

SENATE BILL REPORT

SB 5667

As of February 9, 2023

Title: An act relating to eligibility, enrollment, and compensation of small forestland owners volunteering for participation in the forestry riparian easement program.

Brief Description: Concerning eligibility, enrollment, and compensation of small forestland owners volunteering for participation in the forestry riparian easement program.

Sponsors: Senators Muzzall, Van De Wege, Short, Wagoner and Wellman.

Brief History:

Committee Activity: Agriculture, Water, Natural Resources & Parks: 2/09/23.

Brief Summary of Bill

- Increases the amount the Small Forest Landowner Office (SFLO) shall offer a small forest landowner from 50 percent to 90 percent of the value of qualifying timber in the Forestry Riparian Easement Program (FREP).
- Reduces lease terms for the FREP from 50 years to 40 years.
- Requires the SFLO to process FREP applications within two years consistent with the goals of the Natural Climate Solutions Account.
- Authorizes the Department of Natural Resources to temporarily allow all small forest landowners to be eligible for small parcel alternative management plans if FREP funding is insufficient to cover program reimbursement.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Staff: Jeff Olsen (786-7428)

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.

Background: The Forestry Riparian Easement Program (FREP) is a voluntary program that reimburses landowners for the value of the trees they are required to leave unharvested due to forest practices rules to protect fish and other habitat. FREP is managed by the Small Forest Landowner Office (SFLO) in the Department of Natural Resources (DNR), and acquires 50-year easements along riparian and other sensitive aquatic areas from small forest landowners who are willing to sell or donate easements to the state. Small forest landowners are landowners who harvest less than an average of 2 million board feet per year.

Subject to funding availability, the SFLO may offer compensation for qualifying timber in the amount of 50 percent of the value of the unharvested trees, plus participation compliance costs. Once a contract under FREP is executed, DNR is required to reimburse the landowner for the actual costs to establish streamside buffers and timber marking.

The value of the easement is determined by DNR based on the fair market value of the timber volume covered by the easement. This calculation is made by DNR after it conducts a timber cruise of the entire proposed easement. The data gathered in the timber cruise are then applied to a stumpage value table to calculate the fair market value. Value is calculated only on qualifying timber. Compensation for qualifying timber on potentially unstable slopes or landforms may not exceed \$50,000.

For approved forest practices applications for which the regulatory impact is greater than the average percentage impact for all small forestland owners as determined by an analysis by DNR under the Regulatory Fairness Act, the compensation offered will be increased to 100 percent for that portion of the regulatory impact that is in excess of the average.

Qualifying timber in FREP must meet all of the following criteria:

- the trees are ones that the owner is required to leave unharvested under fish protection rules, or that are made uneconomic to harvest by the forest practices rules;
- the trees are located within or bordering a commercially reasonable harvest unit, or for which an approved forest practices application cannot be obtained because of forest practices rules restrictions; and
- the trees are in certain sensitive areas, including sensitive aquatic areas, channel migration zones, and areas of potentially unstable slopes or landforms.

On parcels of 20 contiguous acres or less the SFLO must work with landowners with a total parcel ownership of less than 80 acres to develop alternative management plans for riparian buffers. The Forest Practices Board (Board) must condition the adopted forest practices rules in such a manner that allows forest practices applicants to propose harvest plans as an alternative to the default rules. These alternative plans are to be developed in response to site-specific physical features and must provide protection to public resources that is equal to the standard harvest rules adopted by the Board.

The Natural Climate Solutions Account (NCSA) is an account established to increase the

resilience of the state's waters, forests, and other vital ecosystems to the impacts of climate change and conserve working forestlands at risk of conversion. Funding must be used for projects and activities that will increase forest and community resilience to wildfire, improve forest health, prevent emissions by preserving natural and working lands from the threat of conversion, or increase support to small forestland owners through FREP and the family forest fish passage program. Legislative intent was established that not less than \$10 million be expended each biennium for the FREP, or for riparian easement projects funded under the agricultural conservation easements program, or similar riparian enhancement programs.

