

HOUSE BILL REPORT

ESHB 1509

As Amended by the Senate

Title: An act relating to the forestry riparian easement program.

Brief Description: Concerning the forestry riparian easement program.

Sponsors: House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Blake, Dunshee and Ryu; by request of Commissioner of Public Lands).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/4/11, 2/11/11 [DPS];
Capital Budget: 2/18/11 [DPS(AGNR-A CB)].

Floor Activity:

Passed House: 3/4/11, 97-0.
Senate Amended.
Passed Senate: 4/7/11, 47-0.

Brief Summary of Engrossed Substitute Bill

- Expands compensation for certain unharvested trees in the Forest Riparian Easement Program (FREP).
- Limits participation in the FREP to non-governmental, for-profit legal entities.
- Requires a recipient of funding from the FREP to repay the total amount received if the recipient sells his or her land within 10 years to someone who would not qualify for participation in the FREP.
- Creates a one-time study group to propose long-term funding solutions for the FREP.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Blake, Chair; Stanford, Vice Chair; Chandler, Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Dunshee, Hinkle, Kretz, Lytton, Orcutt, Pettigrew, Rolfes and Van De Wege.

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.

Staff: Jason Callahan (786-7117).

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: The substitute bill by Committee on Agriculture & Natural Resources be substituted therefor and the substitute bill as amended by Committee on Capital Budget do pass. Signed by 11 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Warnick, Ranking Minority Member; Zeiger, Assistant Ranking Minority Member; Asay, Jacks, Jinkins, Lytton, Pearson, Smith and Tharinger.

Staff: Susan Howson (786-7142).

Background:

The Forest Riparian Easement Program (FREP) is a program managed by the Small Forest Landowner Office (SFLO) in the Department of Natural Resources (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.

The value of the easement is determined by the DNR based on the fair market value of the timber volume covered by the easement. This calculation is made by the DNR after it conducts a timber cruise of the entire proposed easement. The data gathered in the timber cruise is then applied to a stumpage value table to calculate the fair market value. Value is calculated only on qualifying timber. Qualifying timber is timber that is located within a commercially reasonable harvest unit that cannot be harvested because of state limitations.

Summary of Engrossed Substitute Bill:

Qualifying Small Forest Landowner.

The minimum requirements for participation in the FREP are changed. All landowners applying for the FREP must still show that they satisfy the definition of "small harvester" in the tax code; however, in order to participate in the FREP, the landowner must be a non-governmental, for-profit legal entity.

Qualifying Timber.

In addition to the existing unharvested trees that are eligible for FREP compensation, certain other forest trees are added. These include forest trees located within riparian habitats, channel migration zones, and on potentially unstable slopes or landforms.

The DNR must verify, before compensation can be received, that any trees located on unstable slopes are addressed by a forest practices application, are adjacent to a commercially reasonable harvest area, and have the potential to deliver sediment into a public resource or threaten public safety. Compensation for trees left unharvested on unstable slopes may not exceed \$50,000 during any two-year period.

Compensation.

The value of compensation determined by the SFLO is to be calculated at the time the FREP application was completed and not at the time of the underlying harvest. The DNR must not use more than 50 percent of the funding dedicated to the FREP for determining the volume of qualifying timber left unharvested. The resulting easement may not be recorded by the DNR until all compensation is paid to the landowner.

A recipient of funding from the FREP must repay the total amount received if the recipient sells his or her land within 10 years to someone who would not qualify for participation in the FREP.

Long-Term Funding.

The chair of the Forest Practices Board must invite relevant stakeholders to recommend potential long-term funding sources for the FREP. These recommendations must be delivered to the Legislature by October 31, 2011.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment (1) requires the Department of Natural Resource to biennially make recommend to the Governor a list of all forest riparian easement applications to be funded; (2) requires the Governor to determine the number of applications to receive funding and submit the list as part of the capital budget request to the Legislature; (3) requires the list submitted by the Governor to include the date of the forestry riparian easement application, the type of qualifying timber, estimates of the value of the easement, aerial photograph maps of the application area, and an estimate of administrative costs for purchase of easements; and (4) adds a July 1, 2011, effective date.

