

SHB 1421 - H AMD 243

By Representative Tharinger

ADOPTED 03/05/2011

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that since the  
4 1980s, about seventeen percent of Washington's commercial forests have  
5 been converted to other land uses.

6 (2) The legislature further finds that as these forests vanish, so  
7 do the multiple benefits they provide to our communities such as local  
8 timber jobs, clean air and water, carbon storage, fish and wildlife  
9 habitat, recreation areas, and open space.

10 (3) The legislature further finds that it has provided policy  
11 direction to the department of natural resources to protect working  
12 forest and natural resource lands at risk of conversion, while  
13 maintaining the department's obligation to manage the state's fiduciary  
14 trust lands and financial assets in the interest of the beneficiaries  
15 of the respective trust lands and assets.

16 (4) The legislature further finds that there are numerous tools  
17 available to acquire open space and recreation lands, but limited tools  
18 to protect working forest lands.

19 (5) The legislature further finds that currently the department of  
20 natural resources lacks a full complement of policy and management  
21 tools necessary to protect or manage working forest lands at high risk  
22 of conversion.

23 (6) The legislature further finds that through modest enhancements  
24 to existing department of natural resources' programs and authorities,  
25 the legislature can expand Washington's ability to protect communities'  
26 working forest lands, while simultaneously improving the revenue  
27 generating performance of fiduciary trust lands managed by the  
28 department of natural resources.

29 (7) The legislature further finds that there has been past and

1 present legislative intent to ensure continued public access for  
2 recreation compatible with the purposes of the lands involved.

3 (8) The legislature further finds that there exists an interest by  
4 local communities, governments, and conservation organizations in  
5 cooperating in the establishment of working community forests.

6 NEW SECTION. **Sec. 2.** (1) If deemed practicable by the  
7 commissioner, the department is authorized to create and manage,  
8 consistent with the provisions of this chapter, a discrete category of  
9 natural resource lands in a nonfiduciary community forest land trust.  
10 The department is authorized to assemble, hold title to, and manage  
11 directly or through mutual agreement with other landowners land  
12 suitable for sustainable forest management, to be held in the community  
13 forest trust.

14 (2) All land held in the community forest trust must be held by the  
15 department and actively managed, consistent with a community working  
16 forest management plan developed under section 8 of this act, to  
17 generate financial support for the management of the community forest  
18 trust and to advance and sustain the working forest conservation  
19 objectives established in the management plan.

20 NEW SECTION. **Sec. 3.** (1) The department must identify lands for  
21 inclusion into the community forest trust, and manage the resulting  
22 community forest trust lands, in furtherance of goals that must be  
23 identified by the department prior to the creation of a community  
24 forest.

25 (2) In addition to any goals for a community forest identified by  
26 the department, the community forest trust program must satisfy the  
27 following minimum program management principles:

28 (a) Protecting in perpetuity working forest lands that are at a  
29 significant risk of conversion to another land use;

30 (b) Securing financial and social viability through sound  
31 management plans and objectives that are consistent with the values of  
32 the local community;

33 (c) Maintaining the land in a working status, through traditional  
34 forestry, management of specialized forest products harvest consistent  
35 with chapter 76.48 RCW, land leases, renewable energy opportunities,

1 ecosystem services such as clean water protection or carbon storage,  
2 and other sources of revenue appropriate for the community forest to  
3 generate;

4 (d) Generating revenue at levels that are, at a minimum, capable of  
5 reimbursing the department for management costs and providing for some  
6 reinvestment into the management objectives of the community forest;

7 (e) Providing for ongoing, sustainable public recreational access,  
8 local timber jobs, clean air and water, carbon storage, fish and  
9 wildlife habitat, and open space in a manner that is compatible with  
10 management plans and objectives adopted for the community forest; and

11 (f) Providing educational opportunities for local communities  
12 regarding the benefits that working forests provide to Washington's  
13 economy, communities, environment, and quality of life.

14 NEW SECTION. **Sec. 4.** (1)(a) Except as limited by section 7 of  
15 this act, the department is authorized to acquire by purchase, gift,  
16 donation, grant, transfer, or other means other than eminent domain fee  
17 interest or a partial interest, including conservation easements, in  
18 lands or other real property suitable for management as part of the  
19 community forest trust and that are appropriate to further the goals of  
20 the community forest trust.

