications is \$150. However, a fee of \$1,500 generally applies to forest practice operations on lands that have high potential for conversion.

Department of Archaeology and Historic Preservation (DAHP). In addition to other responsibilities, DAHP nominates historic places to the state and national historic registers, maintains an inventory of historic properties and archaeological sites and a computerized mapping system, and engages in educational outreach. The Washington Heritage Register is an official listing of historically significant sites and properties found throughout the state.

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*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.*

DAHP maintains the Register, which includes districts, sites, buildings, structures, and objects that are identified and documented as significant in local or state history, architecture, archaeology, engineering, or culture.

**Summary of Bill:** Tribal cultural resources are added as a protected resource under the FPA. Specifically, tribal cultural resources are added to the following provisions:

- to afford protection to forest soils, public resources, and cultural tribal resources by utilizing all reasonable methods of technology in conducting forest practices; and
- to develop a watershed analysis system that addresses the cumulative effect of forest practices on fish, water, cultural tribal resources, and public capital improvements of the state and its political subdivisions.

Tribal cultural resources means the ancient and spiritual, present and future cultural materials, objects, or sites that are significant to and perpetuate the living culture and history of federally recognized tribes as identified by the tribe. Areas of tribal cultural resources may be identified to be areas of land that have been recorded by DAHP as areas of high probability that an archaeological site is present.

Terms in agreements entered into pursuant to WAC 222-22-110(2) are enforceable conditions of the FPA.

**Appropriation:** None.

**Fiscal Note:** Available.

**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: The plan between the landowner and tribe is not mandatory. But if a plan is agreed upon, the agreement becomes part of the application and enforceable by DNR or DAHP. The reason we brought this bill is because the Yakama Nation has been asking for meetings since 1999, but has not been able to get those meetings. This bill addresses the statutory deficiencies highlighted in the June 2015 attorney general advisory letter. The Puyallup Tribe supports this bill because it will align the relevant statutes and administrative rules regarding cultural resources.

OTHER: DNR would like to work with the sponsor to ensure no unintended consequences occur. This bill may not achieve the sponsor's intent. The bill expands DNR and DAHP enforcement ability without amending the enforcement statutes. WFPA members have voluntary agreements with many tribes regarding cultural resources. Those agreements are private and kept confidential. WFPA would like to work with the tribes to resolve this issue but this bill is not the correct way to do it.

**Persons Testifying:** PRO: Senator Chase, prime sponsor; Dawn Vyvyan, Yakama Nation; David Powell, Yakama Nation; Jeffrey Thomas, Puyallup Tribe.

OTHER: Stephen Bernath, DNR; Debora Munguia, WA Forest Protection Assn.

**Persons Signed In To Testify But Not Testifying:** No one.