

SENATE BILL REPORT

SHB 1460

As Reported by Senate Committee On:
Agriculture, Water, Natural Resources & Parks, March 16, 2023
Ways & Means, April 3, 2023

Title: An act relating to the department of natural resources trust land management.

Brief Description: Concerning the department of natural resources land transactions, revenue distributions, and creation and management of a trust land transfer program.

Sponsors: House Committee on Capital Budget (originally sponsored by Representatives Hackney, Waters, Simmons, Kloba, Pollet, Davis and Macri; by request of Department of Natural Resources).

Brief History: Passed House: 2/27/23, 82-13.

Committee Activity: Agriculture, Water, Natural Resources & Parks: 3/09/23, 3/16/23
[DPA-WM, w/oRec].

Ways & Means: 3/23/23, 4/03/23 [DPA, w/oRec].

Brief Summary of Amended Bill

- Authorizes the Department of Natural Resources to create and manage a trust land transfer program to transfer economically under-performing state lands to other purposes, and acquire replacement property to provide sustainable revenue to trust beneficiaries.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Van De Wege, Chair; Salomon, Vice Chair; Muzzall, Ranking Member; Rolfes, Shewmake, Short, Stanford and Warnick.

Minority Report: That it be referred without recommendation.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Signed by Senator Wagoner.

Staff: Jeff Olsen (786-7428)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Wilson, L., Ranking Member, Operating; Billig, Boehnke, Conway, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Nguyen, Pedersen, Saldaña, Van De Wege and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senators Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Braun, Torres and Wagoner.

Staff: Jed Herman (786-7346)

Background: Trust Land Transfer. Upon statehood, the federal government granted certain lands to the state to be held in trust for several specified purposes. Beneficiaries of these trust lands include common schools, public higher education institutions, the capitol buildings and grounds, and charitable, educational, penal, and reform institutions. These lands are overseen by the Board of Natural Resources (Board) and managed by the Department of Natural Resources (DNR).

The trust land transfer (TLT) is a land management tool used in the Capital Budget since 1989 that enables the DNR to reposition Common School Trust lands out of trust status, and replaces them with lands that can generate revenue for trust beneficiaries. Common School Trust parcels identified for the TLT are typically transferred to other public agencies or programs and managed as conservation or recreational areas.

Under the TLT, a prioritized list of state trust land parcels is developed and submitted to the Legislature. The Legislature provides an appropriation in the capital budget, and the estimated value of the timber on the parcel goes to the Common School Construction Account. The value of the bare land goes to the Real Property Replacement Account, and is used to purchase replacement lands that will generate revenue for trust beneficiaries. Generally, properties must have high timber-to-land-value ratios, typically 80 percent timber value and 20 percent land value. According to the DNR TLT report to the Legislature in December of 2021, over the last 32 years, the Legislature has provided \$882.7 million to facilitate the transfer of 125,968 acres of state Common School Trust lands to other uses, and has purchased 55,546 acres of replacement lands.

The 2021 supplemental budget contained a proviso directing DNR to convene a work group

of trust land beneficiaries and stakeholders to develop recommendations for the TLT process. The work group submitted a report to the Legislature in December of 2021 outlining several changes to the TLT process including removing the requirement that the timber value on proposed transfers is at least 80 percent of the total land value, expand the TLT to all trust lands, dedicate all funding to the purchase of replacement lands, and provide sufficient funding to administer the TLT.

State Forestlands. DNR 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 taxing districts that provide public services such as roads, schools, hospitals, libraries, and fire districts in the counties in which the lands are located. Revenues generated by state forestlands are distributed to the counties in the same manner as general taxes are paid and distributed to the various taxing districts. The 2022 Supplemental Operating Budget required the DNR to work with the Washington State Association of Counties to determine if any statutory changes are necessary to address issues regarding beneficiary revenue distribution or any other fiscal matters related to state forestlands. A report and recommendations were submitted to the Legislature in December 2022.

Land Transfers. In certain circumstances, DNR may transfer or dispose of lands without public auction. These circumstances include transfers under ten contiguous acres, transfers with values under \$25,000, and transfers in certain counties with a population under 25,000 with timber harvest deferrals. DNR may only transfer such property for fair market value, and if the transfer is in the best interest of the state or affected trust. Proceeds from certain real property transferred or disposed of must be deposited in the Parkland Trust Revolving Account to buy replacement lands in the same county.