Summary of Bill: Qualifying timber for FREP means those forest trees on land owned by a qualifying small forest landowner. A forestland owner is an owner whose interest in the land and timber is in fee or who has rights to the timber to be included in the forestry riparian easement that extend at least 40 years, rather than 50 years. Participation in FREP does not preclude inclusion of the land in future mitigation programs.

The SFLO shall process FREP applications in the order received to the extent reasonably possible. Subject to availability of funding, the amount of compensation the SFLO shall offer for qualifying timber in FREP is increased from 50 percent to 90 percent of the value. The SFLO may use a landowner's actual mill receipts to help determine fair market value. Compensation for qualifying timber on potentially unstable slopes or landforms may not exceed \$150,000, up from \$50,000 under current law.

The SFLO must complete FREP application transactions within two years of the application receipt consistent with the goals of the NCSA. Funding through the NCSA for payments to the FREP are provided for the easement timber value, and are not considered payment for the net carbon value of the timber remaining on-site, nor its potential for sequestering additional carbon during the term of the FREP.

If the amounts appropriated for FREP are insufficient to cover program reimbursement over the upcoming two-year period, DNR shall make a declaration that will temporarily allow all small forestland owners to be eligible for small parcel alternative management plans. If a small forestland owner chooses to participate in a small parcel alternative management plan, they are not eligible for FREP compensation on that harvest. When sufficient funding becomes available, DNR may stop accepting small forestland owner forest practice harvest applications that qualify for small parcel alternative management plans due to insufficient funding, provided that any forest practice harvest applications already received may be allowed to continue.

At least semiannually, DNR shall consult with the small forestland owner advisory committee to review landowner complaints, administrative processes, rule recommendations, and related issues for potential improved efficiencies and effectiveness.

The provision allowing for approved forest practices applications for which the regulatory

impact is greater than the average percentage impact for all small forestland owners to receive up to 100 percent for that portion of the regulatory impact that is in excess of the average is repealed.

Appropriation: None.

Fiscal Note: Requested on February 1, 2023.

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: PRO: This bill is a proposed solution to a rule change that surprised several forest landowners in November. If implemented, there will be an increase in landowner participation with the DNR. Many landowners view themselves as environmental stewards and would like the ability to manage their land. FREP is currently back logged by about 100 applications and hopes to catch up with the passage of this bill. It can currently take 4-7 years for some small forest landowners to receive their FREP compensation. There are some concerns with the bill, especially the alternative management plans, which was only intended to exempt the smallest forest landowners and if overapplied could lead to the deterioration of riparian buffers and have a significant impact on water quality. The DNR supports changes in the bill that would increase compensation and decrease lease terms. The forest practices rules and proposed rule changes have a disproportionate impact on small forest landowners. The 20 acre trigger in the bill is an incentive for making sure there is sufficient funding to pay for FREP. Certain small forest landowners have had significant financial impacts from the inability to harvest due to the forest practices rules.

CON: There is support for funding for the FREP program. There are no limits in the bill for how the 20 acre exemption will work, which would allow how many times the exemption may be used. The bill contains a decrease in easement terms and an increase in the cost of the program. If payment of 90 percent of the easement is required the state should consider a permanent easement. If this program is not sufficiently funded, it will have health impacts on the residents of the Suquamish Tribe and will put much of the Suquamish land at risk. The streamside buffers are too small, especially for small streams, and will not be able to maintain a healthy riparian habitat or good water quality. There are additional concerns about the timber value that will be compensated. Increasing the cost of the program may lead to unintended consequences, and demand for natural climate funding already far exceeds what is available.

OTHER: This bill is generally good, but there are concerns regarding insufficient funding and the potential impacts to the 20-acre exemption rule, which could lead to poor water quality and reduced riparian buffers.

Persons Testifying: PRO: Senator Ron Muzzall, Prime Sponsor; Elaine Oneil, Washington Farm Forestry Association; Don Lentz; Ken Miller, Washington Farm Forestry Association; Alex Smith, Washington Department of Natural Resources.

CON: Debbie Kay, The Suquamish Tribe; Paula Swedeen, Conservation Northwest; Darcy Nonemacher, Washington Conservation Action.

OTHER: Tom O'Brien, WDFW; Vince McGowan, Ecology.

Persons Signed In To Testify But Not Testifying: No one.