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**SUBSTITUTE HOUSE BILL 2311**

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**State of Washington**

**57th Legislature**

**2002 Regular Session**

**By** House Committee on Natural Resources (originally sponsored by Representatives Doumit, Sump, Jackley, Rockefeller, Kessler, Eickmeyer, Hatfield, Delvin, Buck, Linville, Upthegrove, Ericksen and Cairnes)

Read first time 01/25/2002. Referred to Committee on .

1 AN ACT Relating to small forest landowners; amending RCW 76.13.110,  
2 76.13.120, and 76.13.140; and adding a new section to chapter 76.09  
3 RCW.

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

5 **Sec. 1.** RCW 76.13.110 and 2001 c 280 s 1 are each amended to read  
6 as follows:

7 (1) The department of natural resources shall establish and  
8 maintain a small forest landowner office. The small forest landowner  
9 office shall be a resource and focal point for small forest landowner  
10 concerns and policies, and shall have significant expertise regarding  
11 the management of small forest holdings, governmental programs  
12 applicable to such holdings, and the forestry riparian easement  
13 program.

14 (2) The small forest landowner office shall administer the  
15 provisions of the forestry riparian easement program created under RCW  
16 76.13.120. ~~((With respect to that program, the office shall have the  
17 authority to contract with private consultants that the office finds  
18 qualified to perform timber cruises of forestry riparian easements or  
19 to lay out streamside buffers and comply with other forest and fish~~

1 regulatory requirements related to the forest riparian easement  
2 program.))

3 (3) The small forest landowner office shall assist in the  
4 development of small landowner options through alternate management  
5 plans or alternate harvest restrictions appropriate to small  
6 landowners. The small forest landowner office shall develop criteria  
7 to be adopted by the forest practices board in rules and a manual for  
8 alternate management plans or alternate harvest restrictions. These  
9 alternate plans or alternate harvest restrictions shall meet riparian  
10 functions while requiring less costly regulatory prescriptions. At the  
11 landowner's option, alternate plans or alternate harvest restrictions  
12 may be used to further meet riparian functions.

13 The small forest landowner office shall evaluate the cumulative  
14 impact of such alternate management plans or alternate harvest  
15 restrictions on essential riparian functions at the subbasin or  
16 watershed level. The small forest landowner office shall adjust future  
17 alternate management plans or alternate harvest restrictions in a  
18 manner that will minimize the negative impacts on essential riparian  
19 functions within a subbasin or watershed.

20 (4) An advisory committee is established to assist the small forest  
21 landowner office in developing policy and recommending rules to the  
22 forest practices board. The advisory committee shall consist of seven  
23 members, including a representative from the department of ecology((7))  
24 and the department of fish and wildlife((, and a tribal  
25 representative)). ((Four)) Five additional committee members shall be

26 appointed by the commissioner of public lands. A tribal representative  
27 shall be chosen from a list of names submitted by the tribal community  
28 and shall serve for a term of four years, and four small forest  
29 landowners ((who shall be appointed by the commissioner of public  
30 lands)) shall be chosen from a list of candidates submitted by the  
31 board of directors of the Washington farm forestry association or its  
32 successor organization. The association shall submit more than one  
33 candidate for each position. The commissioner shall designate two of  
34 the initial small forest landowner appointees to serve five-year terms  
35 and the other two small forest landowner appointees to serve four-year  
36 terms. Thereafter, appointees shall serve for a term of four years.  
37 The small forest landowner office shall review draft rules or rule  
38 concepts with the committee prior to recommending such rules to the  
39 forest practices board. The office shall reimburse nongovernmental

1 committee members for reasonable expenses associated with attending  
2 committee meetings as provided in RCW 43.03.050 and 43.03.060.

3 (5) By December 1, 2002, the small forest landowner office shall  
4 provide a report to the board and the legislature containing:

5 (a) Estimates of the amounts of nonindustrial forests and woodlands  
6 in holdings of twenty acres or less, twenty-one to one hundred acres,  
7 one hundred to one thousand acres, and one thousand to five thousand  
8 acres, in western Washington and eastern Washington, and the number of  
9 persons having total nonindustrial forest and woodland holdings in  
10 those size ranges;

11 (b) Estimates of the number of parcels of nonindustrial forests and  
12 woodlands held in contiguous ownerships of twenty acres or less, and  
13 the percentages of those parcels containing improvements used: (i) As  
14 primary residences for half or more of most years; (ii) as vacation  
15 homes or other temporary residences for less than half of most years;  
16 and (iii) for other uses;

17 (c) The watershed administrative units in which significant  
18 portions of the riparian areas or total land area are nonindustrial  
19 forests and woodlands;

20 (d) Estimates of the number of forest practices applications and  
21 notifications filed per year for forest road construction,  
22 silvicultural activities to enhance timber growth, timber harvest not  
23 associated with conversion to nonforest land uses, with estimates of  
24 the number of acres of nonindustrial forests and woodlands on which  
25 forest practices are conducted under those applications and  
26 notifications; and

27 (e) Recommendations on ways the board and the legislature could  
28 provide more effective incentives to encourage continued management of  
29 nonindustrial forests and woodlands for forestry uses in ways that  
30 better protect salmon, other fish and wildlife, water quality, and  
31 other environmental values.

