

**ESHB 1789** - S COMM AMD

By Committee on Environment, Energy & Technology

**NOT CONSIDERED 05/17/2023**

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** The definitions in this section apply  
4 throughout this chapter unless the context clearly requires  
5 otherwise.

6 (1) "Ecosystem service credit" means a predetermined and  
7 standardized unit that represents a measurable ecosystem service  
8 provided in the context of a payment for an ecosystem service  
9 project.

10 (2) "Ecosystem service marketplace" has the same meaning as  
11 "ecosystem services market" as defined in RCW 76.09.020.

12 (3) "Ecosystem service project broker" means an entity that  
13 facilitates the process of matching ecosystem service providers and  
14 purchasers of ecosystem service project credits. An ecosystem service  
15 project broker may sell or procure credits on their clients' behalf  
16 and provide financing and marketing expertise. Ecosystem service  
17 project brokers may also act as ecosystem service project developers.

18 (4) "Ecosystem service project developer" means an entity that  
19 sources and initiates ecosystem service projects on behalf of the  
20 ecosystem service provider including, but not limited to, by working  
21 with ecosystem service project standards and verification bodies,  
22 bearing financial risks of projects, and working with a network of  
23 distributors and retailers to deliver auditable ecosystem service  
24 project credits to a marketplace. An ecosystem service project  
25 developer may also act as an ecosystem service project broker.

26 (5)(a) "Ecosystem services" has the same meaning as defined in  
27 RCW 76.09.020.

28 (b) Examples of ecosystem services include, but are not limited  
29 to, carbon sequestration and storage projects that are consistent  
30 with the policies outlined in RCW 70A.45.090, air and water  
31 filtration, climate stabilization, and disturbance mitigation.

1 (6) "Payment for ecosystem service project" means a transaction  
2 within an ecosystem service marketplace that transfers financial  
3 incentives to ecosystem service providers that are conditional on the  
4 provision of the service. Project types include, but are not limited  
5 to, carbon offset projects.

6 NEW SECTION. **Sec. 2.** (1) The department is authorized to enter  
7 into contracts for payment for ecosystem service projects on public  
8 lands, consistent with this chapter and other relevant laws, on terms  
9 and conditions acceptable to the department, after approval by the  
10 board of natural resources, only for the purpose of generating  
11 additional revenue by providing ecosystem services. Any ecosystem  
12 service project on public lands:

13 (a) Must be limited to afforestation, reforestation, biochar,  
14 urban forestry, and aquatic projects;

15 (b) Must be consistent with the policies outlined in RCW  
16 70A.45.090;

17 (c) Must support the workforce development goals and investments  
18 made under RCW 76.04.521;

19 (d) May not be inconsistent with ongoing forest health planning  
20 efforts and investments such as expenditures from the wildfire  
21 response, forest restoration, and community resilience account  
22 created in RCW 76.04.511;

23 (e) Must result in an increase in revenue over the lifetime of a  
24 product to beneficiaries as compared to expected revenue that may  
25 exist in absence of the underlying ecosystem service project; and

26 (f) May not limit or impair the exercise of tribal treaty and  
27 reserved rights, existing tribal access to lands managed by the  
28 department, or preexisting agreements between tribes and the  
29 department.

30 (2) The contract term under this section may represent the sale  
31 or lease of ecosystem service credits and may not last for a period  
32 of longer than 125 years. Proceeds from contracts for ecosystem  
33 services must be deposited into the appropriate account in the state  
34 treasury.

35 (3) The authority of the department to enter into a contract that  
36 results in payments for ecosystem service projects under subsection  
37 (1) of this section is conditional on any specific project being  
38 consistent with the department's management of the underlying public  
39 land for agriculture or commercial timber harvest and ensure the

1 department meets its fiduciary responsibility to the state's trust  
2 beneficiaries. Any ecosystem service project, or the sum of all  
3 ecosystem service projects, may not prevent the department from  
4 managing state lands and state forestlands for sustained yield as  
5 required by RCW 79.10.310.