21 (b) The fair market value of any real property, and the associated  
22 valuable materials, of any land transferred into the community forest  
23 trust from state lands must be provided to the beneficiaries of the  
24 transferee trust or used for the furtherance of the transferee trust.

25 (2) The department is authorized to receive funds for purposes of  
26 establishing the community forest trust from grants, gifts, bequests,  
27 or loans, whether public or private, as well as from legislative  
28 appropriation.

29 (3) All acquisitions of real property for the community forest  
30 trust must be approved by the board.

31 NEW SECTION. **Sec. 5.** (1) The department shall, if it establishes  
32 a community forest trust program, develop criteria to be used for the  
33 identification and prioritization of forest land that is suitable for  
34 potential inclusion in the community forest trust due to its ability to  
35 most closely satisfy the goals of the community forest trust outlined  
36 in section 3 of this act.

1 (2) In prioritizing forest land for inclusion in the community  
2 forest trust, the department shall give priority consideration to lands  
3 that are:

4 (a) The subject of established management and revenue production  
5 objectives of potential local community partners;

6 (b) At greatest risk of conversion;

7 (c) Helping buffer commercial public or private forest lands from  
8 encroaching development;

9 (d) Helping to block up other community forest assets to be managed  
10 consistently with the community forest trust acquisition;

11 (e) Able to be managed, considering surrounding current or expected  
12 future land use, as economically sustainable working forest land either  
13 alone or in combination with adjacent and nearby working forest land,  
14 including other lands incorporated into a community forest by the  
15 department, a local governmental entity, or a not-for-profit  
16 conservation organization managing forest lands;

17 (f) Eligible for trust land transfer capital appropriations;

18 (g) Available for acquisition through existing or new programs or  
19 funding;

20 (h) Supporting existing or expanded forest product manufacturing  
21 infrastructure;

22 (i) Useful in leveraging funds to match available acquisition  
23 moneys;

24 (j) Positioned to have their development rights extinguished  
25 through transfer, purchase, conservation easement, lease, or by some  
26 other comparable mechanism; or

27 (k) Enhancing state fiduciary trust land revenues by repositioning  
28 underperforming state trust lands to provide short and long-term  
29 revenues to that trust.

30 NEW SECTION. **Sec. 6.** (1) The department shall, if it establishes  
31 a community forest trust program, submit biennially to the office of  
32 financial management and the appropriate committees of the legislature  
33 a prioritized list that identifies nominated parcels of state land or  
34 state forest land that are suitable for transfer into the community  
35 forest trust, where such a transfer is also in the best interest of the  
36 respective trust. The department shall solicit and consider input from  
37 the board on a draft list before submitting a final prioritized list.

1 (2) The list of nominated parcels must reflect consideration of  
2 local nominations and the priorities outlined in section 5 of this act  
3 and be delivered to the required recipients by November 1st of each  
4 even-numbered year.

5 NEW SECTION. **Sec. 7.** (1) The department must, prior to using the  
6 authority provided in section 4 of this act to acquire land for  
7 inclusion in a community forest, obtain from the local community a  
8 commitment to preserving the land as a working forest.

9 (2) Following initial agreement between potential local community  
10 partners and the department regarding management and revenue production  
11 objectives for the lands in question, the local commitment to  
12 preserving the land as a working forest must be demonstrated by the  
13 county, city, or other local entity providing a financial contribution  
14 to the specific community forest of at least fifty percent of the  
15 difference between the parcel's appraised fair market value and the  
16 parcel's timber and forest land value. The local community  
17 contribution may be provided through any means deemed acceptable by the  
18 department and the local contributor, including:

- 19 (a) Traditional financing or bonding;
- 20 (b) The purchase of conservation easements; or
- 21 (c) The purchase or transfer of development rights.

22 (3) The local financial contribution must be deposited into the  
23 park land trust revolving fund created in RCW 43.30.385 and used solely  
24 for acquisition of the community forest trust land parcel or parcels  
25 for which it is intended.

26 NEW SECTION. **Sec. 8.** (1) All lands transferred into community  
27 forest trust status must be managed in accordance with a  
28 postacquisition management plan developed by the department consistent  
29 with this section.