32 (6) By December 1, 2004, and every four years thereafter, the small  
33 forest landowner office shall provide to the board and the legislature  
34 an update of the report described in subsection (5) of this section,  
35 containing more recent information and describing:

36 (a) Trends in the items estimated under subsection (5)(a) through  
37 (d) of this section;

38 (b) Whether, how, and to what extent the forest practices act and  
39 rules contributed to those trends; and

1 (c) Whether, how, and to what extent: (i) The board and  
2 legislature implemented recommendations made in the previous report;  
3 and (ii) implementation of or failure to implement those  
4 recommendations affected those trends.

5 **Sec. 2.** RCW 76.13.120 and 2001 c 280 s 2 are each amended to read  
6 as follows:

7 (1) The legislature finds that the state should acquire easements  
8 along riparian and other sensitive aquatic areas from small forest  
9 landowners willing to sell or donate such easements to the state  
10 provided that the state will not be required to acquire such easements  
11 if they are subject to unacceptable liabilities. The legislature  
12 therefore establishes a forestry riparian easement program.

13 (2) The definitions in this subsection apply throughout this  
14 section and RCW 76.13.100 and 76.13.110 unless the context clearly  
15 requires otherwise.

16 (a) "Forestry riparian easement" means an easement covering  
17 qualifying timber granted voluntarily to the state by a small forest  
18 landowner.

19 (b) "Qualifying timber" means those trees covered by a forest  
20 practices application that the small forest landowner is required to  
21 leave unharvested under the rules adopted under RCW 76.09.055 and  
22 76.09.370 or that is made uneconomic to harvest by those rules, and for  
23 which the small landowner is willing to grant the state a forestry  
24 riparian easement. "Qualifying timber" is timber within or bordering  
25 a commercially reasonable harvest unit as determined under rules  
26 adopted by the forest practices board, or timber for which an approved  
27 forest practices application for timber harvest cannot be obtained  
28 because of restrictions under the forest practices rules.

29 (c) "Small forest landowner" means a landowner meeting all of the  
30 following characteristics: (i) A forest landowner as defined in RCW  
31 76.09.020 whose interest in the land and timber is in fee or who has  
32 rights to the timber to be included in the forestry riparian easement  
33 that extend at least fifty years from the date the forest practices  
34 application associated with the easement is submitted; (ii) an entity  
35 that has harvested from its own lands in this state during the three  
36 years prior to the year of application an average timber volume that  
37 would qualify the owner as a small ((timber)) harvester under RCW  
38 ((84.33.073(1))) 84.33.035; and (iii) an entity that certifies at the

1 time of application that it does not expect to harvest from its own  
2 lands more than the volume allowed by RCW ((84.33.073(1))) 84.33.035  
3 during the ten years following application. If a landowner's prior  
4 three-year average harvest exceeds the limit of RCW ((84.33.073(1)))  
5 84.33.035, or the landowner expects to exceed this limit during the ten  
6 years following application, and that landowner establishes to the  
7 department of natural resources' reasonable satisfaction that the  
8 harvest limits were or will be exceeded to raise funds to pay estate  
9 taxes or equally compelling and unexpected obligations such as court-  
10 ordered judgments or extraordinary medical expenses, the landowner  
11 shall be deemed to be a small forest landowner.

12 For purposes of determining whether a person qualifies as a small  
13 forest landowner, the small forest landowner office, created in RCW  
14 76.13.110, shall evaluate the landowner under this definition as of the  
15 date that the forest practices application is submitted or the date the  
16 landowner notifies the department that the harvest is to begin with  
17 which the forestry riparian easement is associated. A small forest  
18 landowner can include an individual, partnership, corporate, or other  
19 nongovernmental legal entity. If a landowner grants timber rights to  
20 another entity for less than five years, the landowner may still  
21 qualify as a small forest landowner under this section. If a landowner  
22 is unable to obtain an approved forest practices application for timber  
23 harvest for any of his or her land because of restrictions under the  
24 forest practices rules, the landowner may still qualify as a small  
25 forest landowner under this section.

