

SENATE BILL REPORT

SB 5372

As Reported by Senate Committee On:
Agriculture, Water, Natural Resources & Parks, February 9, 2023

Title: An act relating to authorizing the Department of Natural Resources to create and manage a trust land transfer program.

Brief Description: Authorizing the Department of Natural Resources to create and manage a trust land transfer program.

Sponsors: Senators Rolfes, Short, Lovelett, Randall, Saldaña, Shewmake, Torres and Van De Wege; by request of Department of Natural Resources.

Brief History:

Committee Activity: Agriculture, Water, Natural Resources & Parks: 1/26/23, 2/09/23 [DPS-WM, w/oRec].

Brief Summary of First Substitute Bill

- Authorizes the Department of Natural Resources to create and manage a trust land transfer program to transfer economically under-performing state lands to other purposes, and acquire replacement property to provide sustainable revenue to trust beneficiaries.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Majority Report: That Substitute Senate Bill No. 5372 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Van De Wege, Chair; Salomon, Vice Chair; Rolfes, Shewmake, Short and Stanford.

Minority Report: That it be referred without recommendation.

Signed by Senators Muzzall, Ranking Member; Wagoner and Warnick.

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.

Staff: Jeff Olsen (786-7428)

Background: Trust Land Transfer. The trust land transfer (TLT) is a land management tool used in the Capital Budget since 1989 that enables the Department of Natural Resources (DNR) to reposition Common School Trust lands out of trust status, and replaces them with lands that can generate revenue for trust beneficiaries. Common School Trust parcels identified for the TLT are typically transferred to other public agencies or programs and managed as conservation or recreational areas.

Under the TLT, a prioritized list of state trust land parcels is developed and submitted to the Legislature. 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 Account. The value of the bare land goes to the Real Property Replacement Account, and is used to purchase replacement lands that will generate revenue for trust beneficiaries. Generally, properties must have high timber-to-land-value ratios, typically 80 percent timber value and 20 percent land value. According to the DNR TLT report to the Legislature in December of 2021, over the last 32 years, 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.

The 2021 supplemental budget contained a proviso directing DNR to convene a work group of trust land beneficiaries and stakeholders to develop recommendations for the TLT process. The work group submitted a report to the Legislature in December of 2021 outlining several changes to the TLT process including removing the requirement that the timber value on proposed transfers is at least 80 percent of the total land value, expand the TLT to all trust lands, dedicate all funding to the purchase of replacement lands, and provide sufficient funding to administer the TLT.

Land Bank. DNR manages a state land bank. The land bank provides a mechanism used for the purchasing, selling, and transferring of land to replace less productive land with more productive land, while maintaining the trust land base. Lands held in the land bank may not exceed 1500 acres.

Land Transfers. In certain circumstances, 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. 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.

Summary of Bill (First Substitute): Trust Land Transfer Program. DNR is authorized to create and manage a TLT program to transfer under-performing land with high ecological or public benefit to acquire real property to provide long-term, sustainable revenue to trust

beneficiaries. Underperforming state land and state forestland are those lands, as determined by 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. 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. DNR may use legislative appropriations for approved trust land transfers to acquire replacement property, and transfers must be at fair market value. DNR must prioritize the acquisition of working farms and forests when acquiring replacement property when it can be demonstrated that the trust fiduciary obligations can be better fulfilled with these lands. DNR may use transfer authorities to complete transfers under the program, and pay for the administrative expenses to complete the transfer, including the cost of staff time, appraisals, surveys, environmental reviews, and other similar costs.

When administering the TLT, 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 trust land transfer program. 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. DNR may require prenomination review of parcels over 4500 acres or parcels over an estimated appraised market value of \$15 million. If 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, DNR shall consult with potentially affected tribes to identify and address cultural resource issues.

After DNR's initial review and tribal consultation, 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 DNR.

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, DNR shall complete the transfer.

Land Transfers. 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.

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.

The restriction that DNR may not hold more than 1500 acres in a land bank is removed. DNR, with the approval of the Board, may exchange property held in the land bank for any lands of equal value, including state forestlands. 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.

The restriction that the State Forestland Pool may not contain more than 10,000 acres is removed. Further, the restriction that a county with a population of 25,000 or less is eligible for the land pool is also removed.

Replacement forestland may be acquired in counties proximate to the county or counties that will benefit from the replacement lands if the proximate county is willing to enter into a proximate county agreement. A proximate county 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 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 to or otherwise taking steps to prevent harvesting forest products and other revenue-producing activity consistent with and commonplace on timber resource lands. If a county in which replacement state forestlands are purchased chooses to terminate a proximate county agreement, the 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.

