
HOUSE BILL 2219

State of Washington 60th Legislature 2007 Regular Session

By Representatives Orcutt, B. Sullivan, Kessler and Kretz

Read first time 02/13/2007. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to forest practices regulations applicable to small
2 forest landowners; and amending RCW 76.13.120, 76.13.140, and
3 76.13.130.

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 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.

1 (b) "Qualifying timber" means those trees covered by a forest
2 practices application that the small forest landowner is required to
3 leave unharvested under the rules adopted under RCW 76.09.055 and
4 76.09.370 or that is made uneconomic to harvest by those rules, and for
5 which the small landowner is willing to grant the state a forestry
6 riparian easement. "Qualifying timber" (~~is~~) includes timber within
7 or bordering a commercially reasonable harvest unit as determined under
8 rules adopted by the forest practices board, (~~or~~) and timber for
9 which an approved forest practices application for timber harvest
10 cannot be obtained because of restrictions under the forest practices
11 rules, including restrictions on harvesting in riparian areas and
12 restrictions on harvesting on unstable slopes.

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

33 For purposes of determining whether a person qualifies as a small
34 forest landowner, the small forest landowner office, created in RCW
35 76.13.110, shall evaluate the landowner under this definition, pursuant
36 to RCW 76.13.160, as of the date that the forest practices application
37 is submitted or the date the landowner notifies the department that the
38 harvest is to begin with which the forestry riparian easement is

1 associated. A small forest landowner can include an individual,
2 partnership, corporate, or other nongovernmental legal entity. If a
3 landowner grants timber rights to another entity for less than five
4 years, the landowner may still qualify as a small forest landowner
5 under this section. If a landowner is unable to obtain an approved
6 forest practices application for timber harvest for any of his or her
7 land because of restrictions under the forest practices rules, the
8 landowner may still qualify as a small forest landowner under this
9 section.

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

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

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

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

1 (6) (~~Upon~~) (a) Within sixty days of the department's receipt of
2 a completed application (~~of~~) from a small forest landowner for a
3 riparian easement that is associated with a forest practices
4 application and the landowner's marking of the qualifying timber on the
5 qualifying lands, the small forest landowner office shall determine the
6 compensation to be offered to the small forest landowner as provided
7 for in this section.

8 (b) The small forest landowner office shall also determine, within
9 sixty days from the time of a completed application, the compensation
10 to be offered to a small forest landowner for qualifying timber for
11 which an approved forest practices application for timber harvest
12 cannot be obtained because of restrictions under the forest practices
13 rules.

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

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

31 (e) Determinations for compensation completed under this section
32 serve only as an appraisal. No duty to present an actual offer for
33 compensation exists until appropriations allow.

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

1 RCW 76.13.140. If the landowner accepts the offer for qualifying
2 timber that will be harvested pursuant to an approved forest practices
3 application, the department of natural resources shall pay the
4 compensation promptly upon (a) completion of harvest in the area
5 covered by the forestry riparian easement; (b) verification that there
6 has been compliance with the rules requiring leave trees in the
7 easement area; and (c) execution and delivery of the easement to the
8 department of natural resources. If the landowner accepts the offer
9 for qualifying timber for which an approved forest practices
10 application for timber harvest cannot be obtained because of
11 restrictions under the forest practices rules, the department of
12 natural resources shall pay the compensation promptly upon (i)
13 verification that there has been compliance with the rules requiring
14 leave trees in the easement area; and (ii) execution and delivery of
15 the easement to the department of natural resources. Upon donation or
16 payment of compensation, the department of natural resources may record
17 the easement.

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

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

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

36 (b) Standards for descriptions of the easement premises with a
37 degree of precision that is reasonable in relation to the values
38 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. 2.** 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) The department shall reimburse small forest landowners for the
11 actual costs incurred for laying out the streamside buffers and marking
12 the qualifying timber, including but not limited to the cost of hiring
13 a geotechnologist or other professional required to complete
14 prerequisite studies or reports, once a contract has been executed for
15 the forestry riparian easement program. Reimbursement is subject to
16 the work being acceptable to the department. The small forest
17 landowner office shall determine how the reimbursement costs will be
18 calculated.

19 **Sec. 3.** RCW 76.13.130 and 1999 sp.s. c 4 s 505 are each amended to
20 read as follows:

21 (1) On parcels of twenty contiguous forested acres or less,
22 landowners with a total parcel ownership of less than eighty forested
23 acres shall not be required to leave riparian buffers adjacent to
24 streams according to forest practices rules adopted under the forests
25 and fish report as defined in RCW 76.09.020. These landowners shall be
26 subject to the permanent forest practices rules in effect as of January
27 1, 1999, but may additionally be required to leave timber adjacent to
28 streams that is equivalent to no greater than fifteen percent of a
29 volume of timber contained in a stand of well managed fifty-year old
30 commercial timber covering the harvest area. The additional fifteen
31 percent leave tree level shall be computed as a rotating stand volume
32 and shall be regulated through flexible forest practices as the stream
33 buffer is managed over time to meet riparian functions.

34 (2) On parcels ~~((of))~~ with twenty contiguous forested acres or
35 less, the small forest landowner office shall work with landowners with
36 a total parcel ownership of less than eighty forested acres to develop
37 alternative management plans for riparian buffers. Such alternative

1 plans shall provide for the removal of leave trees as other new trees
2 grow in order to ensure the most effective protection of critical
3 riparian function. The office may recommend reasonable modifications
4 in alternative management plans of such landowners to further reduce
5 risks to public resources and endangered species so long as the
6 anticipated operating costs are not unreasonably increased and the
7 landowner is not required to leave a greater volume than the threshold
8 level. To qualify for the provisions of this section, parcels must
9 ((be)) contain twenty forested acres or less in contiguous ownership,
10 and owners cannot have ownership interests in a total of more than
11 eighty acres of forest lands within the state.

--- END ---