26 (d) "Completion of harvest" means that the trees have been  
27 harvested from an area and that further entry into that area by  
28 mechanized logging or slash treating equipment is not expected.

29 (3) The department of natural resources is authorized and directed  
30 to accept and hold in the name of the state of Washington forestry  
31 riparian easements granted by small forest landowners covering  
32 qualifying timber and to pay compensation to such landowners in  
33 accordance with subsections (6) and (7) of this section. The  
34 department of natural resources may not transfer the easements to any  
35 entity other than another state agency.

36 (4) Forestry riparian easements shall be effective for fifty years  
37 from the date the forest practices application associated with the  
38 qualifying timber is submitted to the department of natural resources,  
39 unless the easement is terminated earlier by the department of natural

1 resources voluntarily, based on a determination that termination is in  
2 the best interest of the state, or under the terms of a termination  
3 clause in the easement.

4 (5) Forestry riparian easements shall be restrictive only, and  
5 shall preserve all lawful uses of the easement premises by the  
6 landowner that are consistent with the terms of the easement and the  
7 requirement to protect riparian functions during the term of the  
8 easement, subject to the restriction that the leave trees required by  
9 the rules to be left on the easement premises may not be cut during the  
10 term of the easement. No right of public access to or across, or any  
11 public use of the easement premises is created by this statute or by  
12 the easement. Forestry riparian easements shall not be deemed to  
13 trigger the compensating tax of or otherwise disqualify land from being  
14 taxed under chapter 84.33 or 84.34 RCW.

15 (6) Upon application of a small forest landowner for a riparian  
16 easement that is associated with a forest practices application and the  
17 landowner's marking of the qualifying timber on the qualifying lands,  
18 the small forest landowner office shall determine the compensation to  
19 be offered to the small forest landowner as provided for in this  
20 section. The small forest landowner office shall also determine the  
21 compensation to be offered to a small forest landowner for qualifying  
22 timber for which an approved forest practices application for timber  
23 harvest cannot be obtained because of restrictions under the forest  
24 practices rules. The legislature recognizes that there is not readily  
25 available market transaction evidence of value for easements of this  
26 nature, and thus establishes the following methodology to ascertain the  
27 value for forestry riparian easements. Values so determined shall not  
28 be considered competent evidence of value for any other purpose.

29 The small forest landowner office shall establish the volume of the  
30 qualifying timber. Based on that volume and using data obtained or  
31 maintained by the department of revenue under RCW 84.33.074 and  
32 84.33.091, the small forest landowner office shall attempt to determine  
33 the fair market value of the qualifying timber as of the date the  
34 forest practices application associated with the qualifying timber was  
35 submitted or the date the landowner notifies the department that the  
36 harvest is to begin. ~~((If, under the forest practices rules adopted  
37 under chapter 4, Laws of 1999 sp. sess., some qualifying timber may be  
38 removed prior to the expiration of the fifty-year term of the easement,  
39 the small forest landowner office shall apply a reduced compensation~~

1 ~~factor to ascertain the value of those trees based on the proportional~~  
2 ~~economic value, considering income and growth, lost to the landowner))~~  
3 Removal of any qualifying timber before the expiration of the easement  
4 must be in accordance with the forest practices rules and the terms of  
5 the easement. There shall be no reduction in compensation for reentry.

6 (7) Except as provided in subsection (8) of this section, the small  
7 forest landowner office shall, subject to available funding, offer  
8 compensation to the small forest landowner in the amount of fifty  
9 percent of the value determined in subsection (6) of this section, plus  
10 the compliance and reimbursement costs as determined in accordance with  
11 RCW 76.13.140. If the landowner accepts the offer for qualifying  
12 timber that will be harvested pursuant to an approved forest practices  
13 application, the department of natural resources shall pay the  
14 compensation promptly upon (a) completion of harvest in the area  
15 covered by the forestry riparian easement; (b) verification that there  
16 has been compliance with the rules requiring leave trees in the  
17 easement area; and (c) execution and delivery of the easement to the  
18 department of natural resources. If the landowner accepts the offer  
19 for qualifying timber for which an approved forest practices  
20 application for timber harvest cannot be obtained because of  
21 restrictions under the forest practices rules, the department of  
22 natural resources shall pay the compensation promptly upon (i)  
23 verification that there has been compliance with the rules requiring  
24 leave trees in the easement area; and (ii) execution and delivery of  
25 the easement to the department of natural resources. Upon donation or  
26 payment of compensation, the department of natural resources may record  
27 the easement.