6 (4) The department may:

7 (a) Directly offer for sale ecosystem service credits, consistent  
8 with this section, with established compliance ecosystem service  
9 marketplaces or verifiable and established voluntary ecosystem  
10 service marketplace;

11 (b) Enter into contracts with ecosystem service project  
12 developers or brokers, through public auction or by direct  
13 negotiation, to bring ecosystem service credits to market. Contracts  
14 for ecosystem services are subject to approval by, and the rules  
15 adopted by, the board.

16 (5) Notice of intent to contract by negotiation must be published  
17 on the department's website. The notice must be published within the  
18 90 days preceding commencement of negotiations.

19 (6) The department is authorized to conduct any additional  
20 advertising that it determines to be in the best interest of the  
21 state.

22 (7) The department may enter into contracts or agreements with  
23 third-party ecosystem service project developers or brokers for  
24 purposes that include, but are not limited to, determining the  
25 feasibility of entering into a contract for a payment for an  
26 ecosystem service project, establishing a payment for an ecosystem  
27 service project with an ecosystem service marketplace, and marketing  
28 and selling credits on an established ecosystem service marketplace.

29 (8) The department must provide a report to the board upon  
30 execution of a contract for a payment for an ecosystem service  
31 project that includes the term of the contract and projected  
32 revenues.

33 (9) (a) Before entering into the sale of ecosystem service credits  
34 under this section, the board must find that the conditions of this  
35 section are satisfied and approve contract terms and a minimum  
36 payment for ecosystem services that is valid for a period of 180  
37 days, or a longer period as may be established by resolution.

38 (b) Where the board has set a minimum payment for ecosystem  
39 service credits, the department may set the final payment for

1 ecosystem service credits, which must be based on current market  
2 prices. The board may reestablish the minimum payment at any time.

3 (10) The board may develop an ecosystem service credit and  
4 ecosystem services policy. The board must make recommendations to the  
5 legislature by June 30, 2025, on the types of ecosystem service  
6 projects the legislature may consider adding to those authorized  
7 under this section. In developing recommendations, the board must  
8 solicit feedback from the public and stakeholders reflecting diverse  
9 interests and expertise. The recommendations must include the manner  
10 in which the department will offer early, meaningful, and fully  
11 informed tribal consultation for ecosystem service credits and  
12 ecosystem service projects.

13 NEW SECTION. **Sec. 3.** (1) By December 1, 2024, the department  
14 must submit a report to the office of financial management and the  
15 legislature, consistent with RCW 43.01.036, that includes information  
16 on payment for ecosystem service projects entered into or committed  
17 to by the department, including type of projects, number of acres  
18 involved, and projected revenues. The report must also include any  
19 challenges or barriers encountered by the department in the process  
20 of attempting to implement carbon offset or payment for ecosystem  
21 service projects and recommendations to address those challenges and  
22 barriers, including the operability of the carbon offset rules  
23 adopted under RCW 70A.65.170.

24 (2) This section expires June 30, 2025.

25 **Sec. 4.** RCW 79.02.010 and 2018 c 258 s 1 are each amended to  
26 read as follows:

27 The definitions in this section apply throughout this title  
28 unless the context clearly requires otherwise.

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

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

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

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

36 (5) "Community forest trust lands" means those lands acquired and  
37 managed under the provisions of chapter 79.155 RCW.

38 (6) "Department" means the department of natural resources.

1 (7) (a) "Forest biomass" means the by-products of: Current forest  
2 management activities; current forest protection treatments  
3 prescribed or permitted under chapter 76.04 RCW; or the by-products  
4 of forest health treatment prescribed or permitted under chapter  
5 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  
11 other legal and contractual requirements; or municipal solid waste.

12 (8) "Good neighbor agreement" means an agreement entered into  
13 between the state and the United States forest service or United  
14 States bureau of land management to conduct forestland, watershed,  
15 and rangeland restoration activities on federal lands, as originally  
16 authorized by the 2014 farm bill (P.L. 113-79).

17 (9) "Improvements" means anything considered a fixture in law  
18 placed upon or attached to lands administered by the department that  
19 has changed the value of the lands or any changes in the previous  
20 condition of the fixtures that changes the value of the lands.