30 (2) After exercising the authority provided in section 4 of this  
31 act to acquire land for inclusion in a community forest, the department  
32 must establish a local advisory committee in cooperation with any  
33 interested and affected local government.

34 (3) The department must use the local advisory committee as a  
35 source of advice and comment on a postacquisition management plan.  
36 Comments and advice should, at a minimum, include plans for how the

1 department will maintain the land's working status and economic  
2 viability objectives through revenue-generating activities that are  
3 sufficient to generate ongoing revenue at a level that reimburses  
4 administrative costs, while satisfying, or contributing to, identified  
5 community conservation and recreation objectives.

6 (4)(a) If, after a good faith effort by all parties, the department  
7 and the local advisory committee fail to reach a consensus on a  
8 conceptual postacquisition management plan for the parcel in question,  
9 the department may either adopt a management plan informed by the  
10 community or recommend to the board that the parcel be divested through  
11 the existing authority of the department and the board. If the parcel  
12 is divested, then, except as otherwise provided in this subsection,  
13 proceeds must return to the park land trust revolving fund created in  
14 RCW 43.30.385.

15 (b) Prior to depositing the proceeds of a land divestiture under  
16 this subsection to the park land trust revolving fund, the department  
17 must first reimburse local entities that have made financial  
18 contributions to the parcel's acquisition as provided in section 7(2)  
19 of this act. However, local entities are only eligible for  
20 reimbursement upon divestiture under this subsection if the board  
21 determines that:

22 (i) The subsequent parcel use is likely to remain a working forest,  
23 the department secures full fair market value for the parcel, and the  
24 local entity's contribution was not provided by a state or federal  
25 grant; or

26 (ii) The funds used as part of the local contribution were  
27 originally provided through a grant that requires, as a condition of  
28 the grant, the repayment of granted dollars if the purposes of the  
29 grant are not or cannot be fulfilled and the decision to divest the  
30 land creates an inability for the purposes of the grant to be  
31 fulfilled.

32 NEW SECTION. **Sec. 9.** (1) Any revenue produced on community forest  
33 trust lands must be, consistent with RCW 79.64.040, allocated as  
34 follows:

35 (a) All costs incurred by the department in managing the parcel  
36 must be fully reimbursed; and

1 (b) After the department's management costs are reimbursed, any  
2 remaining revenue must then be prioritized to fulfill the management  
3 objectives for the specific parcel as identified in the postacquisition  
4 management plan developed under section 8 of this act consistent with  
5 the management principles outlined in section 3 of this act.

6 (2)(a) If, by the determination of the board, there is revenue  
7 remaining in any given biennium after fulfilling the requirements of  
8 subsection (1) of this section, then the board has the discretion to  
9 reimburse any local entities' eligible financial contributions for  
10 acquisition of the parcel under section 7(2) of this act and any state  
11 contribution to the acquisition of the parcel up to an amount that  
12 represents fifty percent of the difference between the parcel's  
13 original appraised fair market value and the parcel's timber and forest  
14 land value. However, any funds used as part of the local contribution  
15 may not be reimbursed if the funds were originally provided through a  
16 state or federal grant, provided through a fully compensated transfer  
17 of development rights at fair market value, or provided by a donation  
18 of funds or property.

19 (b) If the board decides to reimburse the state and local  
20 contribution, then it must allocate the reimbursement so that fifty  
21 percent is provided to the state general fund and fifty percent is  
22 provided to any eligible partnering local entities.

23 (c) Nothing in this section creates an expectation, requirement, or  
24 fiduciary duty for the board or the associated community forest trust  
25 lands to generate revenue in excess of amounts as provided in  
26 subsection (1)(a) of this section.

27 NEW SECTION. **Sec. 10.** By September 1, 2014, and periodically, but  
28 at least once every ten years thereafter, the department shall provide  
29 to the board a review and update of the community forest trust program.  
30 The review must include updates on the performance of the community  
31 forest trust statewide and notification of any community forest trust  
32 parcels not performing according to their management plan. The  
33 department is authorized to, consistent with this chapter, recommend to  
34 the board action to divest itself of nonperforming community forest  
35 trust parcels using existing policies and mechanisms available to the  
36 department and the board.

1        NEW SECTION.    **Sec. 11.**    (1) The commissioner may establish and  
2 maintain a statewide advisory committee to assist the department in the  
3 implementation of this chapter.

