
HOUSE BILL 1637

State of Washington

61st Legislature

2009 Regular Session

By Representatives Orcutt, Blake, Kretz, and Herrera

Read first time 01/26/09. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to forest practices regulations applicable to small
2 forest landowners; amending RCW 76.13.120 and 76.13.140; creating new
3 sections; and providing an expiration date.

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

5 NEW SECTION. **Sec. 1.** This act is intended to allow the small
6 forest landowner office to begin the process of calculating the
7 compensation that may be offered to a small forest landowner who is
8 participating in the forest riparian easement program shortly after
9 receipt of the landowner's application. Timing the compensation
10 calculation with the receipt of the application, as opposed to
11 initiating the compensation determination upon the appropriation of
12 distributable funds, allows the small forest landowner office to both
13 capture the actual value of the unharvested timber at the time that the
14 forest practices operation was conducted, and allows the small forest
15 landowner office to more accurately estimate for the legislature the
16 budget needs of the forest riparian easement program.

17 This act is also intended to ensure that family forest landowners,
18 for whom the forest riparian easement program was initially designed,

1 are compensated under the program before all other qualifying
2 landowners.

3 NEW SECTION. **Sec. 2.** (1) To implement the intent of this act, the
4 small forest landowner office shall, by the end of the 2009-2011 fiscal
5 biennium, use any funding specifically made available to it for these
6 purposes from the state's capital construction budget to complete the
7 compensation estimates for forest riparian easement applications
8 received by the small forest landowner office prior to the effective
9 date of this section.

10 (2) This section expires July 1, 2011

11 **Sec. 3.** RCW 76.13.120 and 2004 c 102 s 1 are each amended to read
12 as follows:

13 (1) The legislature finds that the state should acquire easements
14 along riparian and other sensitive aquatic areas from small forest
15 landowners willing to sell or donate such easements to the state
16 provided that the state will not be required to acquire such easements
17 if they are subject to unacceptable liabilities. The legislature
18 therefore establishes a forestry riparian easement program.

19 (2) The definitions in this subsection apply throughout this
20 section and RCW 76.13.100 and 76.13.110 unless the context clearly
21 requires otherwise.

22 (a) "Forestry riparian easement" means an easement covering
23 qualifying timber granted voluntarily to the state by a small forest
24 landowner.

25 (b) "Qualifying timber" means: (i) Those trees covered by a forest
26 practices application that the small forest landowner is required to
27 leave unharvested under the rules adopted under RCW 76.09.055 and
28 76.09.370 or that is made uneconomic to harvest by those rules, and for
29 which the small landowner is willing to grant the state a forestry
30 riparian easement; and (ii) those trees covered by a forest practices
31 application that a small forest landowner, who is eligible for the
32 exemption provided in RCW 76.13.130 and who took ownership of the
33 property after June 5, 2006, voluntarily leaves unharvested, to the
34 extent that the landowner would have been required to leave those trees
35 unharvested under the rules adopted under RCW 76.09.370, if the
36 landowner was not eligible for the exemption provided in RCW 76.13.130;

1 but not (iii) those trees covered by a forest practices application
2 with a proposal to convert to a use other than commercial timber
3 production. "Qualifying timber" is timber within or bordering a
4 commercially reasonable harvest unit as determined under rules adopted
5 by the forest practices board, or timber for which an approved forest
6 practices application for timber harvest cannot be obtained because of
7 restrictions under the forest practices rules, including restrictions
8 on harvesting in riparian areas, on groundwater recharge areas, and on
9 unstable slopes.

10 (c) "Small forest landowner" means a landowner meeting all of the
11 following characteristics: (i) A forest landowner as defined in RCW
12 76.09.020 whose interest in the land and timber is in fee or who has
13 rights to the timber to be included in the forestry riparian easement
14 that extend at least fifty years from the date the forest practices
15 application associated with the easement is submitted; (ii) an entity
16 that has harvested from its own lands in this state during the three
17 years prior to the year of application an average timber volume that
18 would qualify the owner as a small harvester under RCW 84.33.035; and
19 (iii) an entity that certifies at the time of application that it does
20 not expect to harvest from its own lands more than the volume allowed
21 by RCW 84.33.035 during the ten years following application. If a
22 landowner's prior three-year average harvest exceeds the limit of RCW
23 84.33.035, or the landowner expects to exceed this limit during the ten
24 years following application, and that landowner establishes to the
25 department of natural resources' reasonable satisfaction that the
26 harvest limits were or will be exceeded to raise funds to pay estate
27 taxes or equally compelling and unexpected obligations such as court-
28 ordered judgments or extraordinary medical expenses, the landowner
29 shall be deemed to be a small forest landowner.

