
ENGROSSED SUBSTITUTE HOUSE BILL 1421

State of Washington

62nd Legislature

2011 Regular Session

By House Agriculture & Natural Resources (originally sponsored by Representatives Rolfes, Lytton, Moscoso, Van De Wege, Green, Sells, Blake, Sullivan, Eddy, Fitzgibbon, Frockt, Dunshee, Ryu, Upthegrove, Kenney, Reykdal, and Tharinger; by request of Commissioner of Public Lands)

READ FIRST TIME 02/16/11.

1 AN ACT Relating to providing the authority to create a community
2 forest trust to be managed by the department of natural resources;
3 amending RCW 79.17.210, 43.30.385, 79.64.020, and 79.64.040; reenacting
4 and amending RCW 79.02.010; and adding a new chapter to Title 79 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that since the
7 1980s, about seventeen percent of Washington's commercial forests have
8 been converted to other land uses.

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

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

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

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

8 (6) The legislature further finds that through modest enhancements
9 to existing department of natural resources' programs and authorities,
10 the legislature can expand Washington's ability to protect communities'
11 working forest lands, while simultaneously improving the revenue
12 generating performance of fiduciary trust lands managed by the
13 department of natural resources.

14 (7) The legislature further finds that there has been past and
15 present legislative intent to ensure continued public access for
16 recreation compatible with the purposes of the lands involved.

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

20 NEW SECTION. **Sec. 2.** (1) If deemed practicable by the
21 commissioner, the department is authorized to create and manage,
22 consistent with the provisions of this chapter, a discrete category of
23 natural resource lands in a nonfiduciary community forest land trust.
24 The department is authorized to assemble, hold title to, and manage
25 directly or through mutual agreement with other landowners land
26 suitable for sustainable forest management, to be held in the community
27 forest trust.

28 (2) All land held in the community forest trust must be held by the
29 department and actively managed, consistent with a community working
30 forest management plan developed under section 8 of this act, to
31 generate financial support for the management of the community forest
32 trust and to advance and sustain the working forest conservation
33 objectives established in the management plan.

34 NEW SECTION. **Sec. 3.** (1) The department must identify lands for
35 inclusion into the community forest trust, and manage the resulting

1 community forest trust lands, in furtherance of goals that must be
2 identified by the department prior to the creation of a community
3 forest.

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

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

9 (b) Securing financial and social viability through sound
10 management plans and objectives that are consistent with the values of
11 the local community;

12 (c) Maintaining the land in a working status, through traditional
13 forestry, management of specialized forest products harvest consistent
14 with chapter 76.48 RCW, land leases, renewable energy opportunities,
15 ecosystem services such as clean water protection or carbon storage,
16 and other sources of revenue appropriate for the community forest to
17 generate;

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

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

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

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

35 (b) The fair market value of any real property, and the associated
36 valuable materials, of any land transferred into the community forest

1 trust from state lands must be provided to the beneficiaries of the
2 transferee trust or used for the furtherance of the transferee trust.

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

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

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

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

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

20 (b) At greatest risk of conversion;

21 (c) Helping buffer commercial public or private forest lands from
22 encroaching development;

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

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

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

32 (g) Available for acquisition through existing or new programs or
33 funding;

34 (h) Supporting existing or expanded forest product manufacturing
35 infrastructure;

36 (i) Useful in leveraging funds to match available acquisition
37 moneys;

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

4 (k) Enhancing state fiduciary trust land revenues by repositioning
5 underperforming state trust lands to provide short and long-term
6 revenues to that trust.

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

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

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

23 (2) Following initial agreement between potential local community
24 partners and the department regarding management and revenue production
25 objectives for the lands in question, the local commitment to
26 preserving the land as a working forest must be demonstrated by the
27 county, city, or other local entity providing a financial contribution
28 to the specific community forest of at least fifty percent of the
29 difference between the parcel's appraised fair market value and the
30 parcel's timber and forest land value. The local community
31 contribution may be provided through any means deemed acceptable by the
32 department and the local contributor, including:

- 33 (a) Traditional financing or bonding;
- 34 (b) The purchase of conservation easements; or
- 35 (c) The purchase or transfer of development rights.

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

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

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

13 (3) The department must use the local advisory committee as a
14 source of advice and comment on a postacquisition management plan.
15 Comments and advice should, at a minimum, include plans for how the
16 department will maintain the land's working status and economic
17 viability objectives through revenue-generating activities that are
18 sufficient to generate ongoing revenue at a level that reimburses
19 administrative costs, while satisfying, or contributing to, identified
20 community conservation and recreation objectives.