28 (8) For approved forest practices applications where the regulatory  
29 impact is greater than the average percentage impact for all small  
30 landowners as determined by the department of natural resources  
31 analysis under the regulatory fairness act, chapter 19.85 RCW, the  
32 compensation offered will be increased to one hundred percent for that  
33 portion of the regulatory impact that is in excess of the average.  
34 Regulatory impact includes trees left in buffers, special management  
35 zones, and those rendered uneconomic to harvest by these rules. A  
36 separate average or high impact regulatory threshold shall be  
37 established for western and eastern Washington. Criteria for these  
38 measurements and payments shall be established by the small forest  
39 landowner office.

1 (9) The forest practices board shall adopt rules under the  
2 administrative procedure act, chapter 34.05 RCW, to implement the  
3 forestry riparian easement program, including the following:

4 (a) A standard version or versions of all documents necessary or  
5 advisable to create the forestry riparian easements as provided for in  
6 this section;

7 (b) Standards for descriptions of the easement premises with a  
8 degree of precision that is reasonable in relation to the values  
9 involved;

10 (c) Methods and standards for cruises and valuation of forestry  
11 riparian easements for purposes of establishing the compensation. The  
12 department of natural resources shall perform the timber cruises of  
13 forestry riparian easements required under this chapter and chapter  
14 76.09 RCW. Any rules concerning the methods and standards for  
15 valuations of forestry riparian easements shall apply only to the  
16 department of natural resources, small forest landowners, and the small  
17 forest landowner office;

18 (d) A method to determine that a forest practices application  
19 involves a commercially reasonable harvest, and adopt criteria for  
20 entering into a forest riparian easement where a commercially  
21 reasonable harvest is not possible or a forest practices application  
22 that has been submitted cannot be approved because of restrictions  
23 under the forest practices rules;

24 (e) A method to address blowdown of qualified timber falling  
25 outside the easement premises;

26 (f) A formula for sharing of proceeds in relation to the  
27 acquisition of qualified timber covered by an easement through the  
28 exercise or threats of eminent domain by a federal or state agency with  
29 eminent domain authority, based on the present value of the department  
30 of natural resources' and the landowner's relative interests in the  
31 qualified timber;

32 (g) High impact regulatory thresholds;

33 (h) A method to determine timber that is qualifying timber because  
34 it is rendered uneconomic to harvest by the rules adopted under RCW  
35 76.09.055 and 76.09.370; and

36 (i) A method for internal department of natural resources review of  
37 small forest landowner office compensation decisions under subsection  
38 (7) of this section.

1       **Sec. 3.** RCW 76.13.140 and 2001 c 280 s 3 are each amended to read  
2 as follows:

3       In order to assist small forest landowners to remain economically  
4 viable, the legislature intends that the small forest landowners be  
5 able to net fifty percent of the value of the trees left in the buffer  
6 areas. The amount of compensation offered in RCW 76.13.120 shall also  
7 include the compliance costs for participation in the riparian easement  
8 program. For purposes of this section, "compliance costs" includes the  
9 cost of preparing and recording the easement, and any business and  
10 occupation tax and real estate excise tax imposed because of entering  
11 into the easement. The office may contract with private consultants  
12 that the office finds qualified to perform timber cruises of forestry  
13 riparian easements or to lay out streamside buffers and comply with  
14 other forest and fish regulatory requirements related to the forest  
15 riparian easement program. The department shall reimburse small forest  
16 landowners for the actual costs incurred for laying out the streamside  
17 buffers and marking the qualifying timber once a contract has been  
18 executed for the forestry riparian easement program. Reimbursement is  
19 subject to the work being acceptable to the department. The small  
20 forest landowner office shall determine how the reimbursement costs  
21 will be calculated.

22       NEW SECTION. **Sec. 4.** A new section is added to chapter 76.09 RCW  
23 to read as follows:

24       The legislature intends that small forest landowners have access to  
25 alternate plan processes or alternate harvest restrictions, or both if  
26 necessary, that meet the public resource protection standard set forth  
27 in RCW 76.09.370(3), but which also lowers the overall cost of  
28 regulation to small forest landowners including, but not limited to,  
29 timber value forgone, layout costs, and operating costs. The forest  
30 practices board shall consult with the small forest landowner office  
31 advisory committee in developing these alternate approaches. By July  
32 1, 2003, the forest practices board shall provide the legislature with  
33 a written report that describes the board's progress in developing  
34 alternate plan processes or alternate harvest restrictions, or both if  
35 necessary, that meet legislative intent.

1       As used in this section, "small forest landowner" has the same  
2 meaning as defined in RCW 76.13.120(2).

--- **END** ---