21 (10) "Land bank lands" means lands acquired under RCW 79.19.020.

22 (11) "Person" means an individual, partnership, corporation,  
23 association, organization, cooperative, public or municipal  
24 corporation, or agency of a federal, state, or local governmental  
25 unit, however designated.

26 (12) "Public lands" means lands of the state of Washington  
27 administered by the department including but not limited to state  
28 lands, state forestlands, lands included in a state forestland pool,  
29 and aquatic lands.

30 (13) "State forestland pool" or "land pool" means state  
31 forestlands acquired and managed under RCW 79.22.140.

32 (14) "State forestlands" means lands acquired under RCW  
33 79.22.010, 79.22.040, and 79.22.020.

34 (15) "State lands" includes:

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

37 (b) University lands, that is, lands held in trust for university  
38 purposes;

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

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

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

5 (f) Capitol building lands, that is, lands held in trust for the  
6 purpose of erecting public buildings at the state capital for  
7 legislative, executive, and judicial purposes;

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

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

13 (16) "Valuable materials" means any product or material on the  
14 lands, such as forest products, forage or agricultural crops, stone,  
15 gravel, sand, peat, and all other materials of value except: (a)  
16 Mineral, coal, petroleum, and gas as provided for under chapter 79.14  
17 RCW; ~~((and))~~ (b) forest biomass as provided for under chapter 79.150  
18 RCW; and (c) ecosystem services as provided for under chapter 79.---  
19 RCW (the new chapter created in section 9 of this act).

20 (17) "Ecosystem services" has the same meaning as defined in RCW  
21 76.09.020.

22 **Sec. 5.** RCW 79.64.110 and 2021 c 334 s 995 and 2021 c 145 s 3  
23 are each reenacted and amended to read as follows:

24 (1) Any moneys derived from the lease of state forestlands or  
25 from the sale of valuable materials, oils, gases, coal, minerals,  
26 ~~((or))~~ fossils, or contracts for payments for ecosystem service  
27 projects under chapter 79.--- RCW (the new chapter created in section  
28 9 of this act) from those lands, except as provided in RCW 79.64.130,  
29 or the appraised value of these resources when transferred to a  
30 public agency under RCW 79.22.060, except as provided in RCW  
31 79.22.060(4), must be distributed as follows:

32 (a) For state forestlands acquired through RCW 79.22.040 or by  
33 exchange for lands acquired through RCW 79.22.040:

34 (i) The expense incurred by the state for administration,  
35 reforestation, and protection, not to exceed ~~((twenty-five))~~ 25  
36 percent, which rate of percentage shall be determined by the board,  
37 must be returned to the forest development account created in RCW  
38 79.64.100. During the 2017-2019, 2019-2021, and 2021-2023 fiscal

1 biennia, the board may increase the (~~twenty-five~~) 25 percent  
2 limitation up to (~~twenty-seven~~) 27 percent.

3 (ii) Any balance remaining must be paid to the county in which  
4 the land is located or, for counties participating in a land pool  
5 created under RCW 79.22.140, to each participating county  
6 proportionate to its contribution of asset value to the land pool as  
7 determined by the board. Payments made under this subsection are to  
8 be paid, distributed, and prorated, except as otherwise provided in  
9 this section, to the various funds in the same manner as general  
10 taxes are paid and distributed during the year of payment. However,  
11 in order to test county flexibility in distributing state forestland  
12 revenue, a county may in its discretion pay, distribute, and prorate  
13 payments made under this subsection of moneys derived from state  
14 forestlands acquired by exchange between July 28, 2019, and June 30,  
15 2020, for lands acquired through RCW 79.22.040, within the same  
16 county, in the same manner as general taxes are paid and distributed  
17 during the year of payment for the former state forestlands that were  
18 subject to the exchange.

19 (iii) Any balance remaining, paid to a county with a population  
20 of less than (~~sixteen thousand~~) 16,000, must first be applied to  
21 the reduction of any indebtedness existing in the current expense  
22 fund of the county during the year of payment.