30 For purposes of determining whether a person qualifies as a small
31 forest landowner, the small forest landowner office, created in RCW
32 76.13.110, shall evaluate the landowner under this definition, pursuant
33 to RCW 76.13.160, as of the date that the forest practices application
34 is submitted or the date the landowner notifies the department that the
35 harvest is to begin with which the forestry riparian easement is
36 associated. A small forest landowner can include an individual,
37 partnership, corporate, or other nongovernmental legal entity. If a
38 landowner grants timber rights to another entity for less than five

1 years, the landowner may still qualify as a small forest landowner
2 under this section. If a landowner is unable to obtain an approved
3 forest practices application for timber harvest for any of his or her
4 land because of restrictions under the forest practices rules, the
5 landowner may still qualify as a small forest landowner under this
6 section.

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

10 (3) The department of natural resources is authorized and directed
11 to accept and hold in the name of the state of Washington forestry
12 riparian easements granted by small forest landowners covering
13 qualifying timber and to pay compensation to such landowners in
14 accordance with subsections (6) and (7) of this section. The
15 department of natural resources may not transfer the easements to any
16 entity other than another state agency.

17 (4) Forestry riparian easements shall be effective for fifty years
18 from the date the forest practices application associated with the
19 qualifying timber is submitted to the department of natural resources,
20 unless the easement is terminated earlier by the department of natural
21 resources voluntarily, based on a determination that termination is in
22 the best interest of the state, or under the terms of a termination
23 clause in the easement.

24 (5) Forestry riparian easements shall be restrictive only, and
25 shall preserve all lawful uses of the easement premises by the
26 landowner that are consistent with the terms of the easement and the
27 requirement to protect riparian functions during the term of the
28 easement, subject to the restriction that the leave trees required by
29 the rules to be left on the easement premises may not be cut during the
30 term of the easement. No right of public access to or across, or any
31 public use of the easement premises is created by this statute or by
32 the easement. Forestry riparian easements shall not be deemed to
33 trigger the compensating tax of or otherwise disqualify land from being
34 taxed under chapter 84.33 or 84.34 RCW.

35 (6)(a) Upon application ((of)) from a small forest landowner for a
36 riparian easement that is associated with a forest practices
37 application and the landowner's marking of the qualifying timber on the

1 qualifying lands, the small forest landowner office shall determine the
2 compensation to be offered to the small forest landowner as provided
3 for in this section.

4 (b) The small forest landowner office shall also determine the
5 compensation to be offered to a small forest landowner for qualifying
6 timber for which an approved forest practices application for timber
7 harvest cannot be obtained because of restrictions under the forest
8 practices rules.

9 (c) The legislature recognizes that there is not readily available
10 market transaction evidence of value for easements of this nature, and
11 thus establishes the (~~following~~) methodology contained in this
12 section to ascertain the value for forestry riparian easements. Values
13 so determined shall not be considered competent evidence of value for
14 any other purpose.

15 (d) The small forest landowner office shall establish the volume of
16 the qualifying timber. Based on that volume and using data obtained or
17 maintained by the department of revenue under RCW 84.33.074 and
18 84.33.091, the small forest landowner office shall attempt to determine
19 the fair market value of the qualifying timber as of the date the
20 forest practices application associated with the qualifying timber was
21 submitted or the date the landowner notifies the department that the
22 harvest is to begin. Removal of any qualifying timber before the
23 expiration of the easement must be in accordance with the forest
24 practices rules and the terms of the easement. There shall be no
25 reduction in compensation for reentry.

26 (e) Small forest landowners who are not nonprofit organizations or
27 municipalities, municipal corporations, or special districts have
28 priority for payment under this section.

29 (f) The small forest landowner office shall initiate the process
30 for determining the compensation amount as soon as possible after
31 receipt of an application. No duty to present an actual offer for
32 compensation exists until appropriations allow.