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 (Agriculture & Natural Resources):

(In support) The FREP has been a successful program for helping keep working forests on the landscape, allowing landowners to pay their taxes, improving forest habitat, and meeting the new, stringent forest practices rules. The FREP has worked well and only minor tweaks to the program's implementation are needed. Loopholes need to be closed to give certainty to the FREP moving forward and to help the Forest and Fish Habitat Conservation Plan meet its

conservation goals. Revisions to the FREP are needed to allow the DNR to make the most of the limited funds available to the FREP.

The FREP came from an agreement that some of the lost value from unharvested trees should be provided to small forest landowners. The FREP was intended to benefit working forests and family foresters. It was not intended for nonprofit organizations or governmental entities.

The FREP can be used as an incentive for landowners to voluntarily leave a wider buffer in instances when they are not required to do so.

There should be an incentive to cruise the affected timber at the time of harvest and not at a later point in the future. Trees can be lost and damage can be done in the intervening years that make the condition of the stand at time of harvest nearly impossible to recreate.

It is fair for the state to reimburse the landowners for the costs of participation in the FREP.

(With concerns) When the Forest and Fish Law was passed, it was recognized that the FREP was to be used for smoothing out some of the disproportionate impacts on small forest landowners. Changes to the FREP are welcome, but they need to maintain the original intent. It is important to provide clarity as to when the easement begins and how future owners can be encouraged to remain in forestry.

(Neutral) The DNR staff worked hard to craft a good bill, but their task was impossible given the breadth of reform options they were mandated to consider. The proposals do nothing to address the real issues facing the FREP which is a lack of adequate funding. Requiring a landowner to obtain a forest certification or a plan approved by the DNR would further marginalize the two-thirds of small forest landowners who have neither. The current Forest Practices Rules are the nation's most stringent, and they should be enough to justify compensation. Eliminating future landowners from participating in the FREP eliminates future value of the land and discourages any future buyers from staying in forestry. It is a good idea to cruise timber at the time of application, but that would be a financial investment that would limit the ability of funds to actually pay for easements. The timelines in the stakeholder group should be synched with other ongoing work group efforts.

(Opposed) None.

Staff Summary of Public Testimony (Capital Budget):

(In support) To date, the state has purchased 278 forest riparian easements, which includes 395 acres for just under \$23 million. There is a current backlog of 90 applications for this program at the DNR with an estimated cost of \$6.7 million. This bill modernizes the FREP for these tougher economic times and fixes some of the provisions where past abuses of the FREP have occurred. Substitute House Bill 1509 clearly defines the areas of impact as riparian areas, which include: streams, seeps and springs; channel migration zones; and certain areas of unstable slope. Next, the bill better defines who is eligible for the FREP. The bill also ensures that the 50-year easement term begins with the date of the completed FREP application. Finally, the bill creates a process for recommending potential long-term

dedicated funding sources for the FREP. Adequate funding for the FREP has not been made available even in good times. A dedicated source of funding is necessary to slow the conversion of these lands to other uses.

(In support with concerns) The DNR has done a good job of maintaining and improving the FREP, however, the lack of capital funds for the FREP is concerning. Something must be done to bring back the incentive to tree farm. Our grandchildren will wonder why all of the public benefits that were provided to this generation will not be available for them too.

(With concerns) The Governor does not fund the fiscal impact for this bill in her capital budget proposal. It would be more cost-effective to align the study group language and due date with efforts required under Substitute House Bill 2541, which was enacted in 2010 that directs the DNR to develop landowner conservation proposals that support forest landowners by December 31, 2011.

(Opposed) None.

Persons Testifying (Agriculture & Natural Resources): (In support) Representative Blake, prime sponsor; Sherry Fox; Ken Miller, Washington Farm Forestry Association; and Bridget Moran, Department of Natural Resources.

(With concerns) Stephen Bernath, Department of Ecology.

(Neutral) Rick Dunning, Washington Farm Forestry Association.

Persons Testifying (Capital Budget): (In support) Ken Miller, Washington Farm Forestry Association; Bridget Moran, Department of Natural Resources; Debora Munguia, Washington Forest Protection Association; and Bill Robinson, The Nature Conservancy.

(In support with concerns) Rick Dunning, Washington Farm and Forestry Association.

(With concerns) Steven Bernath, Department of Ecology.

Persons Signed In To Testify But Not Testifying (Agriculture & Natural Resources): None.

Persons Signed In To Testify But Not Testifying (Capital Budget): None.