

SENATE BILL REPORT

ESHB 1789

As of March 29, 2023

Title: An act relating to expanding revenue generation and economic opportunities from natural climate solutions and ecosystem services.

Brief Description: Expanding revenue generation and economic opportunities from natural climate solutions and ecosystem services.

Sponsors: House Committee on Agriculture and Natural Resources (originally sponsored by Representatives Reeves, Fitzgibbon, Chapman, Kloba, Ramel, Pollet and Fosse; by request of Department of Natural Resources).

Brief History: Passed House: 3/7/23, 82-13.

Committee Activity: Environment, Energy & Technology: 3/22/23, 3/28/23 [DPA-WM].
Ways & Means: 3/30/23.

Brief Summary of Amended Bill

- Authorizes the Department of Natural Resources (DNR) to enter into contracts for payment for ecosystem service projects on public lands, on terms and conditions acceptable to DNR, only for the purpose of generating additional revenue by providing ecosystem services.
- Requires any ecosystem project on public lands to be limited to afforestation, reforestation, biochar, urban forestry, and aquatic projects.
- Requires the Board of Natural Resources to approve contract terms and minimum payment for ecosystem services before entering into a contract.
- Requires DNR to report to the Legislature and the Office of Financial Management by December 1, 2024, on ecosystem service projects.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

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.

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

Signed by Senators Nguyen, Chair; Lovelett, Vice Chair; MacEwen, Ranking Member; Boehnke, Lovick, Short, Trudeau and Wellman.

Staff: Kimberly Cushing (786-7421)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Jed Herman (786-7346)

Background: State Lands. The Department of Natural Resources (DNR) manages 5.6 million acres of state-owned public lands, which includes forestlands, aquatic lands, and state trust land that provides revenue to help pay for construction of public schools, universities, and other state institutions, and funds services in many counties. The Commissioner of Public Lands (Commissioner) is a separately elected statewide official and the administrator for DNR. The Commissioner chairs the state's Board of Natural Resources (Board), which sets policy for the management of state lands and also the Forest Practices Board, which regulates forest operations.

Valuable materials that are derived on state forestlands and state-owned aquatic lands may be sold, and the funds from those sales must be used in specified ways.

Cap and Invest Program. In 2021, the Legislature passed the Climate Commitment Act (CCA) and directed the Department of Ecology (Ecology) to implement a cap and invest program (Program) to reduce greenhouse gas (GHG) emissions consistent with the statewide statutory emissions limits.

Starting January 1, 2023, covered entities must either reduce their emissions or obtain allowances to cover any remaining emissions. The total number of allowances will decrease over time to meet statutory limits. The Program must track, verify, and enforce compliance through the use of compliance instruments. A compliance instrument is an allowance or offset credit issued by Ecology or a trading program that has linked with Washington's Program. One compliance instrument is equal to one metric ton of carbon dioxide equivalent.

Summary of Amended Bill: Ecosystem Service Projects. DNR is authorized to enter into contracts for ecosystem service projects (ES projects) on public lands, consistent with relevant laws, on terms and conditions acceptable to DNR, after approval by the Board, only for the purpose of generating additional revenue by providing ecosystem services.

Ecosystem services are the benefits that the public enjoys as a result of natural processes and biological diversity. ES projects include carbon sequestration and storage, air and water filtration, climate stabilization, and disturbance mitigation.

Any ES project on public lands must:

- be limited to afforestation, reforestation, biochar, urban forestry, and aquatic projects;
- be consistent with the policies of the state to support the contributions of all working forests and the synergistic forest products sector to the state's climate response;
- support statutory workforce development goals and investments;
- be consistent with ongoing forest health planning efforts and investments; and
- result in an increase in revenue over the lifetime of a project to beneficiaries as compared to expected revenue that may exist in absence of the ES project.

Any ES project may not limit or impair the exercise of tribal treaty and reserved rights, existing tribal access to lands managed by DNR, or preexisting agreements between tribes and DNR.

DNR's authority to enter into a contract that results in payment of ES projects is conditional on the project being consistent with DNR's management of the underlying public land for agriculture or commercial timber harvest and ensure DNR meets its fiduciary responsibility to the state's trust beneficiaries. An ES project, or the sum of all ES projects may not prevent DNR from managing state lands and forestlands for sustained yield as required by law.

DNR may:

- directly offer ecosystem services credits for sale with established compliance or verifiable and established voluntary ecosystem services marketplaces;
- enter into contracts with ES project developers or brokers through public auction or by direct negotiation to bring ecosystem services credits to the market, subject to approval by, and rules adopted by, the Board; and
- enter into contracts or agreements with third-party ES project developers or brokers for purposes that include determining the feasibility of entering into an ES project contract, establishing a payment for an ES project with an ecosystem services marketplace, and marketing and selling credits on an established ecosystem services marketplace.

Contracts for ES projects may last up to 125 years. Proceeds from contracts must be deposited into the appropriate account in the State Treasury and distributed in the same manner as money derived from the sale of valuable materials under current law.

DNR must publish notice of intent to enter contract negotiations on its website within 90 days preceding the commencement of negotiations. DNR may conduct additional advertising that it determines is in the best interest of the state.