4        (2) If a statewide advisory committee is established, the  
5 commissioner shall appoint a balanced representation of interests on  
6 the committee, including representatives of state fiduciary trust land  
7 beneficiaries, tribal governments, local governments, relevant state  
8 agencies, commercial forest landowners, land trusts, and conservation  
9 organizations.

10       (3) The statewide advisory committee shall provide consultation on  
11 issues and questions presented by the commissioner and may be dissolved  
12 by the commissioner at any time.

13       (4) Participation on the statewide advisory committee is voluntary  
14 and members are not eligible for any form of compensation nor for  
15 reimbursement for expenses incurred due to service on the committee.

16       NEW SECTION.    **Sec. 12.**    (1) The commissioner may, if deemed  
17 practicable and beneficial by the commissioner, cooperate with  
18 interested local governments in establishing community forest districts  
19 or local working forest districts that are compatible with the goals  
20 identified in this chapter for the community forest trust. Cooperative  
21 districts would attempt to voluntarily synchronize the management of  
22 community forest trust lands, other public lands, and private lands  
23 located within a certain geographic area to further a common set of  
24 community goals. If a working forest district encompasses state lands  
25 or state forest lands, then their voluntary management to further a  
26 common set of community goals must be consistent with the department's  
27 fiduciary and other legal obligations to the trust, including the  
28 multiple use act in chapter 79.10 RCW.

29       (2)(a) The department may, in its sole discretion and if it deems  
30 sufficient funding to be available, provide technical assistance grants  
31 to local communities for the purpose of enabling or furthering the  
32 development of community forest management plans consistent with this  
33 chapter.

34       (b) This subsection does not create a private right of action.

35       **Sec. 13.**    RCW 79.17.210 and 2003 c 334 s 118 are each amended to  
36 read as follows:



1 (1) The legislature finds that the department has a need to  
2 maintain the real property asset base it manages and needs an  
3 accounting mechanism to complete transactions without reducing the real  
4 property asset base.

5 (2) The natural resources real property replacement account is  
6 created in the state treasury. This account shall consist of funds  
7 transferred or paid for the disposal or transfer of real property by  
8 the department under RCW 79.17.200 and the transfer of state lands or  
9 state forest lands into community forest trust lands under section 4 of  
10 this act. The funds in this account shall be used solely for the  
11 acquisition of replacement real property and may be spent only when,  
12 and as, authorized by legislative appropriation.

13 **Sec. 14.** RCW 43.30.385 and 2009 c 354 s 9 are each amended to read  
14 as follows:

15 (1) The park land trust revolving fund is to be utilized by the  
16 department for the purpose of acquiring real property, including all  
17 reasonable costs associated with these acquisitions, as a replacement  
18 for the property transferred to the state parks and recreation  
19 commission, as directed by the legislature in order to maintain the  
20 land base of the affected trusts or under RCW 79.22.060 and to receive  
21 voluntary contributions for the purpose of operating and maintaining  
22 public use and recreation facilities, including trails, managed by the  
23 department.

24 (2) In addition to the other purposes identified in this section,  
25 the park land trust revolving fund may be utilized by the department to  
26 hold funding for future acquisition of lands for the community forest  
27 trust program from willing sellers under section 4 of this act.

28 (3)(a) Proceeds from transfers of real property to the state parks  
29 and recreation commission or other proceeds identified from transfers  
30 of real property as directed by the legislature shall be deposited in  
31 ~~((this))~~ the park land trust revolving fund.

32 (b) The proceeds from real property transferred or disposed under  
33 RCW 79.22.060 must be used solely to purchase replacement forest land,  
34 that must be actively managed as a working forest, within the same  
35 county as the property transferred or disposed.

36 (c) Disbursement from the park land trust revolving fund to acquire  
37 replacement property and for operating and maintaining public use and

1 recreation facilities shall be on the authorization of the department.  
2 (~~The proceeds from real property transferred or disposed under RCW~~  
3 ~~79.22.060 must be solely used to purchase replacement forest land, that~~  
4 ~~must be actively managed as a working forest, within the same county as~~  
5 ~~the property transferred or disposed.~~)

6 (4) In order to maintain an effective expenditure and revenue  
7 control, the park land trust revolving fund is subject in all respects  
8 to chapter 43.88 RCW, but no appropriation is required to permit  
9 expenditures and payment of obligations from the fund.

