

HOUSE BILL REPORT

SHB 1460

As Amended by the Senate

Title: An act relating to the department of natural resources trust land management.

Brief Description: Concerning the department of natural resources land transactions, revenue distributions, and creation and management of a trust land transfer program.

Sponsors: House Committee on Capital Budget (originally sponsored by Representatives Hackney, Waters, Simmons, Kloba, Pollet, Davis and Macri; by request of Department of Natural Resources).

Brief History:

Committee Activity:

Capital Budget: 2/9/23, 2/16/23 [DPS].

Floor Activity:

Passed House: 2/27/23, 82-13.

Senate Amended.

Passed Senate: 4/8/23, 40-8.

Brief Summary of Substitute Bill

- Authorizes the Department of Natural Resources (DNR) to create and manage a Trust Land Transfer program to transfer economically underperforming state lands to other purposes, and to acquire replacement property to provide sustainable revenue to trust beneficiaries.
- Modifies the DNR's authority to exchange state forestlands on behalf of counties.
- Eliminates a restriction that the DNR may not hold more than 1,500 acres in a land bank.

HOUSE COMMITTEE ON CAPITAL BUDGET

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 25 members: Representatives Tharinger, Chair; Callan, Vice Chair; Hackney, Vice Chair; Steele, Ranking Minority Member; Sandlin, Assistant Ranking Minority Member; Alvarado, Bateman, Cheney, Christian, Dye, Farivar, Fosse, Kloba, Leavitt, McClintock, McEntire, Morgan, Mosbrucker, Orwall, Peterson, Reed, Rule, Shavers, Stearns and Waters.

Minority Report: Without recommendation. Signed by 4 members: Representatives Abbarno, Assistant Ranking Minority Member; Couture, Eslick and Maycumber.

Staff: John Wilson-Tepeli (786-7115).

Background:

Lands Managed by the Department of Natural Resources.

Upon statehood, the federal government granted certain lands to the state to be held in trust for several specified purposes. Beneficiaries of these trust lands include common schools, public higher education institutions, the capitol buildings and grounds, and charitable, educational, penal, and reform institutions. These lands are overseen by the Board of Natural Resources (Board) and administered by the Department of Natural Resources (DNR).

As shown in the following table, the DNR manages about three million acres for trust beneficiaries: (1) approximately 618,500 acres of state forestlands, beneficiaries of which include counties and their taxing districts; and (2) about 2.33 million acres of state trust lands. State trust lands generate timber, mineral, and lease revenue, which is appropriated through the capital budget.

Trust Land Endowment (By Trust)

Trust	2022 Acreage	% of Total
Common School	1,781,425	60.4%
State Forestlands (formerly called Forest Board Lands)	618,518	21.0%
Washington State University (Agriculture and Scientific Trusts)	155,400	5.3%
State Capitol Building	109,492	3.7%
University of Washington	89,056	3.0%
Charitable, Educational, Penal and Reformatory Institutions	71,780	2.4%
Normal School (Central Washington University, Western Washington University, The Evergreen State College, Eastern Washington University)	66,799	2.3%

Community Forest Trust	52,217	1.8%
King County Water Pollution Control Division	5,960	0.2%
Community and Technical Colleges (since 1990)	1,168	<0.1%
TOTAL	2,951,815	

Source: Department of Natural Resources, October 2022.

The DNR manages another 2.6 million acres under beds of navigable waters, tidelands, shorelands, and harbor areas that generate revenue for the Aquatic Lands Enhancement Account, the Resource Management Cost Account, and the Aquatic Lands Dredged Material Disposal Site Account. The DNR also manages nontrust lands of more than 39,000 acres of Natural Area Preserved lands and more than 125,000 acres of Natural Resources Conservation Area lands.

Trust Land Transfers.

Trust Land Transfers (TLT) are capital budget proviso mechanisms that have been used over time to transfer economically underperforming common school trust lands with high recreational and environmental value to other public agencies. The lands transferred out of trust status are managed for conservation, wildlife habitat, or recreational purposes. Using this mechanism, such trust lands are transferred into protected status, and the school trust is compensated without actually harvesting the timber.