Upon execution of a contract, DNR must report the term of the contract and projected revenues to the Board. Before entering into a sale of ecosystem services credits, the Board must set a minimum payment and approve contract terms valid for at least 180 days. The

Board may reestablish the minimum payment at any time. DNR may set the final payment, which must be based on current market prices.

The Board may develop an ecosystem service credit and ecosystem services policy. The Board must make recommendations to the Legislature by June 30, 2025, on the types of ES projects the Legislature may consider adding to the authorized projects. In developing recommendations, the Board must solicit feedback from the public and stakeholders reflecting diverse interests and expertise. The recommendations must include how DNR will offer early, meaningful, and fully informed tribal consultation for ecosystem service credits and ES projects.

Report. DNR must submit a report to the Legislature and the Office of Financial Management by December 1, 2024, that includes information on payment for ES projects entered into or committed to by DNR, including type of projects, the number of acres involved, and projected revenues; and any challenges or barriers encountered by DNR in the process of attempting to implement carbon offset or payment for ES projects and recommendations to address those challenges and barriers, including the operability of carbon offset rules adopted under the CCA.

EFFECT OF ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE AMENDMENT(S):

- Adds biochar and urban forestry to the list of types of ecosystem services projects authorized on public lands.
- Clarifies that ecosystem service projects must result in an increase in revenue over the lifetime of a project as compared to expected revenue that may exist in absence of the underlying project.
- Authorizes the B to develop an ecosystem service credit and ecosystem services policy.
- Directs the Board to make recommendations to the Legislature on the types of ES projects the Legislature may consider adding, by June 30, 2025, solicit feedback for the recommendations, and include the manner in which DNR will offer early, meaningful, and fully informed tribal consultation for ecosystem service credits and ES projects.

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 Engrossed Substitute House Bill

(Environment, Energy & Technology): *The committee recommended a different version of the bill than what was heard.* PRO: This bill ensures we are generating revenue to support schools, creates an authorizing environment for DNR compete in the open market, and the works to correct historic economic harms while looking to the future to ensure that timber continues to be a critical part of communities. This bill recognizes that DNR should be allowed to tap into new revenue streams that helps us take action on climate change. DNR can sell timber, wheat, hops, apples, and shellfish, but cannot sell carbon. Without this bill, there will be less revenue for the state and schools and less ability to reduce carbon emissions. DNR should be able to work in the carbon offset sector in the same way as the private companies do. Tapping into new markets will generate funding for projects that would otherwise require direct funding from the Legislature. We can use carbon projects to create high-value forestlands through afforestation and raise revenue needed that critically supports jobs and gets us closer to carbon goals. Climate change is one of the biggest crises in the state, but not the only one, homelessness, education, and mental health also need funding. Revenue from DNR lands supports essential function of port districts, counties, and other junior taxing districts. We would like to see biochar for soil amendments restored in the bill. The bill gives DNR the opportunity to generate carbon credits from applying biochar on DNR agriculture lands which supports carbon sequestration. We prefer the term protected tribal rights. Wildfires have caused thousands of dollars of damage. These projects are limited. The bill allows for more carbon sequestration and more working forestlands. This is an appropriate first step to enter ecosystem markets. This bill provide a new tool for DNR to manage wildfires and better support beneficiaries. Wood products help address affordable housing requirements. This will keep working forests in logging. It will also reduce the need for taxpayer support.

CON: The Board is well suited to determine these contracts. There is a limited scope of authorized projects and the bill does not include the greatest potential for revenue. It essential to add a path to expand projects. The bill does not authorize DNR's existing carbon project and is a major missed opportunity. DNR needs clear authority to move forward with carbon work. This bill does not go far enough, it ties the hands of DNR to do other of carbon projects.

OTHER: The opportunity to generate revenues on land not generating revenue is exciting. There is no guarantee funds will be raised because 125 years is a long term and will lock out future opportunities. We are concerned the proposal would create uncertainty for revenues. As a school district that receives timber revenues, we would like DNR to consider a pilot project first.

Persons Testifying (Environment, Energy & Technology): PRO: Representative Kristine Reeves, Prime Sponsor; Eric ffitich, Washington Public Ports Association; Lauren Breynaert, Myno Carbon; Paul Jewell, Washington State Association of Counties; Diane Jones, NW Progressive Institute; Heath Heikkila, American Forest Resource Council; Doug Cooper, Hampton Lumber; Bill Turner, Sierra Pacific Industries; Hilary Franz, Washington Department of Natural Resources; Isaac Kastama, Clean & Prosperous Washington; Jerred

Michael Erickson, Chairman, Confederated Tribes of the Colville Reservation; michael MORAN, Confederated Tribes of the Colville Reservation.

CON: Sherri Dysart, League of Women Voters of Washington; Mitch Friedman, Conservation Northwest; Rachel Baker, Washington Conservation Action; Alex Harris, RE Sources; Mariska Kecskes, Sierra Club.

OTHER: Brett Greenwood, Sedro-Woolley School District; Mark Watrin, Washington State School Directors' Association (WSSDA).

Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology): PRO: Csenka Favorini-Csorba, Washington Department of Natural Resources; Duane Emmons, Washington Department of Natural Resources.