

HOUSE BILL REPORT

ESB 6140

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to promoting the efficient and effective management of state-managed lands.

Brief Description: Promoting the efficient and effective management of state-managed lands.

Sponsors: Senators King, Van De Wege and Sheldon; by request of Department of Natural Resources.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/20/18, 2/21/18 [DPA].

**Brief Summary of Engrossed Bill
(As Amended by Committee)**

- Brings into alignment the maximum length of leases for certain state-owned aquatic lands.
- Provides that the Department of Natural Resources (DNR) may, rather than must, plat certain aquatic lands.
- Authorizes the DNR to market certain uplands through a real estate broker without first offering them for sale at public auction.
- Authorizes the DNR to transfer certain real property directly, without public auction, to lessees who are currently leasing the property for a home site.
- Directs the DNR to conduct an evaluation of its lands portfolio, revenue streams, management practices, and transaction processes, in order to ensure that its fiduciary duty is being met.
- Requires the DNR, as part of the evaluation, to track certain values generated by state trust lands and state forestlands, including, among others, forestland, irrigated and non-irrigated agricultural land, ecosystem services, and recreation benefits.
- Requires the DNR to use the services of a contractor to perform an independent asset valuation of the trust land portfolio and revenue streams in comparison to other lands regulated by the DNR.

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.

- Directs the DNR to evaluate certain industrial and commercial leases and easements on state-owned aquatic lands relating to certain matters including lease terms, annual revenues, and inspection and compliance efforts.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass as amended. Signed by 10 members: Representatives Blake, Chair; Chapman, Vice Chair; Buys, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Lytton, Orcutt, Pettigrew, Robinson, Springer and Stanford.

Minority Report: Do not pass. Signed by 3 members: Representatives Fitzgibbon, Schmick and Walsh.

Staff: Robert Hatfield (786-7117).

Background:

Department of Natural Resources.

The Department of Natural Resources (DNR) manages a number of different categories of land on behalf of Washington, each for a specific purpose and under different management requirements.

These include approximately 3 million acres of federally granted lands and state forestlands, which the DNR manages to support common schools, counties, and other public institutions. These lands were granted to the state upon statehood.

The DNR also manages more than 600,000 acres of state forestlands, which were acquired primarily through tax foreclosures in the 1920s and 1930s, and to a lesser extent through purchases by the state or gifts to the state. State forestlands are managed for the benefit of the counties in which the lands are located.

The DNR also manages over 2 million acres of tidelands, shorelands, and bedlands. This includes the beds of all navigable rivers and lakes, along with the beds below the Puget Sound.

Board of Natural Resources.

The Board of Natural Resources (Board) sets policies to guide how the DNR manages the state's lands and resources. The Board has several responsibilities: (1) approve or disapprove trust land timber and mineral sales; (2) establish the sustainable harvest level for forested trust lands; (3) approve or disapprove sales or exchanges of trust lands; and (4) guide the DNR's stewardship of state Natural Area Preserves, Natural Resources Conservation Areas, and aquatic or submerged lands.

Types of Aquatic Lands.

There are several different types of aquatic lands, including:

- tidelands, which are generally the shores of tidal waters between the line of ordinary high tide and the line of extreme low tide;
- shorelands, which are generally the shores of a navigable lake or river lying between the line of ordinary high water and the line of navigability; and
- bedlands, which are generally aquatic lands waterward of the line of navigability in rivers and lakes, and waterward of extreme low tide in tidal waters.

Tidelands and shorelands that are in front of or within two miles of a city are considered first class, and those more than two miles from a city are considered second class.

The DNR must plat all first class tidelands and shorelands that have not been previously platted.

Lease Terms for Aquatic Lands.

First class tidelands and shorelands that have been platted may be offered for lease by the DNR, but the DNR is required to provide the owner of adjoining uplands a preferential right to apply to lease such tidelands or shorelands.

Maximum lease terms for first class tidelands and shorelands differ depending on whether or not the land is platted. For example, tidelands and shorelands generally can be leased for 55 years, but this is limited to 10 years for unplatted first class tidelands and shorelands and five years for a re-lease of the land. Bedlands may generally be leased for 30 years, but this is limited to 10 years if the bedlands are in front of unplatted first class tidelands or shorelands.

Constitutional Requirements Concerning the Sale of Public Lands.

All of the lands granted by the United States to Washington upon statehood are held in trust for the people of Washington, and such lands may not be disposed of unless the state obtains full market value for the property.