10 ((+2)) (5) The department is authorized to solicit and receive  
11 voluntary contributions for the purpose of operating and maintaining  
12 public use and recreation facilities, including trails, managed by the  
13 department. The department may seek voluntary contributions from  
14 individuals and organizations for this purpose. Voluntary  
15 contributions will be deposited into the park land trust revolving fund  
16 and used solely for the purpose of public use and recreation facilities  
17 operations and maintenance. Voluntary contributions are not considered  
18 a fee for use of these facilities.

19 **Sec. 15.** RCW 79.64.020 and 2008 c 328 s 6004 are each amended to  
20 read as follows:

21 A resource management cost account in the state treasury is created  
22 to be used solely for the purpose of defraying the costs and expenses  
23 necessarily incurred by the department in managing and administering  
24 state lands, community forest trust lands, and aquatic lands and the  
25 making and administering of leases, sales, contracts, licenses,  
26 permits, easements, and rights-of-way as authorized under the  
27 provisions of this title. Appropriations from the resource management  
28 cost account to the department shall be expended for no other purposes.  
29 Funds in the resource management cost account may be appropriated or  
30 transferred by the legislature for the benefit of all of the trusts  
31 from which the funds were derived. (~~For the 2007-2009 biennium,~~  
32 ~~moneys in the account may be used for the purposes identified in~~  
33 ~~section 3044, chapter 328, Laws of 2008.~~)

34 **Sec. 16.** RCW 79.64.040 and 2009 c 564 s 957 are each amended to  
35 read as follows:

36 (1) The board shall determine the amount deemed necessary in order

1 to achieve the purposes of this chapter and shall provide by rule for  
2 the deduction of this amount from the moneys received from all leases,  
3 sales, contracts, licenses, permits, easements, and rights-of-way  
4 issued by the department and affecting state lands, community forest  
5 trust lands, and aquatic lands, provided that no deduction shall be  
6 made from the proceeds from agricultural college lands.

7 (2) Moneys received as deposits from successful bidders, advance  
8 payments, and security under RCW 79.15.100, 79.15.080, and 79.11.150  
9 prior to December 1, 1981, which have not been subjected to deduction  
10 under this section are not subject to deduction under this section.

11 (3) Except as otherwise provided in subsections ~~((+5+))~~ (4) and (6)  
12 of this section, the deductions authorized under this section shall not  
13 exceed twenty-five percent of the moneys received by the department in  
14 connection with any one transaction pertaining to state lands and  
15 aquatic lands other than second-class tide and shore lands and the beds  
16 of navigable waters, and fifty percent of the moneys received by the  
17 department pertaining to second-class tide and shore lands and the beds  
18 of navigable waters.

19 (4) Deductions authorized under this section for transactions  
20 pertaining to community forest trust lands must be established at a  
21 level sufficient to defray over time the management costs for  
22 activities prescribed in a parcel's management plan adopted pursuant to  
23 section 8 of this act, and, if deemed appropriate by the board  
24 consistent with section 9 of this act, to reimburse the state and any  
25 local entities' eligible financial contributions for acquisition of the  
26 parcel.

27 (5) In the event that the department sells logs using the contract  
28 harvesting process described in RCW 79.15.500 through 79.15.530, the  
29 moneys received subject to this section are the net proceeds from the  
30 contract harvesting sale.

31 ~~((+5+))~~ (6) During the 2009-2011 fiscal biennium, the twenty-five  
32 percent limitation on deductions set in subsection (3) of this section  
33 may be increased up to thirty percent by the board.

34 **Sec. 17.** RCW 79.02.010 and 2010 c 126 s 6 are each reenacted and  
35 amended to read as follows:

36 The definitions in this section apply throughout this title unless  
37 the context clearly requires otherwise.

1 (1) "Aquatic lands" means all state-owned tidelands, shorelands,  
2 harbor areas, and the beds of navigable waters as defined in RCW  
3 79.105.060 that are administered by the department.

4 (2) "Board" means the board of natural resources.

5 (3) "Commissioner" means the commissioner of public lands.

