
HOUSE BILL 2105

State of Washington

57th Legislature

2001 Regular Session

By Representatives Sump, Doumit, Pearson and Rockefeller

Read first time 02/14/2001. Referred to Committee on Natural Resources.

1 AN ACT Relating to small forest landowners; and amending RCW
2 76.13.110 and 76.13.120.

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

4 **Sec. 1.** RCW 76.13.110 and 2000 c 11 s 12 are each amended to read
5 as follows:

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

13 (2) The small forest landowner office shall administer the
14 provisions of the forestry riparian easement program created under RCW
15 76.13.120. With respect to that program, the office shall have the
16 authority to contract with private consultants that the office finds
17 qualified to perform timber cruises of forestry riparian easements.

18 (3) The small forest landowner office shall assist in the
19 development of small landowner options through alternate management

1 plans or alternate harvest restrictions appropriate to small
2 landowners. The small forest landowner office shall develop criteria
3 to be adopted by the forest practices board in a manual for alternate
4 management plans or alternate harvest restrictions. These alternate
5 plans or alternate harvest restrictions shall meet riparian functions
6 while requiring less costly regulatory prescriptions. Alternate plans
7 are intended to provide flexibility to landowners by allowing
8 low-impact activities that will still provide protection of riparian
9 functions based upon specific field conditions or stream conditions on
10 the landowner's property. At the landowner's option, alternate plans
11 or alternate harvest restrictions may be used to further meet riparian
12 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, the
24 department of fish and wildlife, and a tribal representative. Four
25 additional committee members shall be small forest landowners who shall
26 be appointed by the commissioner of public lands from a list of
27 candidates submitted by the board of directors of the Washington farm
28 forestry association or its successor organization. The association
29 shall submit more than one candidate for each position. Appointees
30 shall serve for a term of four years. The small forest landowner
31 office shall review draft rules or rule concepts with the committee
32 prior to recommending such rules to the forest practices board. The
33 office shall reimburse nongovernmental committee members for reasonable
34 expenses associated with attending committee meetings as provided in
35 RCW 43.03.050 and 43.03.060.

36 (5) By December 1, 2000, the small forest landowner office shall
37 provide a report to the board and the legislature containing:

38 (a) Estimates of the amounts of nonindustrial forests and woodlands
39 in holdings of twenty acres or less, twenty-one to one hundred acres,

1 one hundred to one thousand acres, and one thousand to five thousand
2 acres, in western Washington and eastern Washington, and the number of
3 persons having total nonindustrial forest and woodland holdings in
4 those size ranges;

5 (b) Estimates of the number of parcels of nonindustrial forests and
6 woodlands held in contiguous ownerships of twenty acres or less, and
7 the percentages of those parcels containing improvements used: (i) As
8 primary residences for half or more of most years; (ii) as vacation
9 homes or other temporary residences for less than half of most years;
10 and (iii) for other uses;

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

14 (d) Estimates of the number of forest practices applications and
15 notifications filed per year for forest road construction,
16 silvicultural activities to enhance timber growth, timber harvest not
17 associated with conversion to nonforest land uses, with estimates of
18 the number of acres of nonindustrial forests and woodlands on which
19 forest practices are conducted under those applications and
20 notifications; and

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

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

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

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

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

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

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

9 (2) The definitions in this subsection apply throughout this
10 section and RCW 76.13.100 and 76.13.110 unless the context clearly
11 requires otherwise.

12 (a) "Forestry riparian easement" means an easement covering
13 qualifying timber granted voluntarily to the state by a small forest
14 landowner.

15 (b) "Qualifying timber" means those trees covered by a forest
16 practices application that the small forest landowner is required to
17 leave unharvested under the rules adopted under RCW 76.09.055 and
18 76.09.370 or that is made uneconomic to harvest by those rules, and for
19 which the small landowner is willing to grant the state a forestry
20 riparian easement. "Qualifying timber" is timber within or bordering
21 a commercially reasonable harvest unit as determined under rules
22 adopted by the forest practices board.

23 (c) "Small forest landowner" means a landowner meeting all of the
24 following characteristics: (i) A forest landowner as defined in RCW
25 76.09.020 whose interest in the land and timber is in fee or who has
26 rights to the timber to be included in the forestry riparian easement
27 that extend at least fifty years from the date the forest practices
28 application associated with the easement is submitted; (ii) an entity
29 that has harvested from its own lands in this state during the three
30 years prior to the year of application an average timber volume that
31 would qualify the owner as a small timber harvester under RCW
32 84.33.073(1); and (iii) an entity that certifies at the time of
33 application that it does not expect to harvest from its own lands more
34 than the volume allowed by RCW 84.33.073(1) during the ten years
35 following application. If a landowner's prior three-year average
36 harvest exceeds the limit of RCW 84.33.073(1), or the landowner expects
37 to exceed this limit during the ten years following application, and
38 that landowner establishes to the department of natural resources'
39 reasonable satisfaction that the harvest limits were or will be

1 exceeded to raise funds to pay estate taxes or equally compelling and
2 unexpected obligations such as court-ordered judgments or extraordinary
3 medical expenses, the landowner shall be deemed to be a small forest
4 landowner.