DNR manages a state land bank. The land bank provides a mechanism used for the purchasing, selling, and transferring of land to replace less productive land with more productive land, while maintaining the trust land base. Lands held in the land bank may not exceed 1500 acres.

Summary of Amended Bill: Trust Land Transfer Program. DNR is authorized to create and manage a TLT program to transfer under-performing land with high ecological or public benefit to acquire real property to provide long-term, sustainable revenue to trust beneficiaries. Underperforming state land and state forestland are those lands, as determined by DNR, that have limited potential to generate income in the reasonably foreseeable future due to physical, legal, or access constraints. The lands selected for transfer may be deemed appropriate for state parks, fish and wildlife habitats, natural area preserves, natural resources conservation areas, community forests, recreation, or other public purposes. DNR may use legislative appropriations for approved trust land transfers to acquire replacement property. DNR must prioritize the acquisition of working farms and forests when acquiring replacement property when it can be demonstrated that the trust fiduciary obligations can be better fulfilled with these lands. DNR may use transfer

authorities to complete transfers under the program, and pay for the administrative expenses to complete the transfer, including the cost of staff time, appraisals, surveys, environmental reviews, and other similar costs.

When administering the TLT, any citizen, state and federal agencies, counties, cities, towns, tribes, nonprofit organizations, special purpose districts, public development authorities, and other political subdivisions of the state, may nominate a parcel of state land or state forestland for the trust land transfer program. DNR shall perform an initial review to determine whether the transfer of a nominated parcel is in the best interest of the trust, and whether a public agency is willing to take ownership and manage the parcel. DNR may require prenomination review of parcels over 4500 acres or parcels over an estimated appraised market value of \$15 million. If DNR determines through its initial review that transfer would be in the best interest of the trust, and a public agency is able to take ownership and manage the land, DNR shall consult with potentially affected tribes to identify and address cultural resource issues.

After DNR's initial review and tribal consultation, DNR may submit parcels to an advisory committee that must evaluate and prioritize nominated parcels according to criteria approved by the Board, including social, ecological, economic, and other values. The advisory committee may include representatives of trust beneficiaries, public agencies, tribes, overburdened communities, vulnerable populations, and other stakeholders as determined by DNR.

DNR, with approval of the Board, determines the final, prioritized list of trust land transfer parcels to submit to the Legislature. If a legislative appropriation includes the full fair market value for the trust land transfer parcel, and the Board determines that the transfer is in the best interest of the trust for which the land is held, DNR shall complete the transfer.

DNR shall only submit properties to the Board or the Legislature if at least 50 percent of all previous appropriations for the purchase of replacement lands for the TLT program have been used to purchase replacement trust lands. The list of TLT properties submitted to the Board or the Legislature shall not exceed \$30 million in total property value for each year the list is submitted.

Land Transfers. The Board may exchange state forestland for obtaining land with greater natural resource or income-producing potential when it is in the best interest of the state or affected trust. The exchange may not be used to reduce the publicly owned forestland base. In addition to funds transferred due to the transfer of real property, the Natural Resources Real Property Replacement Account may also consist of the value of land, timber, other valuable materials, and improvements owned by the state. The restriction that the State Forestland Pool may not contain more than 10,000 acres is removed. Further, the restriction that a county with a population of 25,000 or less is eligible for the land pool is also removed.

DNR may acquire replacement state forestland located outside of counties participating in a state forestland pool when DNR has transferred some or all of the encumbered state forestlands of the counties to natural area status. Counties participating in a state forestland pool that desire to have DNR acquire replacement lands in a designated county not included in the state forestland pool shall enter into an agreement with the designated county. The agreement shall include that the designated county shall not object to forest practices undertaken on the replacement state forestland and the counties participating in the state forestland pool acknowledge that they shall pass through the payment in lieu of taxes to the designated county in which replacement lands are purchased. If a designated county desires to terminate the agreement, the designated county shall be required to pay to DNR the fair market value of replacement forestlands.

The restriction that the Board must use the proceeds from the transfer or disposal of state forestlands to purchase replacement lands within the same county is modified to allow the purchase of forestland for the benefit of the county. The transfer may also include the cost of DNR's administrative expenses to complete the transfer. The legislative authority of the county from which the real property was transferred or disposed may request that DNR distribute a percentage of the proceeds associated with valuable materials.

