

SENATE BILL REPORT

SB 5667

As Reported by Senate Committee On:
Agriculture, Water, Natural Resources & Parks, January 11, 2024
Ways & Means, February 2, 2024

Title: An act relating to eligibility, enrollment, and compensation of small forestland owners volunteering for participation in the forestry riparian easement program.

Brief Description: Concerning eligibility, enrollment, and compensation of small forestland owners volunteering for participation in the forestry riparian easement program.

Sponsors: Senators Muzzall, Van De Wege, Short, Wagoner and Wellman.

Brief History:

Committee Activity: Agriculture, Water, Natural Resources & Parks: 2/09/23; 1/11/24 [DPS-WM, w/oRec].
Ways & Means: 1/22/24, 2/02/24 [DPS (AWNPN)].

Brief Summary of First Substitute Bill

- Increases the amount the Small Forest Landowner Office shall offer a small forest landowner from 50 percent to 90 percent of the value of qualifying timber in the Forestry Riparian Easement Program (FREP).
- Reduces lease terms for the FREP from 50 years to 40 years.
- Increases payments for qualifying timber on unstable slopes from \$50,000 to \$150,000.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Majority Report: That Substitute Senate Bill No. 5667 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Van De Wege, Chair; Muzzall, Ranking Member; Liias,

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.

Shewmake, Short, Wagoner and Warnick.

Minority Report: That it be referred without recommendation.

Signed by Senators Salomon, Vice Chair; Stanford.

Staff: Jeff Olsen (786-7428)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5667 as recommended by Committee on Agriculture, Water, Natural Resources & Parks be substituted therefor, and the substitute bill do pass.

Signed by Senators Robinson, Chair; Mullet, Vice Chair, Capital; Nguyen, Vice Chair, Operating; Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Billig, Boehnke, Braun, Conway, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Pedersen, Randall, Saldaña, Torres, Van De Wege, Wagoner and Wellman.

Staff: Wendy Brown (786-7359)

Background: The Forestry Riparian Easement Program (FREP) is a voluntary program that reimburses small forest landowners for the value of the trees they are required to leave unharvested due to forest practices rules to protect fish and other habitat. FREP is managed by the Small Forest Landowner Office (SFLO) in the Department of Natural Resources (DNR), and acquires 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. Small forest landowners are landowners who harvest less than an average of 2 million board feet per year.

Subject to funding availability, the SFLO may offer compensation for qualifying timber in the amount of 50 percent of the value of the unharvested trees, plus participation compliance costs. Once a contract under FREP is executed, 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 DNR based on the fair market value of the timber volume covered by the easement. This calculation is made by DNR after it conducts a timber cruise of the entire proposed easement. The data gathered in the timber cruise are then applied to a stumpage value table to calculate the fair market value. Value is calculated only on qualifying timber. Compensation for qualifying timber on potentially unstable slopes or landforms may not exceed \$50,000.

For approved forest practices applications for which the regulatory impact is greater than the average percentage impact for all small forestland owners as determined by an analysis by DNR under the Regulatory Fairness Act, the compensation offered will be increased to

100 percent for that portion of the regulatory impact that is in excess of the average.

Qualifying timber in FREP must meet all of the following criteria:

- the trees are ones that the owner is required to leave unharvested under fish protection rules, or that are made uneconomic to harvest by the forest practices rules;
- the trees are located within or bordering a commercially reasonable harvest unit, or for which an approved forest practices application cannot be obtained because of forest practices rules restrictions; and
- the trees are in certain sensitive areas, including sensitive aquatic areas, channel migration zones, and areas of potentially unstable slopes or landforms.

The Natural Climate Solutions Account (NCSA) is an account established to increase the resilience of the state's waters, forests, and other vital ecosystems to the impacts of climate change and conserve working forestlands at risk of conversion. Funding must be used for projects and activities that will increase forest and community resilience to wildfire, improve forest health, prevent emissions by preserving natural and working lands from the threat of conversion, or increase support to small forestland owners through FREP and the family forest fish passage program. Legislative intent was established that not less than \$10 million be expended each biennium for the FREP, or for riparian easement projects funded under the agricultural conservation easements program, or similar riparian enhancement programs.

Summary of Bill (First Substitute): Qualifying timber for FREP means those forest trees on land owned by a qualifying small forest landowner. Minimum lease terms for forestlands owners participating in the FREP program are reduced from 50 years to 40 years. The SFLO shall attempt to determine the fair market value of qualifying timber for an easement as of the date of the completed harvest, rather than the date of the completed application. Participation in FREP does not preclude inclusion of the land in future mitigation programs.

The SFLO shall process FREP applications in the order received to the extent reasonably possible. Subject to availability of funding, the amount of compensation the SFLO shall offer for qualifying timber in FREP is increased from 50 percent to 90 percent of the value. The SFLO may use a landowner's actual mill receipts to help determine fair market value. Compensation for qualifying timber on potentially unstable slopes or landforms may not exceed \$150,000 during any biennial funding period.