6 (4) "Community and technical college forest reserve lands" means  
7 lands managed under RCW 79.02.420.

8 (5) "Department" means the department of natural resources.

9 (6)(a) "Forest biomass" means the by-products of: Current forest  
10 management activities; current forest protection treatments prescribed  
11 or permitted under chapter 76.04 RCW; or the by-products of forest  
12 health treatment prescribed or permitted under chapter 76.06 RCW.

13 (b) "Forest biomass" does not include wood pieces that have been  
14 treated with chemical preservatives such as: Creosote,  
15 pentachlorophenol, or copper-chrome-arsenic; wood from existing old  
16 growth forests; wood required to be left on-site under chapter 76.09  
17 RCW, the state forest practices act; and implementing rules, and other  
18 legal and contractual requirements; or municipal solid waste.

19 (7) "Improvements" means anything considered a fixture in law  
20 placed upon or attached to lands administered by the department that  
21 has changed the value of the lands or any changes in the previous  
22 condition of the fixtures that changes the value of the lands.

23 (8) "Land bank lands" means lands acquired under RCW 79.19.020.

24 (9) "Person" means an individual, partnership, corporation,  
25 association, organization, cooperative, public or municipal  
26 corporation, or agency of a federal, state, or local governmental unit,  
27 however designated.

28 (10) "Public lands" means lands of the state of Washington  
29 administered by the department including but not limited to state  
30 lands, state forest lands, and aquatic lands.

31 (11) "State forest lands" means lands acquired under RCW 79.22.010,  
32 79.22.040, and 79.22.020.

33 (12) "State lands" includes:

34 (a) School lands, that is, lands held in trust for the support of  
35 the common schools;

36 (b) University lands, that is, lands held in trust for university  
37 purposes;

1 (c) Agricultural college lands, that is, lands held in trust for  
2 the use and support of agricultural colleges;

3 (d) Scientific school lands, that is, lands held in trust for the  
4 establishment and maintenance of a scientific school;

5 (e) Normal school lands, that is, lands held in trust for state  
6 normal schools;

7 (f) Capitol building lands, that is, lands held in trust for the  
8 purpose of erecting public buildings at the state capital for  
9 legislative, executive, and judicial purposes;

10 (g) Institutional lands, that is, lands held in trust for state  
11 charitable, educational, penal, and reformatory institutions; and

12 (h) Land bank, escheat, donations, and all other lands, except  
13 aquatic lands, administered by the department that are not devoted to  
14 or reserved for a particular use by law.

15 (13) "Valuable materials" means any product or material on the  
16 lands, such as forest products, forage or agricultural crops, stone,  
17 gravel, sand, peat, and all other materials of value except: (a)  
18 Mineral, coal, petroleum, and gas as provided for under chapter 79.14  
19 RCW; and (b) forest biomass as provided for under chapter 79.150 RCW.

20 (14) "Community forest trust lands" means those lands acquired and  
21 managed under the provisions of chapter 79.--- RCW (the new chapter  
22 created in section 19 of this act).

23 NEW SECTION. Sec. 18. The authorities granted under Title 79 RCW  
24 for the management of state lands apply to the community forest trust  
25 to the extent consistent with the purposes of this act. The department  
26 may develop management procedures deemed necessary by the department to  
27 implement this act.

28 NEW SECTION. Sec. 19. Sections 1 through 12 and 18 of this act  
29 constitute a new chapter in Title 79 RCW."

30 Correct the title.

EFFECT: Provides that the department of natural resources may

only provide a reimbursement to a local entity for its contribution to a community forest trust purchase after the parcel's management costs and objectives have been funded.

Requires any reimbursement dollars to be split evenly between the local contributing entity and the state, with the state reimbursement limited to the difference between the parcel's original appraised fair market value and the parcel's timber and forest land value (which is the amount that equals the local contribution).

Limits the reimbursement of a local contribution through proceeds from the working forest to instances when the local contribution was not provided through a state or federal grant, when the local entity has not been compensated through the transfer or purchase of development rights, or in instances when the contribution has not been provided through a gift or donation.

Limits the reimbursement of a local contribution upon divestiture to instances when the local contribution was not provided through a state or federal grant and the land is not being changed into something other than a working forest.

Clarifies that the option to reimburse the state and local contribution does not create a fiduciary duty.

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