Article XVI, section 2 of the Washington State Constitution provides that none of the land granted to the state for educational purposes may be sold other than at public auction to the highest bidder, and for no less than the appraised value of the land.

Statutory Requirements Concerning Land Transfers.

With the approval of the Board, the DNR is authorized by statute to transfer or dispose of real property, without public auction, in the following circumstances: transfers in lieu of condemnation; transfers to public agencies; and transfers to resolve trespass and property ownership disputes. Such transfers or disposals may occur only after appraisal, for no less than fair market value, and only if such a transaction is in the best interest of the state or the affected trust.

Statutory Requirements Concerning Land Sales.

With specified exceptions, all sales of public lands that are administered by the DNR must be at public auction, to the highest bidder, and for no less than the appraised value. There is an exception for land that the state has acquired other than through a grant by the United States, such as through escheat, deed of sale, gift, devise, or property tax foreclosure. Such land must initially be offered for sale either at public auction or by direct sale to public agencies. If such lands are not sold at public auction, the DNR may, with the approval of the Board,

market such lands through a licensed real estate broker or other commercially feasible means, at a price not lower than the land's appraised value.

Sustained Yield.

The DNR is required to manage forested state trust lands on a sustained yield basis. To achieve a sustained yield, the DNR must manage the state's forests to provide a continuing harvest level without any prolonged curtailments or cessation of harvests. As part of this obligation, the DNR must periodically adjust the tracts of land that are included in the sustained yield management program and calculate a sustainable harvest level accordingly.

Arrearage.

Arrearage constitutes the volume of timber that was expected to be sold over the course of a planning decade based on the DNR's sustained yield calculations, but was not. That shortage may then result in lower than expected revenues for trust beneficiaries, which can then in turn impact the ability of the trust beneficiaries to meet their financial obligations.

If an arrearage exists at the end of a planning decade, the DNR must conduct an analysis of the arrearage to determine the course of action regarding the arrearage that provides the greatest return to the trusts, based both upon economic conditions and upon the impacts to the environment that would result from harvesting the additional timber. The DNR must offer for sale the arrearage volume of timber in addition to the sustainable harvest level volume of timber for the next planning decade, if the DNR's analysis determines that doing so will provide the greatest return to the trusts.

Summary of Amended Bill:

The maximum term of lease for all bedlands is 30 years.

The maximum term of lease for all first class tidelands and shorelands is 55 years.

The DNR may, but is not required to, survey and plat unplatted tidelands and shorelands.

State Upland Sales and Transfers.

The requirement that lands not be sold at public auction before the DNR may market the property through a real estate broker is removed.

The DNR is authorized to transfer directly to a lessee, without going through public auction, land that the lessee is currently leasing from the DNR for purposes of a home site.

Department of Natural Resources Uplands Evaluation.

Within existing appropriations, the DNR must evaluate its lands portfolio and revenue streams, among other things, and must develop options and recommendations to ensure the state's fiduciary duty is being met and to increase the amount and stability of revenue from state lands and state forestlands over time.

The DNR must develop methods or tools to estimate the current asset value of state lands and state forestlands. The methods should be designed to be as accurate and resource efficient as possible and be designed to allow repeated estimates over time. The methods must allow for the segregation of different asset classes, and at a minimum allow for the tracking of values over time for the following: forestland, irrigated agricultural land, nonirrigated agricultural land, commercial real estate land, ecosystem services, and recreation benefits.

The DNR must use the services of a contractor to perform an independent evaluation of the current asset value of the trust land portfolio and revenue streams in comparison to other lands regulated by the DNR.

The DNR must provide a final report to the appropriate committees of the Legislature by June 30, 2020, and must provide progress reports by December 1, 2018, and December 1, 2019.

Department of Natural Resources Aquatic Lands Lease Evaluation.

Within existing appropriations, the DNR must evaluate leases and easements of state-owned aquatic lands for industrial and commercial uses. The evaluation must address, among other topics:

- a summary of each lease and easement, including lease term, rental rate, and use conditions;
- a summary of the methods used to value each lease and easement;
- a description of inspection and monitoring efforts completed over the previous 10 years relating to compliance with the terms of the leases and easements, as well as compliance with water quality and other environmental, public health, and safety standards;
- a description of inspection and monitoring requirements under the terms of the leases and easements, as well as under local, state, and federal law; and
- a description of the lease and easement compliance activities performed by the DNR to ensure protection of the state's aquatic resources.