23 (iv) With regard to moneys remaining under this subsection  
24 (1)(a), within seven working days of receipt of these moneys, the  
25 department shall certify to the state treasurer the amounts to be  
26 distributed to the counties. The state treasurer shall distribute  
27 funds to the counties four times per month, with no more than (~~ten~~)  
28 10 days between each payment date.

29 (b) For state forestlands acquired through RCW 79.22.010 or by  
30 exchange for lands acquired through RCW 79.22.010, except as provided  
31 in RCW 79.64.120:

32 (i) Fifty percent shall be placed in the forest development  
33 account.

34 (ii) Fifty percent shall be prorated and distributed to the state  
35 general fund, to be dedicated for the benefit of the public schools,  
36 to the county in which the land is located or, for counties  
37 participating in a land pool created under RCW 79.22.140, to each  
38 participating county proportionate to its contribution of asset value  
39 to the land pool as determined by the board, and according to the  
40 relative proportions of tax levies of all taxing districts in the

1 county. The portion to be distributed to the state general fund shall  
2 be based on the regular school levy rate under RCW 84.52.065 (1) and  
3 (2) and the levy rate for any school district enrichment levies. With  
4 regard to the portion to be distributed to the counties, the  
5 department shall certify to the state treasurer the amounts to be  
6 distributed within seven working days of receipt of the money. The  
7 state treasurer shall distribute funds to the counties four times per  
8 month, with no more than (~~ten~~) 10 days between each payment date.  
9 The money distributed to the county must be paid, distributed, and  
10 prorated to the various other funds in the same manner as general  
11 taxes are paid and distributed during the year of payment.

12 (2) A school district may transfer amounts deposited in its debt  
13 service fund pursuant to this section into its capital projects fund  
14 as authorized in RCW 28A.320.330.

15 **Sec. 6.** RCW 79.22.050 and 2003 c 334 s 220 and 2003 c 313 s 7  
16 are each reenacted and amended to read as follows:

17 (1) Except as provided in RCW 79.22.060, all land, acquired or  
18 designated by the department as state forestland, shall be forever  
19 reserved from sale, but the valuable materials thereon may be sold or  
20 the land may be leased in the same manner and for the same purposes  
21 as is authorized for state lands if the department finds such sale or  
22 lease to be in the best interests of the state and approves the terms  
23 and conditions thereof.

24 (2) Ecosystem services may be sold only if consistent with the  
25 conditions in chapter 79.--- RCW (the new chapter created in section  
26 9 of this act) and may not be sold if chapter 79.--- RCW (the new  
27 chapter created in section 9 of this act) does not appear in codified  
28 statute.

29 (3) In the event that the department sells logs using the  
30 contract harvesting process described in RCW 79.15.500 through  
31 79.15.530, the moneys received subject to this section are the net  
32 proceeds from the contract harvesting sale.

33 **Sec. 7.** RCW 79.105.150 and 2022 c 157 s 19 are each amended to  
34 read as follows:

35 (1) After deduction for management costs as provided in RCW  
36 79.64.040 and payments to towns under RCW 79.115.150(2), all moneys  
37 received by the state from the sale or lease of state-owned aquatic  
38 lands (~~and~~) and from the sale of valuable material from state-owned



1 aquatic lands, and from the sale of ecosystem services under chapter  
2 79.--- RCW (the new chapter created in section 9 of this act), shall  
3 be deposited in the aquatic lands enhancement account which is hereby  
4 created in the state treasury. After appropriation, these funds shall  
5 be used solely for aquatic lands enhancement projects; for the  
6 purchase, improvement, or protection of aquatic lands for public  
7 purposes; for providing and improving access to the lands; and for  
8 volunteer cooperative fish and game projects. The aquatic lands  
9 enhancement account may be used to support the shellfish program, the  
10 ballast water program, hatcheries, the Puget Sound toxic sampling  
11 program and steelhead mortality research at the department of fish  
12 and wildlife, the knotweed program at the department of agriculture,  
13 actions at the University of Washington for reducing ocean  
14 acidification, which may include the creation of a center on ocean  
15 acidification, the Puget SoundCorps program, and support of the  
16 marine resource advisory council and the Washington coastal marine  
17 advisory council. During the 2017-2019 and 2019-2021 fiscal biennia,  
18 the legislature may transfer from the aquatic lands enhancement  
19 account to the geoduck aquaculture research account for research  
20 related to shellfish aquaculture. During the 2015-2017 fiscal  
21 biennium, the legislature may transfer moneys from the aquatic lands  
22 enhancement account to the marine resources stewardship trust  
23 account.