Through the TLT mechanism, the Legislature provides an appropriation in the capital budget, and the estimated value of the timber on the parcel goes to the Common School Construction Fund (CSCF). The value of the bare land goes to the Real Property Replacement Account (Replacement Account) and is used to purchase replacement lands that will generate revenue for trust beneficiaries. Generally, TLT properties must have high timber-to-land-value ratios, typically 80 percent timber value and 20 percent land value.

The TLT mechanism functions in the following manner: (1) each biennium, the DNR identifies a list of low income-producing properties with high recreation or conservation values for consideration by the Board and the Legislature as candidates for trust land transfer; (2) if the list is authorized and funded in the capital budget bill, the trust lands are transferred to public agencies at appraised market value; (3) at transfer, the capital budget directs the timber value to be deposited in the CSCF where it becomes available for school construction within the current biennium; and (4) the bare land value is deposited into the Replacement Account for the purchase of replacement lands with higher income producing potential to be managed by the DNR to provide current and future income for the Common School Trust.

According to a 2021 DNR report on the TLT mechanism, since 1989, the Legislature has provided \$882.7 million to facilitate the transfer of 125,968 acres of state common school trust lands to other uses and has purchased 55,546 acres of replacement lands.

State Forestlands.

State forestlands consist of forested land that escheated to the state (transfer lands) as well as land purchased by the state outside the Enabling Act of 1889 trust process. When harvests occur, these revenues are divided between the state and counties, and are generally distributed to counties in proportion to the property taxes levied by the various taxing districts in the county where the harvest occurred. However, due to the protection of various species under the Endangered Species Act (ESA) of 1973, some state forestlands that once generated timber revenue for counties have become subject to ESA-related restrictions on timber harvest. These lands are sometimes referred to as "encumbered lands," due to harvest restrictions. Over time, the operating and capital budgets have appropriated funding related to reducing the impacts of ESA encumbrances on the affected counties.

Land Management Activities.

The DNR manages a state land bank. The land bank provides a mechanism used for the purchasing, selling, and transferring land that allows the DNR to replace less productive land with more productive land, while maintaining the trust land base. Lands held in the land bank may not exceed a total of 1,500 acres.

In certain circumstances, the DNR may transfer or dispose of lands without public auction. These circumstances include transfers under ten contiguous acres, transfers with values under \$25,000, and transfers in certain counties with a population under 25,000 with timber harvest deferrals. The DNR may only transfer such property for fair market value, and if the transfer is in the best interest of the state or affected trust. Proceeds from certain real property transferred or disposed of must be deposited in the Parkland Trust Revolving Account to buy replacement lands in the same county.

Recent Related Workgroups.

Trust Land Transfers Workgroup. In the 2021-23 biennium, the Legislature appropriated funding for stakeholder work by a group of trust land beneficiaries and stakeholders to develop a recommended process for the way TLT proposals are developed and implemented. A report and recommendations to the Legislature were submitted by the DNR in December 2021.

Encumbered Lands Workgroup. The 2022 Supplemental Operating Budget required the DNR to work with the Washington State Association of Counties to determine if any statutory changes are necessary to address issues regarding beneficiary revenue distribution or any other fiscal matters related to state forestlands. A report and recommendations were submitted to the Legislature in December 2022.

Summary of Substitute Bill:

Trust Land Transfer Program.

Authorization. The Department of Natural Resources (DNR) is authorized to create and

manage a Trust Land Transfer (TLT) program to transfer underperforming land with high ecological or public benefit to acquire real property to provide long-term, sustainable revenue to trust beneficiaries. The lands selected for transfer may be deemed appropriate for state parks, fish and wildlife habitats, natural area preserves, natural resources conservation areas, community forests, recreation, or other public purposes. The DNR may use legislative appropriations for approved trust land transfers to acquire replacement property. The DNR may use transfer authorities to complete transfers under the program and to pay for the administrative expenses to complete the transfer, including the cost of staff time, appraisals, surveys, environmental reviews, and other similar costs.