33 (7) Except as provided in subsection (8) of this section, the small
34 forest landowner office shall, subject to available funding, offer
35 compensation to the small forest landowner in the amount of fifty
36 percent of the value determined in subsection (6) of this section, plus
37 the compliance and reimbursement costs as determined in accordance with
38 RCW 76.13.140. If the landowner accepts the offer for qualifying

1 timber that will be harvested pursuant to an approved forest practices
2 application, the department of natural resources shall pay the
3 compensation promptly upon (a) completion of harvest in the area
4 covered by the forestry riparian easement; (b) verification that there
5 has been compliance with the rules requiring leave trees in the
6 easement area; and (c) execution and delivery of the easement to the
7 department of natural resources. If the landowner accepts the offer
8 for qualifying timber for which an approved forest practices
9 application for timber harvest cannot be obtained because of
10 restrictions under the forest practices rules, the department of
11 natural resources shall pay the compensation promptly upon (i)
12 verification that there has been compliance with the rules requiring
13 leave trees in the easement area; and (ii) execution and delivery of
14 the easement to the department of natural resources. Upon donation or
15 payment of compensation, the department of natural resources may record
16 the easement.

17 (8) For approved forest practices applications where the regulatory
18 impact is greater than the average percentage impact for all small
19 landowners as determined by the department of natural resources
20 analysis under the regulatory fairness act, chapter 19.85 RCW, the
21 compensation offered will be increased to one hundred percent for that
22 portion of the regulatory impact that is in excess of the average.
23 Regulatory impact includes trees left in buffers, special management
24 zones, and those rendered uneconomic to harvest by these rules. A
25 separate average or high impact regulatory threshold shall be
26 established for western and eastern Washington. Criteria for these
27 measurements and payments shall be established by the small forest
28 landowner office.

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

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

35 (b) Standards for descriptions of the easement premises with a
36 degree of precision that is reasonable in relation to the values
37 involved;

1 (c) Methods and standards for cruises and valuation of forestry
2 riparian easements for purposes of establishing the compensation. The
3 department of natural resources shall perform the timber cruises of
4 forestry riparian easements required under this chapter and chapter
5 76.09 RCW. Any rules concerning the methods and standards for
6 valuations of forestry riparian easements shall apply only to the
7 department of natural resources, small forest landowners, and the small
8 forest landowner office;

9 (d) A method to determine that a forest practices application
10 involves a commercially reasonable harvest, and adopt criteria for
11 entering into a forest riparian easement where a commercially
12 reasonable harvest is not possible or a forest practices application
13 that has been submitted cannot be approved because of restrictions
14 under the forest practices rules;

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

17 (f) A formula for sharing of proceeds in relation to the
18 acquisition of qualified timber covered by an easement through the
19 exercise or threats of eminent domain by a federal or state agency with
20 eminent domain authority, based on the present value of the department
21 of natural resources' and the landowner's relative interests in the
22 qualified timber;

23 (g) High impact regulatory thresholds;

24 (h) A method to determine timber that is qualifying timber because
25 it is rendered uneconomic to harvest by the rules adopted under RCW
26 76.09.055 and 76.09.370; and

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

30 **Sec. 4.** RCW 76.13.140 and 2002 c 120 s 3 are each amended to read
31 as follows:

32 (1) In order to assist small forest landowners to remain
33 economically viable, the legislature intends that the small forest
34 landowners be able to net fifty percent of the value of the trees left
35 in the buffer areas.

36 (2) The amount of compensation offered in RCW 76.13.120 shall also
37 include the compliance costs for participation in the riparian easement

1 program. For purposes of this section, "compliance costs" includes the
2 cost of preparing and recording the easement, and any business and
3 occupation tax and real estate excise tax imposed because of entering
4 into the easement.

5 (3) The office may contract with private consultants that the
6 office finds qualified to perform timber cruises of forestry riparian
7 easements or to lay out streamside buffers and comply with other forest
8 and fish regulatory requirements related to the forest riparian
9 easement program.

10 (4) Once a contract has been executed for the forestry riparian
11 easement program, the department shall reimburse small forest
12 landowners for the actual costs incurred for laying out the streamside
13 buffers ((and)), marking the qualifying timber ((once a contract has
14 been executed for the forestry riparian easement program)), and hiring
15 a qualified expert to complete required studies or reports as part of
16 the forest practices application upon which the easement application is
17 based. Reimbursement is subject to the work being acceptable to the
18 department. The small forest landowner office shall determine how the
19 reimbursement costs will be calculated.

--- END ---