

2 SHB 2105 - S AMD 238  
3 By Senator Jacobsen

4

5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. RCW 76.13.110 and 2000 c 11 s 12 are each amended to read  
8 as follows:

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

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

24 (3) The small forest landowner office shall assist in the  
25 development of small landowner options through alternate management  
26 plans or alternate harvest restrictions appropriate to small  
27 landowners. The small forest landowner office shall develop criteria  
28 to be adopted by the forest practices board in rules and a manual for  
29 alternate management plans or alternate harvest restrictions. These  
30 alternate plans or alternate harvest restrictions shall meet riparian  
31 functions while requiring less costly regulatory prescriptions. At the  
32 landowner's option, alternate plans or alternate harvest restrictions  
33 may be used to further meet riparian functions.

34 The small forest landowner office shall evaluate the cumulative  
35 impact of such alternate management plans or alternate harvest  
36 restrictions on essential riparian functions at the subbasin or

1 watershed level. The small forest landowner office shall adjust future  
2 alternate management plans or alternate harvest restrictions in a  
3 manner that will minimize the negative impacts on essential riparian  
4 functions within a subbasin or watershed.

5 (4) An advisory committee is established to assist the small forest  
6 landowner office in developing policy and recommending rules to the  
7 forest practices board. The advisory committee shall consist of seven  
8 members, including a representative from the department of ecology, the  
9 department of fish and wildlife, and a tribal representative. Four  
10 additional committee members shall be small forest landowners who shall  
11 be appointed by the commissioner of public lands from a list of  
12 candidates submitted by the board of directors of the Washington farm  
13 forestry association or its successor organization. The association  
14 shall submit more than one candidate for each position. Appointees  
15 shall serve for a term of four years. The small forest landowner  
16 office shall review draft rules or rule concepts with the committee  
17 prior to recommending such rules to the forest practices board. The  
18 office shall reimburse nongovernmental committee members for reasonable  
19 expenses associated with attending committee meetings as provided in  
20 RCW 43.03.050 and 43.03.060.

21 (5) By December 1, (~~2000~~) 2002, the small forest landowner office  
22 shall provide a report to the board and the legislature containing:

23 (a) Estimates of the amounts of nonindustrial forests and woodlands  
24 in holdings of twenty acres or less, twenty-one to one hundred acres,  
25 one hundred to one thousand acres, and one thousand to five thousand  
26 acres, in western Washington and eastern Washington, and the number of  
27 persons having total nonindustrial forest and woodland holdings in  
28 those size ranges;

29 (b) Estimates of the number of parcels of nonindustrial forests and  
30 woodlands held in contiguous ownerships of twenty acres or less, and  
31 the percentages of those parcels containing improvements used: (i) As  
32 primary residences for half or more of most years; (ii) as vacation  
33 homes or other temporary residences for less than half of most years;  
34 and (iii) for other uses;

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

38 (d) Estimates of the number of forest practices applications and  
39 notifications filed per year for forest road construction,

1 silvicultural activities to enhance timber growth, timber harvest not  
2 associated with conversion to nonforest land uses, with estimates of  
3 the number of acres of nonindustrial forests and woodlands on which  
4 forest practices are conducted under those applications and  
5 notifications; and

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

11 (6) By December 1, ((2002)) 2004, and every four years thereafter,  
12 the small forest landowner office shall provide to the board and the  
13 legislature an update of the report described in subsection (5) of this  
14 section, containing more recent information and describing:

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

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

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

23 **Sec. 2.** RCW 76.13.120 and 2000 c 11 s 13 are each amended to read  
24 as follows:

25 (1) The legislature finds that the state should acquire easements  
26 along riparian and other sensitive aquatic areas from small forest  
27 landowners willing to sell or donate such easements to the state  
28 provided that the state will not be required to acquire such easements  
29 if they are subject to unacceptable liabilities. The legislature  
30 therefore establishes a forestry riparian easement program.