It is the intent of the legislature that the SFLO complete FREP application transactions within two years of the application receipt consistent with the goals of the NCSA.

At least semiannually, DNR shall consult with the small forestland owner advisory committee to review landowner complaints, administrative processes, rule recommendations, and related issues for potential improved efficiencies and effectiveness.

The provision allowing for approved forest practices applications for which the regulatory impact is greater than the average percentage impact for all small forestland owners to receive up to 100 percent for that portion of the regulatory impact that is in excess of the average is repealed.

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

- Specifies that the Small Forest Landowner Office (SFLO) shall attempt to determine the fair market value of qualifying timber for an easement as of the date of the completed harvest rather than the date of the completed application.
- States legislative intent that the SFLO complete forestry riparian easement (FREP) applications within two years and removes the requirement that DNR must allow all small forest landowners to be eligible for alternative management plans if there is insufficient funding.
- Removes language specifying that funding through the Natural Climate Solutions Account for payments to the FREP are provided solely for the easement timber value and are not considered payment for the net carbon value of the timber remaining on-site.
- Makes technical and clarifying changes regarding the removal of the high impact regulatory threshold.

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 (Agriculture, Water, Natural Resources & Parks) (Regular Session 2023): *The committee recommended a different version of the bill than what was heard.* PRO: This bill is a proposed solution to a rule change that surprised several forest landowners in November. If implemented, there will be an increase in landowner participation with the DNR. Many landowners view themselves as environmental stewards and would like the ability to manage their land. FREP is currently backlogged by about 100 applications and hopes to catch up with the passage of this bill. It can currently take 4-7 years for some small forest landowners to receive their FREP compensation. There are some concerns with the bill, especially the alternative management plans, which was only intended to exempt the smallest forest landowners and if overapplied could lead to the deterioration of riparian buffers and have a significant impact on water quality. The DNR supports changes in the bill that would increase compensation and decrease lease terms. The forest practices rules and proposed rule changes have a disproportionate impact on small forest landowners. The 20-acre trigger in the bill is an

incentive for making sure there is sufficient funding to pay for FREP. Certain small forest landowners have had significant financial impacts from the inability to harvest due to the forest practices rules.

CON: There is support for funding for the FREP program. There are no limits in the bill for how the 20-acre exemption will work, which would allow how many times the exemption may be used. The bill contains a decrease in easement terms and an increase in the cost of the program. If payment of 90 percent of the easement is required the state should consider a permanent easement. If this program is not sufficiently funded, it will have health impacts on the residents of the Suquamish Tribe and will put much of the Suquamish land at risk. The streamside buffers are too small, especially for small streams, and will not be able to maintain a healthy riparian habitat or good water quality. There are additional concerns about the timber value that will be compensated. Increasing the cost of the program may lead to unintended consequences, and demand for natural climate funding already far exceeds what is available.

OTHER: This bill is generally good, but there are concerns regarding insufficient funding and the potential impacts to the 20-acre exemption rule, which could lead to poor water quality and reduced riparian buffers.

Persons Testifying (Agriculture, Water, Natural Resources & Parks): PRO: Senator Ron Muzzall, Prime Sponsor; Elaine Oneil, Washington Farm Forestry Association; Don Lentz; Ken Miller, Washington Farm Forestry Association; Alex Smith, Washington Department of Natural Resources.

CON: Debbie Kay, The Suquamish Tribe; Paula Swedeen, Conservation Northwest; Darcy Nonemacher, Washington Conservation Action.

OTHER: Tom O'Brien, WDFW; Vince McGowan, Ecology.

Persons Signed In To Testify But Not Testifying (Agriculture, Water, Natural Resources & Parks): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means) (Regular Session 2024): PRO: SSB 5667 offers improvements to the decades-old FREP program. According to DNR estimates, FREP payments are currently provided at 62 percent of the value of timber stock. This bill will increase the payments to 90 percent of the timber value. There have been concerns that DNR would see a dramatic increase in applicants to the program as a result of this bill, but DNR estimates there would be an additional 10 applicants per year. This is a simple fix that will help many small forest landowners who are tasked with managing land they cannot harvest.

Small forest landowners are currently struggling with harvest regulations. FREP is our best hope to meet the disproportionate impact findings of the small business economic statement in 1999. We have modified the current proposal in ways we believe will address the few

concerns we heard last year. The newly proposed lease terms better fit our harvest cycles.

Forty-five percent of our forestland is within regulatory leave areas, with thirteen percent in FREP easements. The timber our family logs is sold to mills for 100 percent of the value. It feels unfair that the state pays us for only half the value of timber in riparian buffers. The bill addresses that lack of fair compensation by increasing compensation from 50 percent to 90 percent for land we steward in part for water quality and fish habitat. The proposed 40 year easement is an even bigger deal as it aligns with our 40 year rotation practices.

Persons Testifying (Ways & Means): PRO: Senator Ron Muzzall, Prime Sponsor; Nora Palattao Burnes, Washington Farm Forestry Association; Ken Miller, Ken & Bonnie Miller's Family Forest; Orv Mowry.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.