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 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 that DNR distribute a percentage of the proceeds associated with valuable materials.

The Land Bank Account is created for the purpose of acquiring property for the land bank. Income from the sale of property in the land bank shall be deposited in the account and used to acquire property.

EFFECT OF CHANGES MADE BY AGRICULTURE, WATER, NATURAL RESOURCES & PARKS COMMITTEE (First Substitute):

- Defines under-performing state lands as lands having constraints that preclude or severely hamper revenue generation. Provides that land transfers funded by legislative appropriation must be at fair market value and the appropriations must be

- deposited in the appropriate account.
- Provides direction to the DNR to prioritize the acquisition of working farms and forests when acquiring replacement property when it can be demonstrated that the trust fiduciary obligations can be better fulfilled with these lands.
 - Removes the restriction that the State Forestland Pool may not contain more than 10,000 acres and authorizes any size county to participate in the land pool.
 - Provides that replacement forestland may be acquired in counties proximate to the county or counties that will benefit from the replacement lands if the proximate county is willing to enter into a proximate county agreement.
 - Provides that a proximate county 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 DNR conservation programs as appropriate, and the corresponding payments in lieu of taxes will be paid to the proximate county annually.
 - Provides that the proximate county agreement must also stipulate that the county where replacement state forestlands are purchased is prohibited from objecting to or otherwise taking steps to prevent harvesting forest products and other revenue-producing activity consistent with and commonplace on timber resource lands.
 - Provides that if a county in which replacement state forestlands are purchased chooses to terminate a proximate county agreement, the 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.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This is an agency request bill to create a transparent and predictable program. Trust land transfer has been a successful tool for Washington for 33 years to transfer more than 125,000 acres of land into valuable parks and natural areas. A large stakeholder group held over 30 meetings over two years to develop this proposal. This bill will transition the trust land transfer from a legislative budget mechanism into a formalized stand-alone program under the Department of Natural Resources (DNR). It calls for the DNR to perform an open and transparent trust analysis on trust land transfers. It creates a panel for reviewing and prioritizing properties that will maximize the economic and environmental benefits of Washington State's trust lands and ensure that beneficiaries and junior taxing districts remain whole. It takes tribal interests and concerns into consideration. The trust land transfer's current \$9 million cannot buy sufficient replacement land, but the \$25 million provided in this bill can. This bill will

provide good governance, increased transparency, more public input, and consistency for the trust land transfer program. It will benefit everyone by protecting natural spaces, adding parks for the public to visit, and collecting revenue to support school infrastructure. Trust land transfer is the only method for DNR to dispose of land that is underperforming. The trust land transfer program is a tool to keep working lands working. People who nominate land for trust land transfer must be working with a supporting agency, and a review will be conducted to see if that land is in the best interest of the trust. This is not open to anyone from the public to nominate without oversight and review.

CON: Please consider addressing operable acres. If a piece of land sits for a long time without accommodating the purpose it was transferred for then it should go back to being operable acres. This bill will allow the county to be a legislative body over other taxing districts and decide what is best for taxpayers, instead their elected officials. There is also a concern over the transfer of lands to tribes.

OTHER: Trust land transfer is appreciated especially when it benefits beneficiaries by replacing lands with low income potential. The bills needs a few changes to ensure it works to benefit the trusts. The nomination process could be potentially problematic if lands already in use are nominated. The nomination process is too broad, anyone can nominate anything. There needs to be a review of proceeds, and limits must be put in place. Trust land transfer is an effective tool if used correctly to dispose of unproductive lands, but it should not be available to anyone. The land bank needs to acquire land in advance and have it in place to replace trust lands. There needs to be clear and concise language regarding transfers of state forestlands. There needs to be a definition of underperforming lands. The trust land transfer process has resulted in the loss of over 71,000 acres of lands for the trusts. Replacing state forestlands outside of the county it is located is problematic.

Persons Testifying: PRO: Senator Christine Rolfes, Prime Sponsor; Sherri Dysart, League of Women Voters of Washington; Justin Allegro, The Nature Conservancy; Heidi Eisenhower, Jefferson County; Doug McClelland, Mountains to Sound Greenway; Bill Dewey, Taylor Shellfish; Vanessa Kritzer, Washington Association of Land Trusts; Hilary Franz, Washington Department of Natural Resources; Duane Emmons, Washington Department of Natural Resources.

CON: Ed Bowen.

OTHER: Rod Fleck, City of Forks; Logan Endres, Washington State School Directors' Association (WSSDA); Paul Jewell, Washington State Association of Counties; Ron Wesen, Skagit County; Matthew Comisky, American Forest Resource Council.

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