

# HOUSE BILL ANALYSIS

## HCR 4410

**Brief Description:** Establishing a joint select committee on consulting foresters.

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**Sponsors:** Representative McMorris

Hearing: March 5, 1997

### **BACKGROUND:**

Washington law does not regulate the practice of consulting foresters. The state's Forest Practices Act governs the management of the state's forest land resources. The Act refers to a 'professional forester;' however, that term is not defined. The argument for consulting forester legislation is to protect the health, safety and welfare of the public. The opponents of forester regulation argue licensing will constitute more regulation among a professional group and its clientele, some of whom feel there are already too many regulations.

This memorandum addresses previous proposals to regulate consulting foresters in the state, the arguments of the proponents and opponents of consulting forester regulation, and consulting forester laws in the states.

### **I. BACKGROUND TO REGULATING CONSULTING FORESTERS IN WASHINGTON**

The Committee has previously considered provisions regulating consulting foresters in Washington.

Those provisions include the following:

- . That a person must obtain a license from the Department of Licensing to practice forestry.
- . That applicants meet the following requirements:
  - . A minimum of five years experience or training in forestry management under the supervision of a consulting forester.
  - . Completion of a 4-year degree in forestry or a related field from a

board approved college.

. Passage of a board examination.

. That every person complete continuing education courses.

The bill creates a 5-member state board of licensing to regulate consulting foresters.

## II. THE ARGUMENTS FOR LICENSING

The argument for consulting forester legislation is to protect the health, safety and welfare of the public. The proponents divide the public into two categories: a) the individual landowner; and b) the general public.

### A. INDIVIDUAL LANDOWNERS

**Obtaining fair prices.** Of concern to the proponents of consulting forester licensing are the owners of small tracts of forest land who cannot afford to hire their own full time forester. The proponents argue that without licensing, landowners have little assurance when searching for technical help, and little legal recourse if consulting foresters mislead them into losing a fair market return on their timber.

**Technical assistance.** Proponents of consulting forester regulation further argue that getting competent help with existing regulations and technical matters are a major need of the individual owners of small forests. They argue competent forest advisors must be well trained and competent. They submit competency can be only achieved through legislation.

### B. THE PUBLIC

**Environmental protection.** Proponents of consulting forester regulation argue the other part of public protection; beside that for individual forest owners, is the need of the public. They argue demands for broad scale forest stewardship suggest the public want foresters with good training and a high degree of professional competence, beyond the narrow attention to timber merchandising. As such they argue, consulting forester legislation will help the public.

### C. RELIEF FROM OVER REGULATION

According to the proponents of consulting forester legislation, federal, state, and local laws relating to the environment and natural resources have become increasingly detailed. This is so because many legislators are concerned with adapting regulations to local conditions, and to the many natural variations of terrain, plant and animal life. The result is attorneys, police, and judges who have no knowledge of forestry matters are forced to manage natural

resources, including forests.

The proponents suggest one remedy is to assure natural resources professionals are well trained and ethically trustworthy. They argue licensing and certification of those professionals, including foresters, attempt to improve this assurance.

Relatedly, the proponents argue high level litigation and proposals for more federal, state and local laws are occurring because over regulation is infringing on private property rights. As a remedy, the proponents suggest licensing is a means to reduce such special legislation.

#### **D. ETHICS.**

The questionable practices of individuals regarding advertisement, business transactions, public contracts, and the treatment of forest resources are universally condemned. The proponents of forester legislation argue licensing is one way to bring guidelines adopted by the professional foresters' organizations before all foresters and to establish a legal mechanism to encourage compliance.

### **III. THE ARGUMENTS AGAINST LICENSING**

#### **A. MORE REGULATION**

The opponents of forester regulation argue licensing will constitute more regulation among a professional group and its clientele; some of whom feel there are already too many regulations. Opponents also voice concerns about 'red tape' and delays, both in restrictions on activities and in approvals of new applicants for licenses. A related concern of those opposing regulation is that it will exclude some people who are now working as foresters from earning a livelihood.

#### **B. OTHER MEANS OF PROTECTING FOREST VALUES AND SUSTAINABILITY**

**Current laws and programs.** Another argument against licensing is that there are sufficient laws and other programs now in place concerning forestry management, and that they merely need more enforcement and opportunity to operate as initially planned. For example, the federal Clean Water Act, the Endangered Species Act, and the state's Forest Practices Act are cited by the opponents as bringing new attention to forest practices.

Further, the Sustainable Forestry Initiative (SFI) announced in 1994 by the American Forest and Paper Association (AFPA) is a nationwide effort to exert influence on all forest industries to broaden the practice of sustainable forestry. Opponents of forester legislation argue the AFPA's initiative is a step in the direction of self regulation, thereby making government intervention unnecessary.

**Society of American Foresters Certification.** The opponents of forester regulations argue another means of protecting the public, and thereby making licensing unnecessary could be the Certified Forester (CF) program inaugurated by the Society of American Foresters in 1994. The AFC seeks to make certification the standard of professional competence for members of the SAF and for nonmembers.