The DNR must submit the evaluation, along with any recommendations for legislative or administrative actions, to the appropriate policy and fiscal committees of the Legislature by December 1, 2018.

Amended Bill Compared to Engrossed Bill:

The scope of the evaluation of the DNR's lands portfolio is modified. The DNR is required to use the services of a contractor to perform an independent evaluation of the current asset value of the trust land portfolio.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill started as a request from the DNR. It had an amendment that added on elements of Senate Bill 6539 (SB 6539), and came out of the Senate on a 43–4 vote. It does some good things. At least half of this bill was a bill from last year. One part of the bill that is of considerable concern is allowing for transfer of lands to an existing lessee. There have been claims that the bill raises constitutional considerations, but it does not appear that the bill raises constitutional problems. There is a family in Bickleton who has leased a home site for many years. The DNR would like to sell it, and this bill would allow the family to buy it without having to go to auction. This is similar to the way that the Washington State Department of Transportation sells certain property by providing a preferential right of purchase to the abutting landowner. There are approximately 43 parcels of property around the state in this situation.

The forest products sector is the backbone of many rural communities. One timber milling company employs over 500 employees in the state, and they are family wage jobs with benefits. State forestlands generate revenue for public services, such as schools. The DNR lands are critical to timber mills. A valuation of Washington's trust lands is a good idea. A trust valuation has not been done since the 1990s. The valuation should look at each individual trust and should be done by a third-party contractor familiar with forest land valuation. Ultimately, the Legislature is the trustee of the trusts, and the Legislature should have a say in trust land management.

The University of Washington has a research dock on Friday Harbor. It is located on unplatted first class tidelands and so the lease has to be renewed every five years. It would be good to have a longer term lease, which would allow the University of Washington to make longer term investments.

Achieving sustainable, reliable timber harvest is important. The timber industry provides more than 630 direct jobs, and more than 1,400 total jobs and \$78 million in revenues in Clallam County. There are 1.3 induced jobs per timber job. About 20 percent of the timber supply in Clallam County each year originates on state trust lands. There is room to bring mass timber technology to the Olympic peninsula, which is currently in use in British Columbia. It is good public policy for the Legislature to be informed as to the top value of trust assets. There is some concern regarding the concept of a unitary trust because of the accountability of individual trusts to junior taxing districts.

There are trust lands that benefit schools, and there are trust lands that benefit counties, and they are different trusts. County trust lands provide revenue to counties and to junior taxing districts. There has been a decline in timber sales on these lands over the years; as a result, counties have been severely and unequally impacted. There is support for section 6: it is a study and review that examines how to look at all the things that need to be looked at. It does not create an action; it creates a study that would be submitted to the Legislature. Clallam County looked at taking county trust lands back a couple of years ago and decided against it. The arrearage study is important because there can be winners and losers under

the current system as a result of unequal impacts. Studies have shown that recreation on public lands can bring in benefits to urban areas, but those benefits do not always flow to the county, and it is the county that takes on certain financial obligations related to that recreation, such as finding lost people.

The Capital Budget Committee recently heard about funding shortfalls for school construction. Senate Bill 6140 (SB 6140) only provides information; it does not lead to an increase in harvesting timber or a sell-off of land. The Legislature is responsible for upholding Enabling Act provisions and must manage trust lands with undivided loyalty. If there is a decision made to use lands for purposes other than providing revenue, there is a need to figure out how to pay for that. The information that would be provide by this bill will reveal how the trust lands are being managed, and if there are other ways to manage the trust lands. The DNR takes a 31 percent fee for management of uplands, and it would be useful to know how that compares to what a private company would charge.

If a person is an environmentalist, that person should want good forest management in Washington. section 6 calls for a report; it is just attempting to get at some of the current vexing issues. Forty-two percent of DNR trust lands are currently not being managed; rather, they are being set aside for conservation. It is important to know how much an asset is worth and how much should it be generating. A lot has happened since last the trust lands valuation, including the implementation of the Habitat Conservation Plan (HCP), and there may have been between 60,000 and 70,000 acres lost to the trust lands transfer program. There are pros and cons to both unitary trust and private management. An HCP allows some take of listed species, but an HCP then makes up for that take with conservation benefits elsewhere. The state set aside 42 percent of the trust lands land base for conservation through the HCP in order to have certainty on the remaining 58 percent. The currently proposed amendment to the HCP would reduce the amount of land set aside for conservation to 45 percent. But some counties would be particularly hard hit, and the question needs to be asked whether the impact to trust lands is worth the certainty. The concept of a unitary trust would be just for county trust lands. Some counties would be donor counties, and some would be donee counties.

