
**Agriculture & Natural Resources
Committee**

HB 1192

Brief Description: Ensuring the viability of small forest landowners.

Sponsors: Representative Blake.

Brief Summary of Bill

- Changes the nature of both the alternative plans process and riparian buffer harvest exemption in the Forest Practices Rules to be based on the amount of timber harvested and not the size of the harvested parcel or total ownership.

Hearing Date: 2/11/11

Staff: Jason Callahan (786-7117).

Background:

History of the Forests and Fish Law.

The Forest and Fish Report was presented to the Forest Practices Board and the Governor's Salmon Recovery Office on February 22, 1999. The report contained the recommendations for the development and implementation of rules, statutes, and programs designed to improve and protect riparian habitat on non-federal forest lands in Washington. The report was authored by various stakeholders, including the federal government, state government, and various interest and constituency groups. The rules proposed in the report were designed to provide compliance with the federal Endangered Species Act, restore and maintain minimum riparian habitat to support a harvestable supply of fish, meet Clean Water Act standards, and keep the timber industry economically viable.

The Legislature recognized the Forest and Fish Report in 1999 by passing the Forests and Fish Law [Chapter 004, Laws of 1999, 1st Sp. Sess.]. The law directed the Forest Practices Board

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(Board) to adopt emergency rules implementing the recommendations of the Forest and Fish Report. In the years since, the resulting forest practices rules have been adopted and assurances from the federal government have been obtained. The assurances provide some certainty that forestry operations conducted in compliance with the rules will be protected from liability under the Endangered Species Act.

Exemptions to Riparian Buffers.

Although the state's Forest Practice Rules generally have specific restrictions on the amount of harvest allowed near streams and creeks, there is an exemption available from these restrictions for certain landowners. Parcels that are 20 contiguous acres or less are exempt from the modern riparian buffers rule, as long as the owner of the parcel does not own a cumulative total of more than 80 acres. Instead, these landowners can either follow the Forest Practices Rules in place prior to 1999, or work with the Department of Natural Resources to establish an alternative management plan for the riparian portion of the harvest area. Landowners who qualify for the riparian buffer exception to the Forest Practices Rules may still be required to leave trees unharvested if they are located adjacent to a stream and do not exceed 15 percent of the volume of a stand of well-managed 50-year timber [RCW 76.13.130].

Alternate Plans.

As part of the Forest and Fish Law, the Legislature directed the Board to condition the adopted rules in such a manner that allows forest practices applicants to propose harvest plans as an alternative to the default rules. These alternative plans are to be developed in response to site-specific physical features and must provide protection to public resources that is equal to the standard harvest rules adopted by the Board. The Board is directed to consult with the Department of Natural Resources' Small Forest Landowner's Office in developing alternate harvest restrictions for small forest landowners. The alternative plan process is only available to landowners that own less than 80 acres and for harvesters affecting less than 20 acres. [RCW 76.13.130].

Forest Riparian Easement Program.

The Forest Riparian Easement Program (FREP) is a program managed by the Small Forest Landowner Office (SFLO) in the DNR to acquire 50-year easements along riparian and other sensitive aquatic areas from small forest landowners who are willing to sell or donate easements to the state. The DNR can purchase easements from small forest landowners and hold the easements in the name of the state. The easements are restrictive only and allow all landowners to engage in activities except as necessary to protect the riparian functions of the habitat for the term of the easement.

The easements are intended to represent 50 percent of the value of the unharvested trees, plus participation compliance costs. Once a contract from the FREP is executed, the DNR is required to reimburse the landowner for the actual costs to establish streamside buffers and timber marking.

Summary of Bill:

Exemptions to Riparian Buffers.

The exemption that allows the owners of small forest parcels to operate in accordance to the Forest Practices Rules in existence before the adoption of the Forests and Fish Law is changed. To be eligible for this exemption, a landowner no longer is limited to owning less than 80 acres. Instead of a limitation based on total ownership, the exemption is limited to landowners with small harvest totals. Specifically, to be eligible for the exemption to the modern riparian buffer rules, a landowner must not have harvested more than two million board feet of timber for commercial or industrial purposes in any three-year period. In addition, the maximum size of the affected harvest is changed. Instead of the riparian buffer exception applying to parcels sized 20 contiguous *acres* or less, the maximum size is changed to *harvest areas* sized 20-acres or less. This harvest size is unrelated to the size of the overall parcel.

The additional riparian trees required to remain unharvested are allowed to be managed to meet optimal economic and forest health functions. These outcomes are in addition to riparian functions.

Alternate Plans.

The total ownership threshold that limits the availability of alternative plans is removed. A forest landowner will be eligible to participate in the alternative plan process even if the landowner owns more than 80 acres. However, to qualify, a landowner must have only harvested less than two million board feet of timber on average for the previous three years and certify that harvest limits will be limited in the coming 10 years.

Like the exception to the riparian buffer rules, the maximum size of the affected harvest that qualifies for an alternative plan is changed. Instead of the maximum size being 20 contiguous *acres* or less, the maximum size is changed to *harvest areas* sized 20-acres or less.

Forest Riparian Easement Program.

Landowners who qualify for alternative plans or to harvest timber according to the pre-Forest and Fish Law rules, and choose to use those options, are ineligible to participate in the FREP.

Directed Rulemaking.

The Forest Practices Board is directed to amend the administrative rules governing forest practices as they relate to small forest landowners by no later than July 1, 2012. The new rules, which must consider recommendations from stakeholders, must be done in a manner that makes the requirements more understandable to a person who is not a forestry professional and allows buffer requirements to be identified on the landscape without the assistance of a professional forester.

The rulemaking process must amend the existing Forest Practices Rules that apply to small forest landowners. In particular, the new rulemaking must exempt properties eligible for the riparian

buffer exemption from current requirements related to the amount of shade that must be made available to certain streams.

The rules must also require buffering, or the retention of trees, along all surface water streams that flow year round. However, for certain streams that are perennially non-fish bearing or are not considered to be a connected with a shoreline of the state, the rules must be limited so that the maximum buffer of 30 feet is required under given circumstances and so that all subterranean stream segments are allowed to remain unbuffered.

Appropriation: None.

Fiscal Note: Requested on 1/31/2011.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.