

HOUSE BILL REPORT

SSB 6488

As Reported by House Committee On:
Rural Development, Agriculture, & Natural Resources

Title: An act relating to aerial herbicides in forestlands.

Brief Description: Concerning aerial herbicides in forestlands.

Sponsors: Senate Committee on Agriculture, Water, Natural Resources & Parks (originally sponsored by Senators Rolfes, Saldaña and Van De Wege).

Brief History:

Committee Activity:

Rural Development, Agriculture, & Natural Resources: 2/25/20, 2/28/20 [DPA].

**Brief Summary of Substitute Bill
(As Amended by Committee)**

- Implements certain recommendations from the Aerial Herbicides in Forestlands Work Group including using best management practices, improving communications, and addressing administrative and regulatory issues.

HOUSE COMMITTEE ON RURAL DEVELOPMENT, AGRICULTURE, & NATURAL RESOURCES

Majority Report: Do pass as amended. Signed by 13 members: Representatives Blake, Chair; Shewmake, Vice Chair; Dent, Assistant Ranking Minority Member; Chapman, Dye, Fitzgibbon, Lekanoff, Orcutt, Pettigrew, Ramos, Schmick, Springer and Walsh.

Minority Report: Without recommendation. Signed by 1 member: Representative Chandler, Ranking Minority Member.

Staff: Rebecca Lewis (786-7339).

Background:

Forest Practices and Herbicide Application.

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.

The Department of Natural Resources (DNR) manages a number of different categories of land, each for a specific purpose and under different management requirements. State forestlands are managed by the DNR for the benefit of the counties in which the lands are located. Other forestlands in the state are owned and managed by private entities or the federal government.

The Forest Practices Act 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. This includes standards for timber harvest, pre-commercial thinning, road construction, fertilization, and forest chemical application. The DNR processes and reviews applications and administers the forest practices program within the rules of the Board. The Forest Practices Board Manual is an advisory technical supplement to the Washington State Forest Practices Rules and *Forest Practices Illustrated* is a book designed by the DNR to help forest owners, loggers, and others better understand Washington's forest practices rules.

The Department of Agriculture (WSDA) administers the federal Insecticide, Fungicide, and Rodenticide Act, as well as the state Pesticide Control Act and the state Pesticide Application Act. Its activities include adopting rules requiring the registration and restricted use of pesticides, testing and certifying pesticide applicators, issuing handler and worker pesticide training documentation, and providing technical assistance to pesticide applicators and workers.

Aerial Herbicide Application Working Group.

Legislation enacted in 2019 established the Aerial Herbicide Application Working Group (Work Group), co-chaired by the DNR and WSDA, to review best practices for aerial application of herbicides in forestlands in the state. Members of the Work Group include state legislators, state and local governments, private timber managers, pesticide applicators, tribes, and environmental organizations. The Work Group held several meetings across the state to review existing best management practices for aerial application of herbicides on state and private forestlands. In December 2019 the Work Group submitted a report to the Legislature containing recommendations for best management practices, improved communications, and next steps to address administrative and regulatory issues.

Summary of Amended Bill:

Forest Practices and Herbicide Application.

The Department of Natural Resources (DNR) must make completed forest practice applications readily available on the DNR's website. The DNR must integrate evaluation of forest practices aerial applications of herbicide into the 2021-2023 biennial forest practices compliance monitoring sampling.

The DNR must evaluate and conduct research trials of chemical and nonchemical forest vegetation management strategies, in a manner that does not disadvantage the trust beneficiaries, and collaborate with other forestland owners through coordination with leading forestry research cooperatives and universities in the Pacific Northwest.

Through a stakeholder process, the Forest Practices Board (Board) must develop interpretive guidance in the Forest Practices Board Manual (Manual) to clarify adjacent property buffer requirements in the forest practices rules. This includes adding provisions to the Manual addressing protection of private property, including residential and agricultural properties. The guidance must include best management practices (BMPs) and technical guidance related to the aerial application of herbicides consistent with forest practice rules including equipment, weather conditions, communicating BMPs to neighbors, signage, and alternatives to herbicides as appropriate. The Board must complete the Manual updates by November 1, 2021. The Board must improve the aerial herbicide signage information included in the Manual and provide a sign template that satisfies legal posting requirements, and the DNR must make corresponding updates to the *Forest Practices Illustrated* document.

The DNR, in cooperation with existing users of the forest practices application review system (system), must submit a proposal to the Governor and Legislature for inclusion in the 2021-2023 State Omnibus Operating Appropriations Act to replace or upgrade the current system. One outcome of the upgraded or replaced system must be an improved user interface for application review with aerial herbicide application as a component.

The Department of Agriculture must work with a variety of state agencies and consult with other external stakeholders to evaluate pesticide investigation rules and processes, including first responder outreach. A report to the Legislature with recommended changes and recommendations on how complaints should be reported and ensuring complaints are properly referred is due by December 31, 2021.

Aerial Herbicide Application Working Group.

Intent is expressed to adopt several recommendations of the Aerial Herbicide Application Working Group.

Amended Bill Compared to Substitute Bill:

The section directing the Department of Natural Resources (DNR) to conduct research trials for chemical and nonchemical forest vegetation management strategies expires June 30, 2030.

The Forest Practices Board (Board), instead of the DNR, must improve aerial herbicide application signage information. The Forest Practices Board Manual must reflect that emergency contact information may, rather than must, be included on signage. The section directing these updates expires December 31, 2021.

The requirement that the Department of Agriculture (WSDA) work with local health jurisdictions and the Washington State Poison Control Center to investigate pesticide rules and processes is removed, and the WSDA must consult with external stakeholders instead of

specifically with nongovernmental stakeholders, including tribal and environmental representatives. The WSDA must also evaluate first responder outreach in the course of investigating pesticide rules and processes. The report due date is changed from November 1, 2021, to December 31, 2021, and the expiration date of the section directing the report is changed to December 31, 2021, from June 30, 2021.

The requirement that the DNR and the WSDA evaluate how the State Environmental Policy Act is used for aerial herbicide application is removed.

The emergency clause and immediate effective date is removed.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended 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 will provide much needed clarity for forest practice rules. The Department of Natural Resources (DNR) would like to suggest edits to clarify Forest Practices Board and DNR responsibilities, and to provide expiration dates in certain sections. The Aerial Herbicide Working Group (Work Group) process was open and respectful with a diverse membership of tribes, state agencies, forestland owners, and various other entities. Citizens would like there to be more transparency with regard to application of herbicides in forests.

(Opposed) None.

(Other) The Work Group process was diverse, open, and transparent. Because there are fiscal impacts to the Department of Agriculture (WSDA) that are not included in the Governor's proposed budget, the WSDA is neutral on the bill. The bill would be stronger if it was limited to the Work Group recommendations. There were several topics that were put on hold by the Work Group and were not a part of the consensus recommendations, including the section included in the bill that addresses the State Environmental Policy Act. It is unclear why that was included. Improvements in public notification are supported; however, the bill still allows the state to ignore several elephants in the forests which are: (1) the assumption that forests must be clear-cut; (2) the assumption that forests must be sprayed; and (3) equating timber plantations to sustainable forestry.

Persons Testifying: (In support) Alec Brown, Washington Environmental Council; Stephen Bernath, Department of Natural Resources; Tom DeBor; and Beverly Parsons.

(Other) Carol Price; Kelly McLain, Department of Agriculture; Jason Callahan, Washington Forest Protection Association; and Kevin Godbout, Weyerhaeuser Company.

Persons Signed In To Testify But Not Testifying: None.