Underperforming state land and state forestland are identified as those lands, as determined by the DNR, that have physical, legal, access, or other constraints or liabilities that preclude or severely hamper the generation of revenue on that parcel, now and into the future.

Underperforming parcels are identified as those parcels that generate no revenue, substantially less revenue than desired, or too little revenue to cover costs. A key consideration in making such a determination is that the constraints on the parcel are expected to continue indefinitely, making future improvements in revenue generation unlikely or impossible.

Administration. Any citizen, state and federal agencies, counties, cities, towns, tribes, nonprofit organizations, special purpose districts, public development authorities, and other political subdivisions of the state may nominate a parcel of state land or state forestland for the TLT program. The DNR shall perform an initial review to determine whether the transfer of a nominated parcel is in the best interest of the trust, and whether a public agency is willing to take ownership and manage the parcel. The DNR may require prenomination review of parcels over 4,500 acres or parcels over an estimated appraised market value of \$15 million, including the value of the land, valuable materials, and improvements, if any. If the DNR determines through its initial review that transfer would be in the best interest of the trust, and a public agency is able to take ownership and manage the land, the DNR shall consult with potentially affected tribes to identify and address cultural resource issues.

After the DNR's initial review and tribal consultation, the DNR may submit parcels to an advisory committee that must evaluate and prioritize nominated parcels according to criteria approved by the Board of Natural Resources (Board), including social, ecological, economic, and other values. The advisory committee may include representatives of trust beneficiaries, public agencies, tribes, overburdened communities, vulnerable populations, and other stakeholders as determined by the DNR.

The DNR, with approval of the Board, determines the final, prioritized list of trust land transfer parcels to submit to the Legislature. If a legislative appropriation includes a trust land transfer parcel, and the Board determines that the transfer is in the best interest of the trust for which the land is held, the DNR shall complete the transfer.

State Forestlands.

State Forestland Exchange. The Board may exchange state forestland for obtaining land

with greater natural resource or income-producing potential when it is in the best interest of the state or affected trust. The exchange may not be used to reduce the publicly owned forestland base. The restriction that the Board must use the proceeds from the transfer or disposal of state forestlands to purchase replacement lands within the same county is modified to allow the purchase of forestland for the benefit of the county. The transfer may also include the cost of the DNR's administrative expenses to complete the transfer. The legislative authority of the county from which the real property was transferred or disposed may request in writing that the DNR distribute a percentage of the proceeds associated with valuable materials. Upon such a request, and subject to prior approval by the Board, the DNR is required to distribute the requested percentage of proceeds associated with valuable materials.

Proximate County Agreements. The DNR is authorized to acquire replacement forestland in counties proximate to the county or counties that will benefit from the replacement state forestland purchase if the proximate county in which the replacement lands will be purchased is willing to enter into a proximate county agreement. This agreement must stipulate that lands acquired within the proximate county for the benefit of encumbered lands counties will be offset by encumbered lands within the encumbered lands counties enrolled in the DNR conservation programs as appropriate, and the corresponding payments in lieu of taxes will be paid to the proximate county annually. The proximate county agreement must also stipulate that the county where replacement state forestlands are purchased is prohibited from objecting or otherwise taking steps to prevent harvesting forest products and other revenue-producing activity consistent with and commonplace on timber resource lands. In addition, if a county in which replacement state forestlands are purchased chooses to terminate a proximate county agreement, such a county is liable for the total value of the replacement state forestlands to the county or counties to which the benefits from the replacement state forestlands are directed.

Natural Resources Real Property Replacement Account.

In addition to funds transferred due to the transfer of real property, the Natural Resources Real Property Replacement Account may also consist of the value of land, timber, other valuable materials, and improvements owned by the state.

Department of Natural Resources Land Bank and Land Bank Account.

