

# HOUSE BILL REPORT

## HB 1740

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### As Reported by House Committee On:

Agriculture and Natural Resources

**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:** Representatives Orcutt, Chapman, Dent, Reeves, Morgan, Chandler, Kretz, Klicker, Tharinger, Graham and Cheney.

### Brief History:

#### Committee Activity:

Agriculture and Natural Resources: 2/10/23, 2/17/23 [DP].

#### Brief Summary of Bill

- Reduces the duration of easements under the Forestry Riparian Easement Program (FREP) from 50 years to 40 years.
- Increases the amount the Small Forest Landowner Office (SFLO) must offer a small forest landowner from 50 percent to 90 percent of the value of qualifying timber in the FREP.
- Requires the SFLO to complete FREP application transactions within two years of receipt of the application.
- Provides that if the amounts appropriated for the FREP are insufficient to cover FREP reimbursement over the upcoming two-year period, the Department of Natural Resources must temporarily allow all small forest landowners to be eligible for small parcel alternative management plans.

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## HOUSE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

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*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. Signed by 11 members: Representatives Chapman, Chair; Morgan, Vice Chair; Reeves, Vice Chair; Dent, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Kloba, Kretz, Lekanoff, Orcutt, Schmick and Springer.

**Staff:** Robert Hatfield (786-7117).

**Background:**

Forestry Riparian Easement Program.

The Forestry Riparian Easement Program (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. The DNR may purchase easements from small forest landowners and hold the easements in the name of the state. Small forest landowners are generally landowners who harvest less than an average of 2 million board feet per year. The easements are restrictive only and allow landowners to engage in activities except as necessary to protect the riparian functions of the habitat for the term of the easement.

The easements represent 50 percent of the value of the unharvested trees, plus participation compliance costs. Once a contract under the FREP is executed, the 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 the DNR based on the fair market value of the timber volume covered by the easement. This calculation is made by the 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.

Small Parcel Alternative Management Plans.

Parcels of 20 acres or less which are held by landowners owning less than 80 acres total are exempted from requirements to leave riparian buffers adjacent to streams. These landowners must comply with permanent forest practices rules in effect as of January 1, 1999, but may additionally be required to leave timber adjacent to streams equivalent to 15 percent of the volume of timber covering the harvest area. The SFLO is required to work with such landowners to develop alternative management plans for such riparian buffers.

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**Summary of Bill:**

Forestry Riparian Easement Program.

Forestry riparian easements shall be effective for 40 years, rather than 50 years.

Subject to availability of funding, the amount of compensation the Small Forest Landowner Office (SFLO) shall offer for qualifying timber in the Forestry Riparian Easement Program (FREP) is increased from 50 percent to 90 percent of the value. The SFLO may utilize landowners' actual mill receipts to help determine fair market value but may not require these documents in any valuation process.

Compensation for qualifying timber on potentially unstable slopes or landforms may not exceed \$150,000, up from \$50,000 under current law.

At least semiannually, the Department of Natural Resources (DNR) must consult with the Small Forest Landowner Advisory Committee to review landowner complaints, administrative processes, rule recommendations, and related issues where the DNR is actively seeking the Small Forest Land Owner Advisory Committee's advice on potential improved efficiencies and effectiveness.

The SFLO must complete FREP application transactions within two years of receipt of the application.

Funding through the Natural Climate Solutions Account created through the enactment of the Climate Commitment Act for payments to the FREP are provided solely for the easement's 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 easement.

Small Parcel Alternative Management Plans.

If the amounts appropriated are insufficient to cover FREP reimbursement over the upcoming two-year period, the DNR shall make a declaration that will temporarily allow all small forest landowners to be eligible for small parcel alternative management plans, provided the parcels' harvests do not exceed 20 acres. If a small forest landowner chooses to participate in a small parcel alternative management plan due to their eligibility as a result of insufficient funds for the FREP, they are not eligible for forestry riparian easement compensation on that harvest.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) One of the provisions in the bill is that it decreases the forestry riparian easement from 50 years to 40 years. Many landowners are starting to harvest at 40 years, rather than 50 years. It used to be that larger is better when it comes to timber value, but that is not the case any more; now, timber that gets bigger than a certain size starts to lose its value.

Last fall, the Forest Practices Board failed to approve simple harvest prescriptions. As a result, some have suggested focusing on enhancing the Forestry Riparian Easement Program (FREP). The FREP needs stable funding, so the bill has a trigger to open the 20-acre harvest rules temporarily if there is not enough funding for FREP.

Forty-five percent of one landowner's land is in riparian reserve, which is a significant impact. The intent of FREP is to address the disproportionate impacts of the Forests and Fish law. Increasing the FREP compensation amount to a flat amount of 90 percent of the timber value would simplify calculations. It is important to still be able to sell the carbon value of timber left standing.

This bill is a helpful step in streamlining FREP for the Department of Natural Resources (DNR) and landowners.

There are concerns with the 20-acre exemption in the bill. The FREP was established in 1999 following the passage of the Forests and Fish law. The state has purchased more than 150 FREP easements over time. There is support for many elements of the bill, including increasing the compensation rate to 90 percent, raising the cap on stable slope easements to \$150,000, reducing the length of easements to 40 years, and requiring a two-year timeline to process FREP applications. However, the 20-acre exemption in the bill could allow thousands of landowners to circumvent riparian protections, which could in turn lead to Endangered Species Act violations.

(Opposed) The bill will negatively impact salmon habitat and water quality. This is not the time to be decreasing riparian habitat protections at the same time the state is trying to restore and protect riparian habitat.

There is a clause in the bill that allows small forest landowners to go back to the 1999 forest practice rules regarding riparian protections, which poses a risk to streams. There is a disclaimer on the webpage for the small parcel management plan rules that says that compliance with those requirements does not ensure compliance with the ESA or the Clean Water Act. There is no limit on the number of these 20-acre harvests in the bill, nor any minimum distances between the 20-acre harvests, nor any minimum elapsed time between 20-acre harvests. This clause could put most of the state's local salmon habitat landscape at risk. The bill would take riparian buffers in many areas from 100 feet down to 58 feet or 29 feet.

There is currently \$10 million in the proposed Climate Commitment Act (CCA) budget

for FREP to address the backlog in applications. Money from the CCA will be a little unpredictable at first. The concern around the bill is that it will increase costs to the state and also provide less returns to the state; first by reducing the duration of easements to 40 years, and second by broadening the 20-acre harvest exemption. The bill could lead to an actual diminishment in riparian buffers.

(Other) There is support for full funding for FREP as a critical component in maintaining habitat and water quality. But the language in the bill could mean that about 20 percent of harvests could have significantly less protections than they currently do.

The only area of concern around the bill is the 20-acre exemption rule. The exemption is currently available only to landowners where the harvest parcel is less than 20 acres and the landowner owns less than 80 acres statewide.

**Persons Testifying:** (In support) Representative Ed Orcutt, prime sponsor; Elaine Oneil and Ken Miller, Washington Farm Forestry Association; Alex Smith, Washington Department of Natural Resources.

(Opposed) Jim Peters, Northwest Indian Fisheries Commission; Debbie Kay, The Suquamish Tribe; and Darcy Nonemacher, Washington Conservation Action.

(Other) Vince McGowan, Ecology; and Tom O'Brien, Department of Fish and Wildlife.

**Persons Signed In To Testify But Not Testifying:** None.