5 For purposes of determining whether a person qualifies as a small
6 forest landowner, the small forest landowner office, created in RCW
7 76.13.110, shall evaluate the landowner under this definition as of the
8 date that the forest practices application is submitted with which the
9 forestry riparian easement is associated. A small forest landowner can
10 include an individual, partnership, corporate, or other nongovernmental
11 legal entity. If a landowner grants timber rights to another entity
12 for less than five years, the landowner may still qualify as a small
13 forest landowner under this section. If a landowner is unable to
14 obtain a forest practices application for any of his or her land
15 because of regulatory impacts, the landowner may still qualify as a
16 small forest landowner under this section.

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

20 (3) The department of natural resources is authorized and directed
21 to accept and hold in the name of the state of Washington forestry
22 riparian easements granted by small forest landowners covering
23 qualifying timber and to pay compensation to such landowners in
24 accordance with subsections (6) and (7) of this section. The
25 department of natural resources may not transfer the easements to any
26 entity other than another state agency.

27 (4) Forestry riparian easements shall be effective for fifty years
28 from the date the forest practices application associated with the
29 qualifying timber is submitted to the department of natural resources,
30 unless the easement is terminated earlier by the department of natural
31 resources voluntarily, based on a determination that termination is in
32 the best interest of the state, or under the terms of a termination
33 clause in the easement.

34 (5) Forestry riparian easements shall be restrictive only, and
35 shall preserve all lawful uses of the easement premises by the
36 landowner that are consistent with the terms of the easement and the
37 requirement to protect riparian functions during the term of the
38 easement, subject to the restriction that the leave trees required by
39 the rules to be left on the easement premises may not be cut during the

1 term of the easement. No right of public access to or across, or any
2 public use of the easement premises is created by this statute or by
3 the easement. Forestry riparian easements shall not be deemed to
4 trigger the compensating tax of or otherwise disqualify land from being
5 taxed under chapter 84.33 or 84.34 RCW.

6 (6) Upon application of a small forest landowner for a riparian
7 easement that is associated with a forest practices application and the
8 landowner's marking of the qualifying timber on the qualifying lands,
9 the small forest landowner office shall determine the compensation to
10 be offered to the small forest landowner as provided for in this
11 section. The small forest landowner office shall also determine the
12 compensation to be offered to a small forest landowner who is unable to
13 obtain a forest practices application because of regulatory impacts.
14 The legislature recognizes that there is not readily available market
15 transaction evidence of value for easements of this nature, and thus
16 establishes the following methodology to ascertain the value for
17 forestry riparian easements. Values so determined shall not be
18 considered competent evidence of value for any other purpose.

19 The small forest landowner office shall establish the volume of the
20 qualifying timber. Based on that volume and using data obtained or
21 maintained by the department of revenue under RCW 84.33.074 and
22 84.33.091, the small forest landowner office shall attempt to determine
23 the fair market value of the qualifying timber as of the date the
24 forest practices application associated with the qualifying timber was
25 submitted. If, under the forest practices rules adopted under chapter
26 4, Laws of 1999 sp. sess., some qualifying timber may be removed prior
27 to the expiration of the fifty-year term of the easement, the small
28 forest landowner office shall apply a reduced compensation factor to
29 ascertain the value of those trees based on the proportional economic
30 value, considering income and growth, lost to the landowner.

31 (7) Except as provided in subsection (8) of this section, the small
32 forest landowner office shall, subject to available funding, offer
33 compensation to the small forest landowner in the amount of fifty
34 percent of the value determined in subsection (6) of this section. If
35 the landowner accepts the offer, the department of natural resources
36 shall pay the compensation promptly upon (a) completion of harvest in
37 the area covered by the forestry riparian easement; (b) verification
38 that there has been compliance with the rules requiring leave trees in
39 the easement area; and (c) execution and delivery of the easement to

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

4 (8) For approved forest practices applications where the regulatory
5 impact is greater than the average percentage impact for all small
6 landowners as determined by the department of natural resources
7 analysis under the regulatory fairness act, chapter 19.85 RCW, the
8 compensation offered will be increased to one hundred percent for that
9 portion of the regulatory impact that is in excess of the average.
10 Regulatory impact includes trees left in buffers, special management
11 zones, and those rendered uneconomic to harvest by these rules. A
12 separate average or high impact regulatory threshold shall be
13 established for western and eastern Washington. For small forest
14 landowners who are unable to obtain a forest practices application for
15 any of his or her land because of regulatory impacts, the compensation
16 offered must be in the amount of fifty percent of the value of the
17 timber that cannot be harvested. Criteria for these measurements and
18 payments shall be established by the small forest landowner office.

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

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

25 (b) Standards for descriptions of the easement premises with a
26 degree of precision that is reasonable in relation to the values
27 involved;

28 (c) Methods and standards for cruises and valuation of forestry
29 riparian easements for purposes of establishing the compensation. The
30 department of natural resources shall perform the timber cruises of
31 forestry riparian easements required under this chapter and chapter
32 76.09 RCW. Any rules concerning the methods and standards for
33 valuations of forestry riparian easements shall apply only to the
34 department of natural resources, small forest landowners, and the small
35 forest landowner office;

36 (d) A method to determine that a forest practices application
37 involves a commercially reasonable harvest;

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.

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