
ENGROSSED SUBSTITUTE HOUSE BILL 1789

State of Washington

68th Legislature

2023 Regular Session

By House Agriculture and Natural Resources (originally sponsored by Representatives Reeves, Fitzgibbon, Chapman, Kloba, Ramel, Pollet, and Fosse; by request of Department of Natural Resources)

READ FIRST TIME 02/17/23.

1 AN ACT Relating to expanding revenue generation and economic
2 opportunities from natural climate solutions and ecosystem services;
3 amending RCW 79.02.010, 79.105.150, and 79.15.010; reenacting and
4 amending RCW 79.64.110 and 79.22.050; adding a new chapter to Title
5 79 RCW; and providing an expiration date.

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

7 NEW SECTION. **Sec. 1.** The definitions in this section apply
8 throughout this chapter unless the context clearly requires
9 otherwise.

10 (1) "Ecosystem service credit" means a predetermined and
11 standardized unit that represents a measurable ecosystem service
12 provided in the context of a payment for an ecosystem service
13 project.

14 (2) "Ecosystem service marketplace" has the same meaning as
15 "ecosystem services market" as defined in RCW 76.09.020.

16 (3) "Ecosystem service project broker" means an entity that
17 facilitates the process of matching ecosystem service providers and
18 purchasers of ecosystem service project credits. An ecosystem service
19 project broker may sell or procure credits on their clients' behalf
20 and provide financing and marketing expertise. Ecosystem service
21 project brokers may also act as ecosystem service project developers.

1 (4) "Ecosystem service project developer" means an entity that
2 sources and initiates ecosystem service projects on behalf of the
3 ecosystem service provider including, but not limited to, by working
4 with ecosystem service project standards and verification bodies,
5 bearing financial risks of projects, and working with a network of
6 distributors and retailers to deliver auditable ecosystem service
7 project credits to a marketplace. An ecosystem service project
8 developer may also act as an ecosystem service project broker.

9 (5) (a) "Ecosystem services" has the same meaning as defined in
10 RCW 76.09.020.

11 (b) Examples of ecosystem services include, but are not limited
12 to, carbon sequestration and storage projects that are consistent
13 with the policies outlined in RCW 70A.45.090, air and water
14 filtration, climate stabilization, and disturbance mitigation.

15 (6) "Payment for ecosystem service project" means a transaction
16 within an ecosystem service marketplace that transfers financial
17 incentives to ecosystem service providers that are conditional on the
18 provision of the service. Project types include, but are not limited
19 to, carbon offset projects.

20 NEW SECTION. **Sec. 2.** (1) The department is authorized to enter
21 into contracts for payment for ecosystem service projects on public
22 lands, consistent with this chapter and other relevant laws, on terms
23 and conditions acceptable to the department, after approval by the
24 board of natural resources, only for the purpose of generating
25 additional revenue by providing ecosystem services. Any ecosystem
26 service project on public lands:

27 (a) Must be limited to afforestation, reforestation, and aquatic
28 projects;

29 (b) Must be consistent with the policies outlined in RCW
30 70A.45.090;

31 (c) Must support the workforce development goals and investments
32 made under RCW 76.04.521;

33 (d) May not be inconsistent with ongoing forest health planning
34 efforts and investments such as expenditures from the wildfire
35 response, forest restoration, and community resilience account
36 created in RCW 76.04.511;

37 (e) Must result in an increase in revenue to beneficiaries as
38 compared to expected revenue that may exist in absence of the
39 underlying ecosystem service project; and

1 (f) May not limit or impair the exercise of tribal treaty and
2 reserved rights, existing tribal access to lands managed by the
3 department, or preexisting agreements between tribes and the
4 department.

5 (2) The contract term under this section may represent the sale
6 or lease of ecosystem service credits and may not last for a period
7 of longer than 125 years. Proceeds from contracts for ecosystem
8 services must be deposited into the appropriate account in the state
9 treasury.

10 (3) The authority of the department to enter into a contract that
11 results in payments for ecosystem service projects under subsection
12 (1) of this section is conditional on any specific project being
13 consistent with the department's management of the underlying public
14 land for agriculture or commercial timber harvest and ensure the
15 department meets its fiduciary responsibility to the state's trust
16 beneficiaries. Any ecosystem service project, or the sum of all
17 ecosystem service projects, may not prevent the department from
18 managing state lands and state forestlands for sustained yield as
19 required by RCW 79.10.310.