21 (4)(a) If, after a good faith effort by all parties, the department
22 and the local advisory committee fail to reach a consensus on a
23 conceptual postacquisition management plan for the parcel in question,
24 the department may either adopt a management plan informed by the
25 community or recommend to the board that the parcel be divested through
26 the existing authority of the department and the board. If the parcel
27 is divested, then, except as otherwise provided in this subsection,
28 proceeds must return to the park land trust revolving fund created in
29 RCW 43.30.385.

30 (b) Prior to depositing the proceeds of a land divestiture under
31 this subsection to the park land trust revolving fund, the department
32 must first reimburse local entities that have made financial
33 contributions to the parcel's acquisition as provided in section 7(2)
34 of this act. However, local entities are only eligible for
35 reimbursement upon divestiture under this subsection if the board
36 determines that:

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

5 (ii) The funds used as part of the local contribution were
6 originally provided through a grant that requires, as a condition of
7 the grant, the repayment of granted dollars if the purposes of the
8 grant are not or cannot be fulfilled and the decision to divest the
9 land creates an inability for the purposes of the grant to be
10 fulfilled.

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

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

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

21 (2)(a) If, by the determination of the board, there is revenue
22 remaining in any given biennium after fulfilling the requirements of
23 subsection (1) of this section, then the board has the discretion to
24 reimburse any local entities' eligible financial contributions for
25 acquisition of the parcel under section 7(2) of this act and any state
26 contribution to the acquisition of the parcel up to an amount that
27 represents fifty percent of the difference between the parcel's
28 original appraised fair market value and the parcel's timber and forest
29 land value. However, any funds used as part of the local contribution
30 may not be reimbursed if the funds were originally provided through a
31 state or federal grant, provided through a fully compensated transfer
32 of development rights at fair market value, or provided by a donation
33 of funds or property.

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

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

5 NEW SECTION. **Sec. 10.** By September 1, 2014, and periodically, but
6 at least once every ten years thereafter, the department shall provide
7 to the board a review and update of the community forest trust program.
8 The review must include updates on the performance of the community
9 forest trust statewide and notification of any community forest trust
10 parcels not performing according to their management plan. The
11 department is authorized to, consistent with this chapter, recommend to
12 the board action to divest itself of nonperforming community forest
13 trust parcels using existing policies and mechanisms available to the
14 department and the board.

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

18 (2) If a statewide advisory committee is established, the
19 commissioner shall appoint a balanced representation of interests on
20 the committee, including representatives of state fiduciary trust land
21 beneficiaries, tribal governments, local governments, relevant state
22 agencies, commercial forest landowners, land trusts, and conservation
23 organizations.

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

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

30 NEW SECTION. **Sec. 12.** (1) The commissioner may, if deemed
31 practicable and beneficial by the commissioner, cooperate with
32 interested local governments in establishing community forest districts
33 or local working forest districts that are compatible with the goals
34 identified in this chapter for the community forest trust. Cooperative
35 districts would attempt to voluntarily synchronize the management of

1 community forest trust lands, other public lands, and private lands
2 located within a certain geographic area to further a common set of
3 community goals. If a working forest district encompasses state lands
4 or state forest lands, then their voluntary management to further a
5 common set of community goals must be consistent with the department's
6 fiduciary and other legal obligations to the trust, including the
7 multiple use act in chapter 79.10 RCW.

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

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

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

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

20 (2) The natural resources real property replacement account is
21 created in the state treasury. This account shall consist of funds
22 transferred or paid for the disposal or transfer of real property by
23 the department under RCW 79.17.200 and the transfer of state lands or
24 state forest lands into community forest trust lands under section 4 of
25 this act. The funds in this account shall be used solely for the
26 acquisition of replacement real property and may be spent only when,
27 and as, authorized by legislative appropriation.

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

30 (1) The park land trust revolving fund is to be utilized by the
31 department for the purpose of acquiring real property, including all
32 reasonable costs associated with these acquisitions, as a replacement
33 for the property transferred to the state parks and recreation
34 commission, as directed by the legislature in order to maintain the
35 land base of the affected trusts or under RCW 79.22.060 and to receive

1 voluntary contributions for the purpose of operating and maintaining
2 public use and recreation facilities, including trails, managed by the
3 department.