24 (2) In providing grants for aquatic lands enhancement projects,  
25 the recreation and conservation funding board shall:

26 (a) Require grant recipients to incorporate the environmental  
27 benefits of the project into their grant applications;

28 (b) Utilize the statement of environmental benefits,  
29 consideration, except as provided in RCW 79.105.610, of whether the  
30 applicant is a Puget Sound partner, as defined in RCW 90.71.010,  
31 whether a project is referenced in the action agenda developed by the  
32 Puget Sound partnership under RCW 90.71.310, and except as otherwise  
33 provided in RCW 79.105.630, and effective one calendar year following  
34 the development and statewide availability of urban forestry  
35 management plans and ordinances under RCW 76.15.090, whether the  
36 applicant is an entity that has been recognized, and what gradation  
37 of recognition was received, in the evergreen community designation  
38 program created in RCW 76.15.090 in its prioritization and selection  
39 process; and

1 (c) Develop appropriate outcome-focused performance measures to  
2 be used both for management and performance assessment of the grants.

3 (3) To the extent possible, the department should coordinate its  
4 performance measure system with other natural resource-related  
5 agencies as defined in RCW 43.41.270.

6 (4) The department shall consult with affected interest groups in  
7 implementing this section.

8 (5) Any project designed to address the restoration of Puget  
9 Sound may be funded under this chapter only if the project is not in  
10 conflict with the action agenda developed by the Puget Sound  
11 partnership under RCW 90.71.310.

12 **Sec. 8.** RCW 79.15.010 and 2003 c 334 s 331 are each amended to  
13 read as follows:

14 (1) Valuable materials situated upon state lands and state  
15 forestlands may be sold separate from the land, when in the judgment  
16 of the department, it is for the best interest of the state so to  
17 sell the same. The sale of any ecosystem services is limited to  
18 consistency with the conditions in chapter 79.--- RCW (the new  
19 chapter created in section 9 of this act) and may not be sold if  
20 chapter 79.--- RCW (the new chapter created in section 9 of this act)  
21 does not appear in codified statute.

22 (2) Sales of valuable materials from any university lands  
23 require:

24 (a) The consent of the board of regents of the University of  
25 Washington; or

26 (b) Legislative directive.

27 (3) When application is made for the purchase of any valuable  
28 materials, the department shall appraise the value of the valuable  
29 materials if the department determines it is in the best interest of  
30 the state to sell. No valuable materials shall be sold for less than  
31 the appraised value thereof.

32 NEW SECTION. **Sec. 9.** Sections 1 through 3 of this act  
33 constitute a new chapter in Title 79 RCW."

**NOT CONSIDERED 05/17/2023**

1        On page 1, line 2 of the title, after "services;" strike the  
2 remainder of the title and insert "amending RCW 79.02.010,  
3 79.105.150, and 79.15.010; reenacting and amending RCW 79.64.110 and  
4 79.22.050; adding a new chapter to Title 79 RCW; and providing an  
5 expiration date."

EFFECT: (1) Adds biochar and urban forestry to the list of types of ecosystem services projects authorized on public lands.

(2) Clarifies that ecosystem service projects must result in an increase in revenue over the lifetime of a project as compared to expected revenue that may exist in absence of the underlying project.

(3) Authorizes the board of natural resources (board) to develop an ecosystem service credit and ecosystem services policy.

(4) Directs the board to make recommendations to the legislature on the types of ecosystem service projects the legislature may consider adding, by June 30, 2025.

(5) Directs the board to solicit feedback for the recommendations and include the manner in which the department will offer early, meaningful, and fully informed tribal consultation for ecosystem service credits and ecosystem service projects.

--- END ---