The restriction that the DNR may not hold more than 1,500 acres in a land bank is removed. The DNR, with the approval of the Board, may exchange property held in the land bank for any lands of equal value, including state forestlands. The Land Bank Account is created in the State Treasury. Income from the sale of property in the land bank must be deposited in the Land Bank Account and may be used to acquire property for the purposes of the land bank.

Other Provisions.

If a DNR lessee owns and resides in a house located on land being held in the land bank, the Board may sell the land directly to the lessee for fair market value.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendments to the substitute House bill are summarized in the following sections.

Trust Land Transfer Program.

The Senate amendment makes the following changes related to the Trust Land Transfer (TLT) Program provisions of the substitute House bill:

- specifies that for the TLT Program process created in the substitute bill, the Department of Natural Resources (DNR) shall only submit properties to the Board of Natural Resources (Board) or the Legislature if at least 50 percent of all previous appropriations after the effective date of the act have been used to purchase replacement trust lands;
- requires that the TLT Program list of properties submitted to the Board or the Legislature not exceed \$30 million in total property value for each year the list is submitted;
- adds the criterion that a TLT appropriation include the full fair market value for the trust land transfer parcel to the other criteria that must be satisfied for a transfer to be effected;
- removes the following factors for determining if lands are underperforming for the purposes of the TLT Program: (1) that underperforming parcels generate no revenue, substantially less revenue than desired, or too little revenue to cover costs; and (2) that a key consideration is that the constraints on the parcel are expected to continue indefinitely, making future improvements in revenue generation unlikely or impossible. (The engrossed Senate amendment retains from the underlying substitute bill that underperforming state land and state forestland is land that the DNR determines has limited potential to generate future income due to physical, legal, access, or other constraints.)

State Forestlands.

The Senate amendment makes the following changes related to the state forestland provisions of the substitute House bill:

- removes language specifying how replacement forestlands may be acquired in counties proximate to the county that will benefit from the replacement state forestland;
- instead requires counties participating in a state forestland pool that desire to have the DNR acquire replacement lands in a designated county not included in the state forestland pool to provide the DNR with an agreement entered with the designated county (designated county agreement) that meets the following requirements:
 - the designated county shall not object to forest practices undertaken on the replacement state forestland in conformity with all applicable laws and rules;
 - the counties participating in the state forestland pool acknowledge that they shall pass through the payment in lieu of taxes (PILT) to which they are statutorily entitled to the designated county in which replacement lands are

- purchased, on an acre for acre basis;
 - if the designated county desires to terminate the agreement, the designated county shall be required to pay the DNR the fair market value of the replacement forestlands, including the value of valuable materials attached to the lands, at the time of termination based on an appraisal accepted by the DNR and approved by the Board; and
 - the board of county commissioners (County Board) for the designated county and each county participating in the state forestland pool approves the agreement in a public meeting, as required by statute;
- requires that when the DNR receives a designated county agreement that meets the required criteria, it shall make reasonable efforts to acquire working forestlands within the designated county to include in the state forestland pool;
- requires counties participating in the state forestland pool to pass through the PILT to which they are statutorily entitled, based on the encumbered state forestlands within their counties transferred to natural area status, to the designated county in which the replacement state forestlands are located, on an acre for acre basis;
- specifies that whenever the County Board of the county in which the replacement state forestlands are located determines to terminate a designated county agreement, the following process shall occur:
 - the County Board shall notify the DNR and the counties participating in the state forestland pool;
 - the DNR shall transfer the replacement state forestlands to the county upon receipt of the fair market value of the lands, including the value of valuable materials attached to the lands, as determined by appraisal and approved by the Board; and
 - the proceeds from this repayment shall be placed in the parkland trust revolving fund and be solely used by the DNR to buy replacement land within the counties participating in the subject state forestland pool or another county with which the participating counties have entered a designated county agreement;
- specifies that the authority provided to acquire replacement state forestlands located outside of the counties participating in a state forestland pool does not preclude the DNR from acquiring replacement lands within the counties participating in the state forestland pool as necessary to fully replace the encumbered state forestlands transferred under the DNR's existing authority to transfer and dispose of lands;
- adds that if requested by a county, revenues from valuable materials may be used to buy replacement forestlands subject to a county agreement; and
- lists natural area preserves as a status of property to which certain encumbered lands may be transferred in exchange for working forestlands through the land pool.