20 (4) The department may:

21 (a) Directly offer for sale ecosystem service credits, consistent
22 with this section, with established compliance ecosystem service
23 marketplaces or verifiable and established voluntary ecosystem
24 service marketplace;

25 (b) Enter into contracts with ecosystem service project
26 developers or brokers, through public auction or by direct
27 negotiation, to bring ecosystem service credits to market. Contracts
28 for ecosystem services are subject to approval by, and the rules
29 adopted by, the board.

30 (5) Notice of intent to contract by negotiation must be published
31 on the department's website. The notice must be published within the
32 90 days preceding commencement of negotiations.

33 (6) The department is authorized to conduct any additional
34 advertising that it determines to be in the best interest of the
35 state.

36 (7) The department may enter into contracts or agreements with
37 third-party ecosystem service project developers or brokers for
38 purposes that include, but are not limited to, determining the
39 feasibility of entering into a contract for a payment for an
40 ecosystem service project, establishing a payment for an ecosystem

1 service project with an ecosystem service marketplace, and marketing
2 and selling credits on an established ecosystem service marketplace.

3 (8) The department must provide a report to the board upon
4 execution of a contract for a payment for an ecosystem service
5 project that includes the term of the contract and projected
6 revenues.

7 (9) (a) Before entering into the sale of ecosystem service credits
8 under this section, the board must find that the conditions of this
9 section are satisfied and approve contract terms and a minimum
10 payment for ecosystem services that is valid for a period of 180
11 days, or a longer period as may be established by resolution.

12 (b) Where the board has set a minimum payment for ecosystem
13 service credits, the department may set the final payment for
14 ecosystem service credits, which must be based on current market
15 prices. The board may reestablish the minimum payment at any time.

16 NEW SECTION. **Sec. 3.** (1) By December 1, 2024, the department
17 must submit a report to the office of financial management and the
18 legislature, consistent with RCW 43.01.036, that includes information
19 on payment for ecosystem service projects entered into or committed
20 to by the department, including type of projects, number of acres
21 involved, and projected revenues. The report must also include any
22 challenges or barriers encountered by the department in the process
23 of attempting to implement carbon offset or payment for ecosystem
24 service projects and recommendations to address those challenges and
25 barriers, including the operability of the carbon offset rules
26 adopted under RCW 70A.65.170.

27 (2) This section expires June 30, 2025.

28 **Sec. 4.** RCW 79.02.010 and 2018 c 258 s 1 are each amended to
29 read as follows:

30 The definitions in this section apply throughout this title
31 unless the context clearly requires otherwise.

32 (1) "Aquatic lands" means all state-owned tidelands, shorelands,
33 harbor areas, and the beds of navigable waters as defined in RCW
34 79.105.060 that are administered by the department.

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

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

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

1 (5) "Community forest trust lands" means those lands acquired and
2 managed under the provisions of chapter 79.155 RCW.

3 (6) "Department" means the department of natural resources.

4 (7) (a) "Forest biomass" means the by-products of: Current forest
5 management activities; current forest protection treatments
6 prescribed or permitted under chapter 76.04 RCW; or the by-products
7 of forest health treatment prescribed or permitted under chapter
8 76.06 RCW.

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

15 (8) "Good neighbor agreement" means an agreement entered into
16 between the state and the United States forest service or United
17 States bureau of land management to conduct forestland, watershed,
18 and rangeland restoration activities on federal lands, as originally
19 authorized by the 2014 farm bill (P.L. 113-79).

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

24 (10) "Land bank lands" means lands acquired under RCW 79.19.020.

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

29 (12) "Public lands" means lands of the state of Washington
30 administered by the department including but not limited to state
31 lands, state forestlands, lands included in a state forestland pool,
32 and aquatic lands.

33 (13) "State forestland pool" or "land pool" means state
34 forestlands acquired and managed under RCW 79.22.140.

35 (14) "State forestlands" means lands acquired under RCW
36 79.22.010, 79.22.040, and 79.22.020.

37 (15) "State lands" includes:

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

1 (b) University lands, that is, lands held in trust for university
2 purposes;

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

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

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

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

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

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

17 (16) "Valuable materials" means any product or material on the
18 lands, such as forest products, forage or agricultural crops, stone,
19 gravel, sand, peat, and all other materials of value except: (a)
20 Mineral, coal, petroleum, and gas as provided for under chapter 79.14
21 RCW; ~~((and))~~ (b) forest biomass as provided for under chapter 79.150
22 RCW; and (c) ecosystem services as provided for under chapter 79.---
23 RCW (the new chapter created in section 9 of this act).

24 (17) "Ecosystem services" has the same meaning as defined in RCW
25 76.09.020.