(Opposed) There is concern about the analysis required by section 6 and the risk of harming forests and overharvesting them. There is an awareness that the timber industry in the state provides money for the economy and for local governments; but there is opposition to increasing reliance on timber revenue. Hiking trips in the state reveal clearcuts and harm to animals from timber harvesting practices. The state and counties do not need more revenue from forestlands and do not need to sell these lands for profits. There needs to be more done to conserve trees. Section 6 looks like a big way of getting trees cut down, which is the opposite direction of where the state needs to go. Forests need protection.

Section 6 of the bill is going back in time to when people viewed forests only in terms of timber production value. Society has moved beyond that, and beyond ignoring recreational and water quality values. Section 6 appears to be designed to maximize the monetary value of forests. Giving public lands to a private company will emphasize short-term profits rather than long-term value. Turning over public lands to private developers will set a bad example and bad precedent. There are some good parts of SB 6140, but section 6 is a problem.

This bill was a good bill that became messy and complicated. State trust lands have to comply with state law while also meeting fiduciary obligations. Asset valuation is a good idea and is consistent with House Bill 2285. Having that information helps land managers be creative. There is opposition to section 6 of the bill. Under current law, if forestlands go back to counties, they can only be used for parks. There is opposition to the language in the bill regarding arrearage; the current arrearage calculation has been heavily negotiated and approved by the Board of Natural Resources. A trust land valuation should also include ecosystem values and recreational values.

There is opposition to section 6(1) of the bill. State trust lands are managed for benefit of beneficiaries, and there is a need to find creative solutions. The language in section 6(1) goes in the wrong direction and does not set the proper context for creative solutions.

There is opposition to the suggestion that state trust lands are under-logged. Some state trust lands must be preserved for other values, and these are values, such as recreation, that also produce revenue.

There is a no-surprises clause in the HCP. If section 6 is passed and results in agreements on how lands are managed, that could throw the viability of the HCP into doubt, since it would be a foreseen circumstance, rather than a surprise circumstance. Populations of marbled murrelets are declining. There is a 10-year report on the HCP published by DNR that describes the miles of roads removed, the many fish barriers removed, and the many miles of stream habitat that have been opened up. That progress could be jeopardized by the passage of this bill.

(Other) This bill would align lease terms for unplatted and platted tidelands and shorelands. The bill would provide greater flexibility to lessees and create greater efficiencies. It is a clean-up bill in that respect. With regard to section 7 of the bill, the DNR is happy to do the analysis called for in that section. There is no funding provided for the analysis, and the analysis will take a significant amount of staff time. There may be room to narrow scope of that analysis in order to reduce the fiscal note.

The DNR supports most of the language in the bill. The DNR is a strong proponent of asset evaluation. There are concerns regarding the arrearage language. There has been some concern expressed about the subsection of the bill related to management of trust lands by timber investment management organizations. Regarding the sale of current home site leases, the DNR would retain most of the land around the homesite. The DNR considers the homes on these homesites as a liability and would prefer to not be managing them. Different counties have different trusts, and different counties are impacted by different factors. Under current structure, an individual beneficiary can lose out as a result of certain land management decisions, but when you make all the smaller trusts into one large trust, you eliminate the winners and losers. It is unclear at this point how the bill would change the DNR lands portfolio. What makes the DNR the most money are the DNR's commercial lands, agricultural lands, and timber lands. Without doing an analysis, it is hard to know how that would change as a result of the bill. The language of the bill may need some work, and the DNR would want to work with the chair of the committee and the sponsor of the bill on that. Concerns have been raised regarding language in the bill.

Persons Testifying: (In support) Senator King, prime sponsor; Doug Cooper, Hampton Lumber; Joe Dacca, University of Washington; Laura Berg, Washington State Association of Counties; Bruce Beckett, Port of Port Angeles; Brian Sims, Washington State School Directors Association; and Heath Heikkila, American Forest Resource Council.

(Opposed) Kristen Bryant; Paul Gould; Darcy Nonemacher, Washington Environmental Council; Bruce Wishart, Sierra Club; Paula Swedeen, Conservation Northwest; and Cindy Levy.

(Other) Kristin Swenddal and Brock Miliern, Department of Natural Resources.

Persons Signed In To Testify But Not Testifying: None.