**Product certification.** Another approach presented by the opponents of forester legislation is forest product marking to certify the product came from forest land managed to high standards of sustainability and ecosystem protection.

### C. CODE OF ETHICS.

Opponents of forester regulation argue the codes of ethics of the professional forestry organizations are sufficient and that the government cannot legislate ethical behavior. Both the Society of American Foresters (SAF) and the Association of Consulting Foresters (ACF) have codes of ethics that prescribe stewardship of the land. These codes also prescribe decent, honorable relationships for foresters in dealing with the public, clients, employers and other professionals. Opponents of forester legislation argue strict adherence to these codes will go a long way toward remedying the difficulties of unscrupulous foresters.

### D. COST.

Opponents of forester licensing also cite cost as a concern. How much is the burden and on whom will it fall? Appendix A shows the current fee structure of the states with licensing or certification of foresters. The cost for the initial year varies from \$20 in Arkansas to \$100 in New Hampshire. Annual renewal fees vary from \$5 in Arkansas to \$50 in several states. In discussing cost, the following three items may be considered:

- . Cost to the government. Consulting forester legislation generally authorizes a board of Licensing for Foresters which is empowered to adopt rules and procedures for its operation and for the implementation of the law. Presumably, the board may impose fees for the program to be self-financing.
- . Cost to the forester. For the individual consulting forester, the fee for licensing would be an added cost of doing business, and would probably shift to the client in a higher fee.
3. Cost to the forest owner. The forest owner would probably pay a higher fee for consulting services.
- . Cost to the wood-using industry. The industry buying logs and pulpwood may find an increased average wood cost as the better informed landowner realizes the full value of timber sales.

#### IV. LICENSING IN OTHER STATES

Sixteen states regulate foresters by requiring either mandatory or voluntary registration, certification or licensing. Those states are: Alabama, Arkansas, California, Georgia, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, North Carolina, Oklahoma, South Carolina and West Virginia. Generally, forester legislation in these states provides for the establishment of a regulatory body to administer the provisions of the law and require the following for registration or licensing:

- w graduation with a BA or a B.S. degree in an approved forestry curriculum
- w breadth-of-experience
- w an examination showing knowledge of forestry
- w continuing education
- w ethical and professional conduct
- w reciprocity
- w disciplinary procedures - revocation of license; appeals
- w injunctive relief and civil fines.

Scanning Appendix B brings out several general conclusions:

- w 5 states have mandatory registration. Those states are: Alabama, California, Georgia, North Carolina and South Carolina.
- w 5 states have voluntary registration. Those states are Arkansas, Michigan, North Carolina,<sup>1</sup> Oklahoma and West Virginia.
- w 5 states require licensing. Those states are: Maine, Maryland, Massachusetts, Mississippi, and New Hampshire.
- w Only Connecticut has certification.
- w 34 states have no form of licensing, registration or certification.

The states with forester licensing, registration, or certification are listed in Appendix A. Appendix A outlines some features of each states' respective regulations. The appendix does not list California, Connecticut, Massachusetts and Oklahoma. Their programs may be summarized as follows:

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<sup>1</sup> North Carolina requires both mandatory and voluntary registration

| <b>STATE</b>           | <b>CALIFORNIA</b>   | <b>CONNECTICUT</b>   | <b>MASSACHUSETTS</b> | <b>OKLAHOMA</b>   |
|------------------------|---|--|----------------------|---|
| <b>Reciprocity</b>     | Yes, provided, the state has a reciprocity provision and the state's licensing requirements are equivalent. | Non resident licensed foresters are allowed to apply for licensing/registration as a certified forester. Certified foresters from other states are not considered legitimate licensed foresters. |                      | Yes, provided, the state has a reciprocity provision and the state's licensing requirements are equivalent. |
| <b>Fees</b>            | \$95 Initial<br>\$200 App.<br>\$95 Renewal  | \$78 App<br>\$13 Exam  |                      | \$15 App.<br>\$10 Renewal   |
| <b>Administration</b>  | Board   | Board  |                      | Board   |
| <b>Credential type</b> | Mandatory registration  | Certification  | License required     | Voluntary registration  |
| <b>Degree</b>          | B.S. in forestry  | No educational requirements  |                      | B.A. in forestry  |
| <b>Testing</b>         | Written test  | Written test   |                      | No test required  |
| <b>Experience</b>      | 2 years with B.S. and Master of Forestry; 3 years with B.S. in forestry or any B.S. and a M. of Forestry    | No experience requirements   |                      | 2 years of experience   |
| <b>CFE</b>             | Not required  | Required   |                      | Not required  |

<sup>2</sup>Massachusetts has recently passed legislation for mandatory licensing. The regulations are currently being drafted. The program should be ready to implement by January, 1997.

<sup>3</sup>Allows an oral test for applicants who are illiterate.

<sup>4</sup>The registration board is considering adding this requirement

**SUMMARY OF BILL:** A joint select committee on consulting foresters is established. The purpose of the committee is to conduct an interim review to determine appropriate licensing methods for consulting foresters.

**RULES AUTHORITY:** The bill does not contain provisions addressing the rule-making powers of an agency.

**FISCAL NOTE:** Not requested.