26 **Sec. 5.** RCW 79.64.110 and 2021 c 334 s 995 and 2021 c 145 s 3
27 are each reenacted and amended to read as follows:

28 (1) Any moneys derived from the lease of state forestlands or
29 from the sale of valuable materials, oils, gases, coal, minerals,
30 ~~((or))~~ fossils, or contracts for payments for ecosystem service
31 projects under chapter 79.--- RCW (the new chapter created in section
32 9 of this act) from those lands, except as provided in RCW 79.64.130,
33 or the appraised value of these resources when transferred to a
34 public agency under RCW 79.22.060, except as provided in RCW
35 79.22.060(4), must be distributed as follows:

36 (a) For state forestlands acquired through RCW 79.22.040 or by
37 exchange for lands acquired through RCW 79.22.040:

38 (i) The expense incurred by the state for administration,
39 reforestation, and protection, not to exceed ~~((twenty-five))~~ 25

1 percent, which rate of percentage shall be determined by the board,
2 must be returned to the forest development account created in RCW
3 79.64.100. During the 2017-2019, 2019-2021, and 2021-2023 fiscal
4 biennia, the board may increase the (~~twenty-five~~) 25 percent
5 limitation up to (~~twenty-seven~~) 27 percent.

6 (ii) Any balance remaining must be paid to the county in which
7 the land is located or, for counties participating in a land pool
8 created under RCW 79.22.140, to each participating county
9 proportionate to its contribution of asset value to the land pool as
10 determined by the board. Payments made under this subsection are to
11 be paid, distributed, and prorated, except as otherwise provided in
12 this section, to the various funds in the same manner as general
13 taxes are paid and distributed during the year of payment. However,
14 in order to test county flexibility in distributing state forestland
15 revenue, a county may in its discretion pay, distribute, and prorate
16 payments made under this subsection of moneys derived from state
17 forestlands acquired by exchange between July 28, 2019, and June 30,
18 2020, for lands acquired through RCW 79.22.040, within the same
19 county, in the same manner as general taxes are paid and distributed
20 during the year of payment for the former state forestlands that were
21 subject to the exchange.

22 (iii) Any balance remaining, paid to a county with a population
23 of less than (~~sixteen thousand~~) 16,000, must first be applied to
24 the reduction of any indebtedness existing in the current expense
25 fund of the county during the year of payment.

26 (iv) With regard to moneys remaining under this subsection
27 (1)(a), within seven working days of receipt of these moneys, the
28 department shall certify to the state treasurer the amounts to be
29 distributed to the counties. The state treasurer shall distribute
30 funds to the counties four times per month, with no more than (~~ten~~)
31 10 days between each payment date.

32 (b) For state forestlands acquired through RCW 79.22.010 or by
33 exchange for lands acquired through RCW 79.22.010, except as provided
34 in RCW 79.64.120:

35 (i) Fifty percent shall be placed in the forest development
36 account.

37 (ii) Fifty percent shall be prorated and distributed to the state
38 general fund, to be dedicated for the benefit of the public schools,
39 to the county in which the land is located or, for counties
40 participating in a land pool created under RCW 79.22.140, to each

1 participating county proportionate to its contribution of asset value
2 to the land pool as determined by the board, and according to the
3 relative proportions of tax levies of all taxing districts in the
4 county. The portion to be distributed to the state general fund shall
5 be based on the regular school levy rate under RCW 84.52.065 (1) and
6 (2) and the levy rate for any school district enrichment levies. With
7 regard to the portion to be distributed to the counties, the
8 department shall certify to the state treasurer the amounts to be
9 distributed within seven working days of receipt of the money. The
10 state treasurer shall distribute funds to the counties four times per
11 month, with no more than (~~ten~~) 10 days between each payment date.
12 The money distributed to the county must be paid, distributed, and
13 prorated to the various other funds in the same manner as general
14 taxes are paid and distributed during the year of payment.

15 (2) A school district may transfer amounts deposited in its debt
16 service fund pursuant to this section into its capital projects fund
17 as authorized in RCW 28A.320.330.

18 **Sec. 6.** RCW 79.22.050 and 2003 c 334 s 220 and 2003 c 313 s 7
19 are each reenacted and amended to read as follows:

20 (1) Except as provided in RCW 79.22.060, all land, acquired or
21 designated by the department as state forestland, shall be forever
22 reserved from sale, but the valuable materials thereon may be sold or
23 the land may be leased in the same manner and for the same purposes
24 as is authorized for state lands if the department finds such sale or
25 lease to be in the best interests of the state and approves the terms
26 and conditions thereof.

