
SENATE BILL 5551

State of Washington

62nd Legislature

2011 Regular Session

By Senators Ranker, Swecker, Sheldon, Regala, and Stevens; by request of Commissioner of Public Lands

Read first time 01/28/11. Referred to Committee on Natural Resources & Marine Waters.

1 AN ACT Relating to the forestry riparian easement program; amending
2 RCW 76.13.120, 76.13.140, and 76.13.160; creating a new section; and
3 providing an expiration date.

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

5 **Sec. 1.** RCW 76.13.120 and 2004 c 102 s 1 are each amended to read
6 as follows:

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

14 (2) The definitions in this subsection apply throughout this
15 section and RCW 76.13.100 (~~and~~), 76.13.110, 76.13.140, and 76.13.160
16 unless the context clearly requires otherwise.

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

1 (b) "Qualifying small forest landowner" means a landowner meeting
2 all of the following characteristics as of the date the department of
3 natural resources offers compensation for a forestry riparian easement:

4 (i) Is a small forest landowner as defined in (d) of this
5 subsection and whose interest in the land and timber is in fee prior to
6 July 1, 2011, or the applicant is a lineal descendant of a landowner
7 meeting this condition;

8 (ii) Is an individual, partnership, corporation, or other
9 nongovernmental for-profit legal entity; and

10 (iii) Is an enrolled participant in an internationally recognized
11 forest certification program, or has a forest stewardship plan that has
12 been approved by the department of natural resources, that includes the
13 land affected by the associated forestry riparian easement. Qualifying
14 small forest landowners with completed forestry riparian easement
15 applications in the queue prior to July 1, 2011, have until July 1,
16 2012, to meet the criteria of this subsection (2)(b)(iii).

17 (c) "Qualifying timber" means those forest trees for which the
18 small forest landowner is willing to grant the state a forestry
19 riparian easement and must meet all of the following:

20 (i) The forest trees are covered by a forest practices application
21 that the small forest landowner is required to leave unharvested under
22 the rules adopted under RCW 76.09.055 and 76.09.370 or that is made
23 uneconomic to harvest by those rules (~~, and for which the small~~
24 landowner is willing to grant the state a forestry riparian easement.
25 "Qualifying timber" is timber);

26 (ii) The forest trees are within or bordering a commercially
27 reasonable harvest unit as determined under rules adopted by the forest
28 practices board, or (~~timber~~) for which an approved forest practices
29 application for timber harvest cannot be obtained because of
30 restrictions under the forest practices rules;

31 (iii) The forest trees are located within, or affected by forest
32 practices rules pertaining to any one, or all, of the following:

33 (A) Riparian or other sensitive aquatic areas;

34 (B) Channel migration zones; or

35 (C) Areas of potentially unstable slopes or landforms, verified by
36 the department, and must meet all of the following:

37 (I) Are addressed in a forest practices application;

38 (II) Are adjacent to a commercially reasonable harvest area; and

1 (III) Have the potential to deliver sediment or debris to a public
2 resource.

3 ~~((+e+))~~ (d) "Small forest landowner" means a landowner meeting all
4 of the following characteristics:

5 (i) A forest landowner as defined in RCW 76.09.020 whose interest
6 in the land and timber is in fee or who has rights to the timber to be
7 included in the forestry riparian easement that extend at least fifty
8 years from the date the ~~((forest practices))~~ completed forestry
9 riparian easement application associated with the easement is
10 submitted;

11 (ii) An entity that has harvested from its own lands in this state
12 during the three years prior to the year of application an average
13 timber volume that would qualify the owner as a small harvester under
14 RCW 84.33.035; and

15 (iii) An entity that certifies at the time of application that it
16 does not expect to harvest from its own lands more than the volume
17 allowed by RCW 84.33.035 during the ten years following application.
18 If a landowner's prior three-year average harvest exceeds the limit of
19 RCW 84.33.035, or the landowner expects to exceed this limit during the
20 ten years following application, and that landowner establishes to the
21 department of natural resources' reasonable satisfaction that the
22 harvest limits were or will be exceeded to raise funds to pay estate
23 taxes or equally compelling and unexpected obligations such as court-
24 ordered judgments or extraordinary medical expenses, the landowner
25 shall be deemed to be a small forest landowner. For purposes of
26 determining whether a person qualifies as a small forest landowner, the
27 small forest landowner office, created in RCW 76.13.110, shall evaluate
28 the landowner under this definition, pursuant to RCW 76.13.160, as of
29 the date that the forest practices application is submitted ~~((or the~~
30 ~~date the landowner notifies the department that the harvest is to begin~~
31 ~~with which the forestry riparian easement is associated))~~ and the date
32 that the department of natural resources offers compensation for the
33 forestry riparian easement. A small forest landowner can include an
34 individual, partnership, ~~((corporate))~~ corporation, or other
35 nongovernmental legal entity. If a landowner grants timber rights to
36 another entity for less than five years, the landowner may still
37 qualify as a small forest landowner under this section. If a landowner
38 is unable to obtain an approved forest practices application for timber

1 harvest for any of his or her land because of restrictions under the
2 forest practices rules, the landowner may still qualify as a small
3 forest landowner under this section.

