

HOUSE BILL REPORT

HB 1251

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to protecting forest health.

Brief Description: Protecting forest land from exotic forest insects or diseases.

Sponsors: Representatives Eickmeyer, Schoesler, Linville, Sump, Quall, Rockefeller and Haigh; by request of Commissioner of Public Lands.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/11/03, 3/5/03 [DPS].

Brief Summary of Substitute Bill

- Provides authority and direction to the Department of Natural Resources to declare a forest health emergency.
- Exempts certain forest health emergency control operations from some of the requirements of the Forest Practices Act.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Linville, Chair; Rockefeller, Vice Chair; Schoesler, Ranking Minority Member; Kristiansen, Assistant Ranking Minority Member; Eickmeyer, Grant, Hunt, McDermott, Orcutt, Quall and Sump.

Minority Report: Do not pass. Signed by 2 members: Representatives Holmquist, Assistant Ranking Minority Member; and Chandler.

Staff: Jason Callahan (786-7117).

Background:

The Department of Natural Resources

The Legislature declared in 1951 that forest insects and forest tree diseases that threaten

permanent timber production in Washington are public nuisances. In response, the Department of Natural Resources (DNR) and the private forest landowners in the state were given specific direction by the Legislature as to how forest health should be protected.

The initial responsibility to protect forest health belongs to the landowner. Forest landowners are required to make every reasonable effort to control or eradicate forest insect pests and diseases that threaten a stand of timber. If a landowner fails in this duty, the DNR may involve itself in forest health maintenance operations.

The DNR is required to declare an Infestation Control District for any area of timber lands that is threatened with insect or disease infestations, or that has already become infested. Once an Infestation Control District is established, the DNR must notify all landowners within the district that they are required to control or destroy the pests or disease.

If the landowner within an Infestation Control District is unable or unwilling to address the infestation, the DNR has the duty to proceed with infestation control and eradication efforts, even if the landowner does not provide consent. Up to 25 percent of any expenses incurred by the DNR in conducting a pest or disease control operation on private land, that is not otherwise funded, becomes the responsibility of the landowner.

The Department of Agriculture

In addition to the DNR, the Washington State Department of Agriculture (WSDA) is also authorized to address plant pests and diseases. The Director of the WSDA can ask the Governor to order emergency pest control measures if there is an eminent danger of a plant pest or disease infestation that threatens the agricultural or horticultural industries or that seriously threatens life health, or economic well-being. If the Governor declares an emergency, the Director of the WSDA may implement emergency measures to prevent, control, or eradicate the identified plant pests or diseases.

Forest Practice Rules and Forest Health

All pest and disease control efforts occurring on non-tribal or non-federal land are subject to the forest practice rules. The rules include the approval of a forest practices application before any significant forest practice operations are undertaken.

Summary of Substitute Bill:

Forest Health Emergency

The DNR is expressly authorized to contribute resources and expertise to the WSDA in

pest control and eradication efforts. However, if the WSDA fails to take action, or if the Commissioner of Public Lands (Commissioner) finds that efforts beyond those undertaken by the WSDA are required to control or prevent an immediate danger to native trees, a forest health emergency can be declared by the Commissioner.

Once an emergency is declared, the DNR must map out the area at risk and determine the most appropriate integrated pest management technique to control the outbreak and notify landowners of their intent to conduct control operations. The DNR is authorized to enter into agreements with individuals, companies, landowners, tribal entities, and the federal government to accomplish control operations; however, it may proceed with the control of exotic forest insects or diseases without the cooperation of an affected property's owner. If a landowner cooperates, the DNR has the discretionary authority to reimburse the landowner for the actual costs of equipment, labor, and materials used by the DNR to conduct the operation.

A forest health emergency is over when the DNR finds that the exotic forest insect or disease has been controlled and that the imminent threat no longer exists, or when there is no longer a good likelihood of effective control.

Exemptions to Forest Practice Applications

Exotic insect and disease control applications carried out by the DNR or the WSDA may go forward without the filing of a forest practices application. To the extent possible, all forest health control operations must notify the DNR and still abide to the forest practice rules relating to road construction and maintenance, timber harvest, forest chemicals application, and reforestation. Upon notification, the DNR staff must consult with the landowners and any interested agencies, including the Department of Ecology and affected tribes. The exemption from filing a forest practices application does not exempt the actor from compliance with the Clean Water Act.

Substitute Bill Compared to Original Bill:

The original bill repealed existing law as it relates to native forest pests and diseases, including the creation of infestation control districts, the requirement that notice be published in newspapers, the ability to act on a landowner's behalf to conduct an infestation control action, and the ability to place a lien on land where the DNR has acted to control a forest health situation.

The original bill also: 1) contained direction that DNR forest health activities must be directed first to communities with the greatest decline in forest health and risk for wildfire; 2) created a first-tier "forest area of concern" designation when a forested area is facing a threat from native pests and diseases; 3) did not contain a limit on the DNR's authority to declare a forest health emergency to instances when insects or diseases have become so habituated that they can not be eradicated, and to those threats that do not

cause an imminent threat to the forest environment; 4) did not require the DNR to consult with landowners and affected tribes when determining the most appropriate integrated pest management approach to control a forest health emergency; 5) did not require approval of a forest practices application for any emergency control measures when eradication of the threat can not be reasonably expected; and 6) did not include a definition of "forest land."

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (Original bill) Washington's forests are vulnerable to forest-destroying diseases, pests, and fire. This bill will deliver a more focused and efficient response to this problem.

Exotic diseases and pests can have grave consequences for a forest, and this bill maintains aggressive pest control authority for dealing with exotics. At the same time, current forest health statutes fail to recognize the positive contributions that many native species bring to the forests. The bill immediately improves the state's ability to deal with an exotic threat, and helps the state to build a resistance to future infestations.

The citrus long-horned beetle breakout in Tukwila this summer exposed a gap in pest control coverage. The forest practice laws and the WSDA's pest control authority could have easily conflicted, leaving WSDA unable to respond. The bill fills that gap and allows the DNR's forest practices staff to assist the WSDA. All of the state's agencies should have the same capacity to work together to deal with exotic forest pests.

The DNR has forestry expertise, and should have the tools it needs to deal with forest pests. This is important, because a small forest landowner could have his or her entire timber stand wiped out by one outbreak.

(In support with concerns) (Original bill) This bill may be too process oriented, which could limit the DNR's ability to be aggressive in addressing pest and disease issues. The bill should also have a lower trigger for establishing an emergency.

The bill does not address the serious issues of federal and tribal lands that neighbor private and state lands.

Testimony Against: None.

Testified: (In support) Karen Ripley, Department of Natural Resources; and Nels Hanson, Washington Farm Forestry Association.

(In support with concerns) Bill Garvin, Washington Forest Protection Association; and Bill Robinson, The Nature Conservancy.