27 (2) Ecosystem services may be sold only if consistent with the
28 conditions in chapter 79.--- RCW (the new chapter created in section
29 9 of this act) and may not be sold if chapter 79.--- RCW (the new
30 chapter created in section 9 of this act) does not appear in codified
31 statute.

32 (3) In the event that the department sells logs using the
33 contract harvesting process described in RCW 79.15.500 through
34 79.15.530, the moneys received subject to this section are the net
35 proceeds from the contract harvesting sale.

36 **Sec. 7.** RCW 79.105.150 and 2022 c 157 s 19 are each amended to
37 read as follows:

1 (1) After deduction for management costs as provided in RCW
2 79.64.040 and payments to towns under RCW 79.115.150(2), all moneys
3 received by the state from the sale or lease of state-owned aquatic
4 lands (~~and~~), from the sale of valuable material from state-owned
5 aquatic lands, and from the sale of ecosystem services under chapter
6 79.--- RCW (the new chapter created in section 9 of this act), shall
7 be deposited in the aquatic lands enhancement account which is hereby
8 created in the state treasury. After appropriation, these funds shall
9 be used solely for aquatic lands enhancement projects; for the
10 purchase, improvement, or protection of aquatic lands for public
11 purposes; for providing and improving access to the lands; and for
12 volunteer cooperative fish and game projects. The aquatic lands
13 enhancement account may be used to support the shellfish program, the
14 ballast water program, hatcheries, the Puget Sound toxic sampling
15 program and steelhead mortality research at the department of fish
16 and wildlife, the knotweed program at the department of agriculture,
17 actions at the University of Washington for reducing ocean
18 acidification, which may include the creation of a center on ocean
19 acidification, the Puget SoundCorps program, and support of the
20 marine resource advisory council and the Washington coastal marine
21 advisory council. During the 2017-2019 and 2019-2021 fiscal biennia,
22 the legislature may transfer from the aquatic lands enhancement
23 account to the geoduck aquaculture research account for research
24 related to shellfish aquaculture. During the 2015-2017 fiscal
25 biennium, the legislature may transfer moneys from the aquatic lands
26 enhancement account to the marine resources stewardship trust
27 account.

28 (2) In providing grants for aquatic lands enhancement projects,
29 the recreation and conservation funding board shall:

30 (a) Require grant recipients to incorporate the environmental
31 benefits of the project into their grant applications;

32 (b) Utilize the statement of environmental benefits,
33 consideration, except as provided in RCW 79.105.610, of whether the
34 applicant is a Puget Sound partner, as defined in RCW 90.71.010,
35 whether a project is referenced in the action agenda developed by the
36 Puget Sound partnership under RCW 90.71.310, and except as otherwise
37 provided in RCW 79.105.630, and effective one calendar year following
38 the development and statewide availability of urban forestry
39 management plans and ordinances under RCW 76.15.090, whether the
40 applicant is an entity that has been recognized, and what gradation

1 of recognition was received, in the evergreen community designation
2 program created in RCW 76.15.090 in its prioritization and selection
3 process; and

4 (c) Develop appropriate outcome-focused performance measures to
5 be used both for management and performance assessment of the grants.

6 (3) To the extent possible, the department should coordinate its
7 performance measure system with other natural resource-related
8 agencies as defined in RCW 43.41.270.

9 (4) The department shall consult with affected interest groups in
10 implementing this section.

11 (5) Any project designed to address the restoration of Puget
12 Sound may be funded under this chapter only if the project is not in
13 conflict with the action agenda developed by the Puget Sound
14 partnership under RCW 90.71.310.

15 **Sec. 8.** RCW 79.15.010 and 2003 c 334 s 331 are each amended to
16 read as follows:

17 (1) Valuable materials situated upon state lands and state
18 forestlands may be sold separate from the land, when in the judgment
19 of the department, it is for the best interest of the state so to
20 sell the same. The sale of any ecosystem services is limited to
21 consistency with the conditions in chapter 79.--- RCW (the new
22 chapter created in section 9 of this act) and may not be sold if
23 chapter 79.--- RCW (the new chapter created in section 9 of this act)
24 does not appear in codified statute.

25 (2) Sales of valuable materials from any university lands
26 require:

27 (a) The consent of the board of regents of the University of
28 Washington; or

29 (b) Legislative directive.

30 (3) When application is made for the purchase of any valuable
31 materials, the department shall appraise the value of the valuable
32 materials if the department determines it is in the best interest of
33 the state to sell. No valuable materials shall be sold for less than
34 the appraised value thereof.

35 NEW SECTION. **Sec. 9.** Sections 1 through 3 of this act
36 constitute a new chapter in Title 79 RCW.

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