31 (2) The definitions in this subsection apply throughout this  
32 section and RCW 76.13.100 and 76.13.110 unless the context clearly  
33 requires otherwise.

34 (a) "Forestry riparian easement" means an easement covering  
35 qualifying timber granted voluntarily to the state by a small forest  
36 landowner.

37 (b) "Qualifying timber" means those trees covered by a forest  
38 practices application that the small forest landowner is required to

1 leave unharvested under the rules adopted under RCW 76.09.055 and  
2 76.09.370 or that is made uneconomic to harvest by those rules, and for  
3 which the small landowner is willing to grant the state a forestry  
4 riparian easement. "Qualifying timber" is timber within or bordering  
5 a commercially reasonable harvest unit as determined under rules  
6 adopted by the forest practices board, or timber for which an approved  
7 forest practices application for timber harvest cannot be obtained  
8 because of restrictions under the forest practices rules.

9 (c) "Small forest landowner" means a landowner meeting all of the  
10 following characteristics: (i) A forest landowner as defined in RCW  
11 76.09.020 whose interest in the land and timber is in fee or who has  
12 rights to the timber to be included in the forestry riparian easement  
13 that extend at least fifty years from the date the forest practices  
14 application associated with the easement is submitted; (ii) an entity  
15 that has harvested from its own lands in this state during the three  
16 years prior to the year of application an average timber volume that  
17 would qualify the owner as a small timber harvester under RCW  
18 84.33.073(1); and (iii) an entity that certifies at the time of  
19 application that it does not expect to harvest from its own lands more  
20 than the volume allowed by RCW 84.33.073(1) during the ten years  
21 following application. If a landowner's prior three-year average  
22 harvest exceeds the limit of RCW 84.33.073(1), or the landowner expects  
23 to exceed this limit during the ten years following application, and  
24 that landowner establishes to the department of natural resources'  
25 reasonable satisfaction that the harvest limits were or will be  
26 exceeded to raise funds to pay estate taxes or equally compelling and  
27 unexpected obligations such as court-ordered judgments or extraordinary  
28 medical expenses, the landowner shall be deemed to be a small forest  
29 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 as of the  
33 date that the forest practices application is submitted or the date the  
34 landowner notifies the department that the harvest is to begin with  
35 which the forestry riparian easement is associated. A small forest  
36 landowner can include an individual, partnership, corporate, or other  
37 nongovernmental legal entity. If a landowner grants timber rights to  
38 another entity for less than five years, the landowner may still  
39 qualify as a small forest landowner under this section. If a landowner

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

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

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

15 (4) Forestry riparian easements shall be effective for fifty years  
16 from the date the forest practices application associated with the  
17 qualifying timber is submitted to the department of natural resources,  
18 unless the easement is terminated earlier by the department of natural  
19 resources voluntarily, based on a determination that termination is in  
20 the best interest of the state, or under the terms of a termination  
21 clause 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 (6) 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  
39 compensation to be offered to a small forest landowner for qualifying

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

8 The small forest landowner office shall establish the volume of the  
9 qualifying timber. Based on that volume and using data obtained or  
10 maintained by the department of revenue under RCW 84.33.074 and  
11 84.33.091, the small forest landowner office shall attempt to determine  
12 the fair market value of the qualifying timber as of the date the  
13 forest practices application associated with the qualifying timber was  
14 submitted or the date the landowner notifies the department that the  
15 harvest is to begin. If, under the forest practices rules adopted  
16 under chapter 4, Laws of 1999 sp. sess., some qualifying timber may be  
17 removed prior to the expiration of the fifty-year term of the easement,  
18 the small forest landowner office shall apply a reduced compensation  
19 factor to ascertain the value of those trees based on the proportional  
20 economic value, considering income and growth, lost to the landowner.