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

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

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

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

33 ~~((Upon application of a small forest landowner for a riparian
34 easement that is associated with a forest practices application and the
35 landowner's marking of the qualifying timber on the qualifying lands,
36 the small forest landowner office shall determine the compensation to
37 be offered to the small forest landowner as provided for in this
38 section. The small forest landowner office shall also determine the~~

1 compensation to be offered to a small forest landowner for qualifying
2 timber for which an approved forest practices application for timber
3 harvest cannot be obtained because of restrictions under the forest
4 practices rules. The legislature recognizes that there is not readily
5 available market transaction evidence of value for easements of this
6 nature, and thus establishes the following methodology to ascertain the
7 value for forestry riparian easements. Values so determined shall not
8 be considered competent evidence of value for any other purpose.

9 The small forest landowner office shall establish the volume of the
10 qualifying timber. Based on that volume and using data obtained or
11 maintained by the department of revenue under RCW 84.33.074 and
12 84.33.091, the small forest landowner office shall attempt to determine
13 the fair market value of the qualifying timber as of the date the
14 forest practices application associated with the qualifying timber was
15 submitted or the date the landowner notifies the department that the
16 harvest is to begin. Removal of any qualifying timber before the
17 expiration of the easement must be in accordance with the forest
18 practices rules and the terms of the easement. There shall be no
19 reduction in compensation for reentry)) The small forest landowner
20 office shall determine what constitutes a completed application for a
21 forestry riparian easement. Such an application shall, at a minimum,
22 include documentation of the owner's status as a qualifying small
23 forest landowner, identification of location and the types of
24 qualifying timber, and notification of completion of harvest, if
25 applicable.

26 (7) ((Except as provided in subsection (8) of this section, the
27 small forest landowner office shall, subject to available funding,
28 offer compensation to the small forest landowner in the amount of fifty
29 percent of the value determined in subsection (6) of this section, plus
30 the compliance and reimbursement costs as determined in accordance with
31 RCW 76.13.140. If the landowner accepts the offer for qualifying
32 timber that will be harvested pursuant to an approved forest practices
33 application, the department of natural resources shall pay the
34 compensation promptly upon (a) completion of harvest in the area
35 covered by the forestry riparian easement; (b) verification that there
36 has been compliance with the rules requiring leave trees in the
37 easement area; and (c) execution and delivery of the easement to the
38 department of natural resources. If the landowner accepts the offer

1 ~~for qualifying timber for which an approved forest practices~~
2 ~~application for timber harvest cannot be obtained because of~~
3 ~~restrictions under the forest practices rules, the department of~~
4 ~~natural resources shall pay the compensation promptly upon (i)~~
5 ~~verification that there has been compliance with the rules requiring~~
6 ~~leave trees in the easement area; and (ii) execution and delivery of~~
7 ~~the easement to the department of natural resources. Upon donation or~~
8 ~~payment of compensation, the department of natural resources may record~~
9 ~~the easement.~~

10 (8)) Upon receipt of the qualifying small forest landowner's
11 forestry riparian easement application, and subject to the availability
12 of amounts appropriated for this specific purpose, the following must
13 occur:

14 (a) The small forest landowner office shall determine the
15 compensation to be offered to the qualifying small forest landowner
16 for qualifying timber after the department accepts the completed
17 forestry riparian easement application and the landowner has completed
18 marking the boundary of the area containing the qualifying timber. The
19 legislature recognizes that there is not readily available market
20 transaction evidence of value for easements of the nature required by
21 this section, and thus establishes the methodology provided in this
22 subsection to ascertain the value for forestry riparian easements.
23 Values so determined may not be considered competent evidence of value
24 for any other purpose.

25 (b) The small forest landowner office, subject to the availability
26 of amounts appropriated for this specific purpose, is responsible for
27 assessing the volume of qualifying timber. Based on the volume
28 established by the small forest landowner office and using data
29 obtained or maintained by the department of revenue under RCW 84.33.074
30 and 84.33.091, the small forest landowner office shall attempt to
31 determine the fair market value of the qualifying timber as of the date
32 the complete forestry riparian easement application is received.
33 Removal of any qualifying timber before the expiration of the easement
34 must be in accordance with the forest practices rules and the terms of
35 the easement. There shall be no reduction in compensation for reentry.