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

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

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

16 (c) Disbursement from the park land trust revolving fund to acquire
17 replacement property and for operating and maintaining public use and
18 recreation facilities shall be on the authorization of the department.
19 ~~((The proceeds from real property transferred or disposed under RCW~~
20 ~~79.22.060 must be solely used to purchase replacement forest land, that~~
21 ~~must be actively managed as a working forest, within the same county as~~
22 ~~the property transferred or disposed.))~~

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

27 ~~((+2))~~ (5) The department is authorized to solicit and receive
28 voluntary contributions for the purpose of operating and maintaining
29 public use and recreation facilities, including trails, managed by the
30 department. The department may seek voluntary contributions from
31 individuals and organizations for this purpose. Voluntary
32 contributions will be deposited into the park land trust revolving fund
33 and used solely for the purpose of public use and recreation facilities
34 operations and maintenance. Voluntary contributions are not considered
35 a fee for use of these facilities.

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

1 A resource management cost account in the state treasury is created
2 to be used solely for the purpose of defraying the costs and expenses
3 necessarily incurred by the department in managing and administering
4 state lands, community forest trust lands, and aquatic lands and the
5 making and administering of leases, sales, contracts, licenses,
6 permits, easements, and rights-of-way as authorized under the
7 provisions of this title. Appropriations from the resource management
8 cost account to the department shall be expended for no other purposes.
9 Funds in the resource management cost account may be appropriated or
10 transferred by the legislature for the benefit of all of the trusts
11 from which the funds were derived. (~~For the 2007-2009 biennium,~~
12 ~~moneys in the account may be used for the purposes identified in~~
13 ~~section 3044, chapter 328, Laws of 2008.))~~

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

16 (1) The board shall determine the amount deemed necessary in order
17 to achieve the purposes of this chapter and shall provide by rule for
18 the deduction of this amount from the moneys received from all leases,
19 sales, contracts, licenses, permits, easements, and rights-of-way
20 issued by the department and affecting state lands, community forest
21 trust lands, and aquatic lands, provided that no deduction shall be
22 made from the proceeds from agricultural college lands.

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

27 (3) Except as otherwise provided in subsections ~~((+5+))~~ (4) and (6)
28 of this section, the deductions authorized under this section shall not
29 exceed twenty-five percent of the moneys received by the department in
30 connection with any one transaction pertaining to state lands and
31 aquatic lands other than second-class tide and shore lands and the beds
32 of navigable waters, and fifty percent of the moneys received by the
33 department pertaining to second-class tide and shore lands and the beds
34 of navigable waters.

35 (4) Deductions authorized under this section for transactions
36 pertaining to community forest trust lands must be established at a
37 level sufficient to defray over time the management costs for

1 activities prescribed in a parcel's management plan adopted pursuant to
2 section 8 of this act, and, if deemed appropriate by the board
3 consistent with section 9 of this act, to reimburse the state and any
4 local entities' eligible financial contributions for acquisition of the
5 parcel.

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

10 ((+5+)) (6) During the 2009-2011 fiscal biennium, the twenty-five
11 percent limitation on deductions set in subsection (3) of this section
12 may be increased up to thirty percent by the board.

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

15 The definitions in this section apply throughout this title unless
16 the context clearly requires otherwise.

17 (1) "Aquatic lands" means all state-owned tidelands, shorelands,
18 harbor areas, and the beds of navigable waters as defined in RCW
19 79.105.060 that are administered by the department.

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

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

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

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

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

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

35 (7) "Improvements" means anything considered a fixture in law
36 placed upon or attached to lands administered by the department that

1 has changed the value of the lands or any changes in the previous
2 condition of the fixtures that changes the value of the lands.

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

4 (9) "Person" means an individual, partnership, corporation,
5 association, organization, cooperative, public or municipal
6 corporation, or agency of a federal, state, or local governmental unit,
7 however designated.

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

11 (11) "State forest lands" means lands acquired under RCW 79.22.010,
12 79.22.040, and 79.22.020.

13 (12) "State lands" includes:

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

16 (b) University lands, that is, lands held in trust for university
17 purposes;

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

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

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

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

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

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

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

37 (14) "Community forest trust lands" means those lands acquired and

1 managed under the provisions of chapter 79.--- RCW (the new chapter
2 created in section 19 of this act).

3 NEW SECTION. **Sec. 18.** The authorities granted under Title 79 RCW
4 for the management of state lands apply to the community forest trust
5 to the extent consistent with the purposes of this act. The department
6 may develop management procedures deemed necessary by the department to
7 implement this act.

8 NEW SECTION. **Sec. 19.** Sections 1 through 12 and 18 of this act
9 constitute a new chapter in Title 79 RCW.

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