Consultation with Federally Recognized Tribes.

The engrossed Senate amendment makes the following changes that apply to TLT Program and state forestlands provisions:

- changes references to "tribes" related to TLT Program consultation and the exchange of state forestlands to "federally recognized Indian tribes"; and

- references consistency with DNR's consultation policy in relation to consulting with federally recognized Indian tribes regarding TLT transfers.

Appropriation: None.

Fiscal Note: Available.

Effective Date: 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 authorizes the Department of Natural Resources (DNR) to create and manage a Trust Land Transfer (TLT) program to transfer economically underperforming state land to other purposes and to acquire real property to provide long-term, sustainable revenue to trust beneficiaries. The language in the bill is the result of many meetings between local and state governments, nonprofits, and industry stakeholders. The recommendations of the encumbered lands workgroup are included. The bill creates a more open and transparent process that takes tribal interests and concerns into account, while also ensuring that the interests of trust beneficiaries are not harmed. This bill will open the program beyond just school trust lands and enable preservation of other types of trust lands.

In the past, the trust land transfer proviso has resulted in the loss of trust land because the bare land value was not enough to purchase replacement lands. Providing the full value of the land, instead of bare land value, will provide adequate revenue to purchase replacement lands that will provide revenue to trust beneficiaries. The prenomination review process for large acre proposed transfers will help ensure that agency resources are being used appropriately.

Retaining our trust lands has been an important accomplishment for our state. The DNR is a great trust land manager. The timber industry needs to recognize that their concerns are addressed in the bill. The industry was a part of the process that led to the bill. Codifying the program will also help maintain water quality in shellfish growing watersheds, which is important to shellfish producers. The past program has been helpful to shellfish watershed producers and the future program will be as well. The bill requires the DNR to prioritize the acquisition of working farms and forests when acquiring replacement land transferred under this program. The TLT program is also important to educators and students in a society in which too much time is spent online. Outdoor education is beneficial to students, and this bill will help teachers get students outdoor by providing additional lands for this purpose.

(Opposed) Skamania County has been heavily impacted by encumbered lands issues. A large percentage of the acres of trust land in the county are impacted by the Endangered Species Act of 1973 restrictions on the spotted owl. The related loss of trust land revenue is

difficult to manage. The DNR has missed opportunities to help counties with bridge funding in the past.

(Other) The bill should clearly state that DNR will receive 100 percent of the value of the property and timber on it to purchase replacement property for trust beneficiaries. Further changes are needed to make sure that additional trust land transfers do not further diminish forested trust lands available for beneficiaries and for harvest. The bill should include a mechanism to make sure that the DNR buys replacement trust property in advance of a trust land transaction or a cap on the number of acres that can be transferred until replacement lands are purchased. The bill includes too much flexibility regarding how lands can be transferred out of trust status without enough of a guarantee that they will be replaced. It would be better to require that funding be provided up front for replacement purchases and complete the purchases before land is transferred out of trust status.

Persons Testifying: (In support) Representative David Hackney, prime sponsor; Paul Jewell, Washington State Association of Counties; Mike Town, Sierra Club; Doug McClelland, Mountains to Sound Greenway; Bill Taylor, Taylor Shellfish; Justin Allegro, The Nature Conservancy; and Hilary Franz and Duane Emmons, Department of Natural Resources.

(Opposed) Tom Lannen, Skamania County Commissioners.

(Other) Heath Heikkila, American Forest Resource Council; and Logan Endres, Washington State School Directors' Association.

Persons Signed In To Testify But Not Testifying: None.