36 (8) Except as provided in subsection (9) of this section and
37 subject to the availability of amounts appropriated for this specific
38 purpose, the small forest landowner office shall offer compensation for

1 qualifying timber to the qualifying small forest landowner in the
2 amount of fifty percent of the value determined by the small forest
3 landowner office, plus the compliance and reimbursement costs as
4 determined in accordance with RCW 76.13.140. Compensation is capped to
5 a total of one hundred thousand dollars value for qualifying timber
6 located on potentially unstable slopes or landforms during any four-
7 year period. If the landowner accepts the offer for qualifying timber,
8 the department of natural resources shall pay the compensation promptly
9 upon: (a) Completion of harvest in the area within a commercially
10 reasonable harvest unit with which the forestry riparian easement is
11 associated under an approved forest practices application, unless an
12 approved forest practices application for timber harvest cannot be
13 obtained because of restrictions under the forest practices rules; (b)
14 verification that the landowner has no outstanding violations under
15 chapter 76.09 RCW or any associated rules; and (c) execution and
16 delivery of the easement to the department of natural resources. Upon
17 donation or payment of compensation, the department of natural
18 resources may record the easement.

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

32 ((+9)) (10) The forest practices board shall adopt rules under the
33 administrative procedure act, chapter 34.05 RCW, to implement the
34 forestry riparian easement program, including the following:

35 (a) A standard version ((or versions of all)) of a forestry
36 riparian easement application as well as all additional documents
37 necessary or advisable to create the forestry riparian easements as
38 provided for in this section;

1 (b) Standards for descriptions of the easement premises with a
2 degree of precision that is reasonable in relation to the values
3 involved;

4 (c) Methods and standards for cruises and valuation of forestry
5 riparian easements for purposes of establishing the compensation. The
6 department of natural resources, subject to the availability of amounts
7 appropriated for this specific purpose, shall perform the timber
8 cruises of forestry riparian easements required under this chapter and
9 chapter 76.09 RCW. Any rules concerning the methods and standards for
10 valuations of forestry riparian easements shall apply only to the
11 department of natural resources, qualifying small forest landowners,
12 and the small forest landowner office;

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

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

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

27 (g) High impact regulatory thresholds;

28 (h) A method to determine timber that is qualifying timber because
29 it is rendered uneconomic to harvest by the rules adopted under RCW
30 76.09.055 and 76.09.370; and

31 (i) A method for internal department of natural resources review of
32 small forest landowner office compensation decisions under ((~~subsection~~
33 ~~(7) of~~)) this section.

34 **Sec. 2.** RCW 76.13.140 and 2002 c 120 s 3 are each amended to read
35 as follows:

36 In order to assist small forest landowners to remain economically
37 viable, the legislature intends that the qualifying small forest

1 landowners be able to net fifty percent of the value of the trees left
2 in the buffer areas. The amount of compensation offered in RCW
3 76.13.120 shall also include the compliance costs for participation in
4 the forestry riparian easement program(~~(. For purposes of this~~
5 ~~section, "compliance costs" includes)~~), including the cost of preparing
6 and recording the forestry riparian easement, and any business and
7 occupation tax and real estate excise tax imposed because of entering
8 into the forestry riparian easement. The small forest landowner office
9 may contract with private consultants that the office finds qualified
10 to perform timber cruises of forestry riparian easements or to lay out
11 streamside buffers and comply with other forest ~~((and fish))~~ practices
12 regulatory requirements related to the ~~((forest))~~ forestry riparian
13 easement program. The department shall reimburse qualifying small
14 forest landowners for the actual costs incurred for laying out the
15 streamside buffers and marking the qualifying timber once a contract
16 has been executed for the forestry riparian easement program.
17 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.

20 **Sec. 3.** RCW 76.13.160 and 2004 c 102 s 2 are each amended to read
21 as follows:

22 When establishing a ~~((forest))~~ forestry riparian easement program
23 applicant's status as a qualifying small forest landowner pursuant to
24 RCW 76.13.120, the department shall not review the applicant's timber
25 harvest records, or any other tax-related documents, on file with the
26 department of revenue. The department of revenue may confirm or deny
27 an applicant's status as a small forest landowner at the request of the
28 department~~((+))~~. However, for the purposes of this section, the
29 department of revenue may not disclose more information than whether or
30 not the applicant has reported a harvest or harvests totaling greater
31 than or less than the qualifying thresholds established in RCW
32 76.13.120. Nothing in this section, or RCW 84.33.280, prohibits the
33 department from reviewing aggregate or general information provided by
34 the department of revenue.

35 NEW SECTION. **Sec. 4.** (1) The chair of the forest practices board
36 shall invite relevant stakeholders to participate in a process that

1 investigates, and ultimately recommends, potential new long-term
2 funding sources for the forestry riparian easement program established
3 in chapter 76.13 RCW.

4 (2) The findings of, and recommendations from, the process required
5 by this section must be reported to the appropriate committees of the
6 legislature in the manner prescribed in RCW 43.01.036 by October 31,
7 2011.

8 (3) This section expires July 31, 2012.

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