21 (7) Except as provided in subsection (8) of this section, the small  
22 forest landowner office shall, subject to available funding, offer  
23 compensation to the small forest landowner in the amount of fifty  
24 percent of the value determined in subsection (6) of this section, plus  
25 the compliance costs as determined in accordance with section 3 of this  
26 act. If the landowner accepts the offer for qualifying timber that  
27 will be harvested pursuant to an approved forest practices application,  
28 the department of natural resources shall pay the compensation promptly  
29 upon (a) completion of harvest in the area covered by the forestry  
30 riparian easement; (b) verification that there has been compliance with  
31 the rules requiring leave trees in the easement area; and (c) execution  
32 and delivery of the easement to the department of natural resources.  
33 If the landowner accepts the offer for qualifying timber for which an  
34 approved forest practices application for timber harvest cannot be  
35 obtained because of restrictions under the forest practices rules, the  
36 department of natural resources shall pay the compensation promptly  
37 upon (i) verification that there has been compliance with the rules  
38 requiring leave trees in the easement area; and (ii) execution and  
39 delivery of the easement to the department of natural resources. Upon

1 donation or payment of compensation, the department of natural  
2 resources may record the easement.

3 (8) For approved forest practices applications where the regulatory  
4 impact is greater than the average percentage impact for all small  
5 landowners as determined by the department of natural resources  
6 analysis under the regulatory fairness act, chapter 19.85 RCW, the  
7 compensation offered will be increased to one hundred percent for that  
8 portion of the regulatory impact that is in excess of the average.  
9 Regulatory impact includes trees left in buffers, special management  
10 zones, and those rendered uneconomic to harvest by these rules. A  
11 separate average or high impact regulatory threshold shall be  
12 established for western and eastern Washington. Criteria for these  
13 measurements and payments shall be established by the small forest  
14 landowner office.

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

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

21 (b) Standards for descriptions of the easement premises with a  
22 degree of precision that is reasonable in relation to the values  
23 involved;

24 (c) Methods and standards for cruises and valuation of forestry  
25 riparian easements for purposes of establishing the compensation. The  
26 department of natural resources shall perform the timber cruises of  
27 forestry riparian easements required under this chapter and chapter  
28 76.09 RCW. Any rules concerning the methods and standards for  
29 valuations of forestry riparian easements shall apply only to the  
30 department of natural resources, small forest landowners, and the small  
31 forest landowner office;

32 (d) A method to determine that a forest practices application  
33 involves a commercially reasonable harvest, and adopt criteria for  
34 entering into a forest riparian easement where a commercially  
35 reasonable harvest is not possible or a forest practices application  
36 that has been submitted cannot be approved because of restrictions  
37 under the forest practices rules;

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

1 (f) A formula for sharing of proceeds in relation to the  
2 acquisition of qualified timber covered by an easement through the  
3 exercise or threats of eminent domain by a federal or state agency with  
4 eminent domain authority, based on the present value of the department  
5 of natural resources' and the landowner's relative interests in the  
6 qualified timber;

7 (g) High impact regulatory thresholds;

8 (h) A method to determine timber that is qualifying timber because  
9 it is rendered uneconomic to harvest by the rules adopted under RCW  
10 76.09.055 and 76.09.370; and

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

14 NEW SECTION. **Sec. 3.** A new section is added to chapter 76.13 RCW  
15 to read as follows:

16 In order to assist small forest landowners to remain economically  
17 viable, the legislature intends that the small forest landowners be  
18 able to net fifty percent of the value of the trees left in the buffer  
19 areas. The amount of compensation offered in RCW 76.13.120 shall also  
20 include the compliance costs for participation in the riparian easement  
21 program. For purposes of this section, "compliance costs" includes the  
22 cost of preparing and recording the easement, and any business and  
23 occupation tax and real estate excise tax imposed because of entering  
24 into the easement."

25 **SHB 2105** - S AMD 238  
26 By Senator Jacobsen

27

28 On page 1, line 1 of the title, after "landowners;" strike the  
29 remainder of the title and insert "amending RCW 76.13.110 and  
30 76.13.120; and adding a new section to chapter 76.13 RCW."

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