The restriction that DNR may not hold more than 1500 acres in a land bank is removed. DNR, with the approval of the Board, may exchange property held in the land bank for any lands of equal value, including state forestlands. If a DNR lessee owns and resides in a house located on land being held in the land bank, the Board may sell the land directly to the lessee for fair market value.

The Land Bank Account is created for the purpose of acquiring property for the land bank. Income from the sale of property in the land bank shall be deposited in the account and used to acquire property.

EFFECT OF WAYS & MEANS COMMITTEE AMENDMENT(S):

- Removes policy and other constraints as factors DNR may consider when determining if lands are underperforming for the TLT program.
- Clarifies that the effective date of the act is the limit on the time frame for how far back DNR needs to consider for calculating the amount of previous appropriation has been spent before making new TLT requests.

EFFECT OF AGRICULTURE, WATER, NATURAL RESOURCES & PARKS COMMITTEE AMENDMENT(S):

- Modifies the definition of underperforming state land and state forestland as land that DNR determines has limited potential to generate income in the reasonably foreseeable future due to physical, legal, policy, access, or other constraints.
- Adds that for TLT program, DNR shall only submit properties to the Board or the

- Legislature if at least 50 percent of all previous appropriations have been used to purchase replacement trust lands.
- Requires that TLT list of properties submitted to the Board or the Legislature not exceed \$30,000,000 in total property value.
 - Adds that DNR may complete a TLT transfer if the appropriation includes the full fair market value for the trust land transfer parcel.
 - Specifies requirements for DNR to acquire replacement state forestland located outside of counties participating in the state forestland pool, including agreements between counties addressing forest practices and payments in lieu of taxes.
 - Modifies language specifying how replacement forestlands may be acquired in counties proximate to the county that will benefit from the replacement state forestland.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Substitute House Bill (Agriculture, Water, Natural Resources & Parks): *The committee recommended a different version of the bill than what was heard.*

PRO: This bill authorizes DNR to create and manage a TLT program to transfer economically underperforming state land to other purposes and to acquire real property to provide long-term, sustainable revenue to trust beneficiaries. The language in the bill is the result of many meetings between stakeholders and would codify a program that has been part of the capital budget for years. By funding projects on the TLT list, community can be involved in transitioning low income producing lands to recreational or other uses and replace those lands with income producing properties. The TLT program needs a transparent and predictable process for why and how decisions are made. There are many underperforming DNR properties across the state and if they were transferred the money generated could be invested to better benefit the beneficiaries. Some amendment language is still needed. The approach in the bill creates a more open and transparent process while also ensuring that the interests of trust beneficiaries are not harmed. More Eastern Washington properties may be able to use the program without the requirement for high timber ratios.

OTHER: There are some technical changes that still need to be made to the bill. The recommendations of the encumbered lands workgroup are included in this version of the bill, but there are more clarifying changes needed. There needs to be balance between the rate at which lands are transferred out of trust status and how quickly replacement lands are available to replace them. Changes should be made to prevent the loss of working trust lands. Counties may keep a portion of the funds from valuable materials which will impact

the ability to purchase replacement lands.

Persons Testifying (Agriculture, Water, Natural Resources & Parks): PRO: Representative David Hackney, Prime Sponsor; Nicole Pasi, Mountains to Sound Greenway Trust; Heidi Eisenhour, Jefferson County; Maggie Coon, Methow Valley Citizens Council; Jeff Lambert; Brian Considine, Washington Department of Natural Resources; Duane Emmons, Washington Department of Natural Resources; Sherri Dysart, League of Women Voters of Washington.

OTHER: Paul Jewell, Washington State Association of Counties; Heath Heikkila, American Forest Resource Council.

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

Staff Summary of Public Testimony on Bill as Amended by Agriculture, Water, Natural Resources & Parks (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: We support the policy, but would like the cap removed on budget requests. We believe the encumbered lands portion of the bill will be a great help to counties. The cap is important to control against the amount of land that is moved out of trust. We appreciate the opportunities presented by this bill and support the striking amendment. Thank you for supporting this bill, we think we can make this work.

OTHER: We agree that trust land transfer is a tool, but think in the long term it reduces the value of timber land.

Persons Testifying (Ways & Means): PRO: Paul Jewell, Washington State Association of Counties; Jim Freeburg, Trust Land Transfer Revitalization Coalition; Logan Endres, Washington State School Directors' Association (WSSDA); Brian Considine, Washington Department of Natural Resources; Duane Emmons, Washington Department of Natural Resources.

OTHER: Heath Heikkila, American Forest Resource Council.

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