
HOUSE BILL 2311

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By Representatives Doumit, Sump, Jackley, Rockefeller, Kessler, Eickmeyer, Hatfield, Delvin, Buck, Linville, Upthegrove, Ericksen and Cairnes

Read first time 01/14/2002. Referred to Committee on Natural Resources.

1 AN ACT Relating to small forest landowners; amending RCW 76.13.110,
2 76.13.120, and 76.13.140; and adding a new section to chapter 76.09
3 RCW.

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

5 **Sec. 1.** RCW 76.13.110 and 2001 c 280 s 1 are each amended to read
6 as follows:

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

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

1 regulatory requirements related to the forest riparian easement
2 program. The office shall reimburse small forest landowners who
3 participate in the forestry riparian easement program for the actual
4 costs incurred for cruising the timber, laying out the streamside
5 buffers, and marking the qualifying timber. Reimbursement is subject
6 to the work being performed by a qualified person, the work being
7 acceptable to the department, and the costs being reasonable based upon
8 the extent of the work and the area in which the work is performed.
9 The small forest landowner may qualify as a person deemed competent to
10 perform the work for which reimbursement is sought.

11 (3) The small forest landowner office shall assist in the
12 development of small landowner options through alternate management
13 plans or alternate harvest restrictions appropriate to small
14 landowners. The small forest landowner office shall develop criteria
15 to be adopted by the forest practices board in rules and a manual for
16 alternate management plans or alternate harvest restrictions. These
17 alternate plans or alternate harvest restrictions shall meet riparian
18 functions while requiring less costly regulatory prescriptions. At the
19 landowner's option, alternate plans or alternate harvest restrictions
20 may be used to further meet riparian functions.

21 The small forest landowner office shall evaluate the cumulative
22 impact of such alternate management plans or alternate harvest
23 restrictions on essential riparian functions at the subbasin or
24 watershed level. The small forest landowner office shall adjust future
25 alternate management plans or alternate harvest restrictions in a
26 manner that will minimize the negative impacts on essential riparian
27 functions within a subbasin or watershed.

28 (4) An advisory committee is established to assist the small forest
29 landowner office in developing policy and recommending rules to the
30 forest practices board. The advisory committee shall consist of seven
31 members, including a representative from the department of ecology, the
32 department of fish and wildlife, and a tribal representative. Four
33 additional committee members shall be small forest landowners who shall
34 be appointed by the commissioner of public lands from a list of
35 candidates submitted by the board of directors of the Washington farm
36 forestry association or its successor organization. The association
37 shall submit more than one candidate for each position. The
38 commissioner shall designate two of the initial small forest landowner
39 appointees to serve five-year terms and the other two small forest

1 landowner appointees to serve four-year terms. Thereafter, appointees
2 shall serve for a term of four years. The small forest landowner
3 office shall review draft rules or rule concepts with the committee
4 prior to recommending such rules to the forest practices board. The
5 office shall reimburse nongovernmental committee members for reasonable
6 expenses associated with attending committee meetings as provided in
7 RCW 43.03.050 and 43.03.060.

8 (5) By December 1, 2002, the small forest landowner office shall
9 provide a report to the board and the legislature containing:

10 (a) Estimates of the amounts of nonindustrial forests and woodlands
11 in holdings of twenty acres or less, twenty-one to one hundred acres,
12 one hundred to one thousand acres, and one thousand to five thousand
13 acres, in western Washington and eastern Washington, and the number of
14 persons having total nonindustrial forest and woodland holdings in
15 those size ranges;

16 (b) Estimates of the number of parcels of nonindustrial forests and
17 woodlands held in contiguous ownerships of twenty acres or less, and
18 the percentages of those parcels containing improvements used: (i) As
19 primary residences for half or more of most years; (ii) as vacation
20 homes or other temporary residences for less than half of most years;
21 and (iii) for other uses;

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

25 (d) Estimates of the number of forest practices applications and
26 notifications filed per year for forest road construction,
27 silvicultural activities to enhance timber growth, timber harvest not
28 associated with conversion to nonforest land uses, with estimates of
29 the number of acres of nonindustrial forests and woodlands on which
30 forest practices are conducted under those applications and
31 notifications; and

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

37 (6) By December 1, 2004, and every four years thereafter, the small
38 forest landowner office shall provide to the board and the legislature

1 an update of the report described in subsection (5) of this section,
2 containing more recent information and describing:

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

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

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

11 **Sec. 2.** RCW 76.13.120 and 2001 c 280 s 2 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 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. "Qualifying timber" is timber within or bordering
31 a commercially reasonable harvest unit as determined under rules
32 adopted by the forest practices board, or timber for which an approved
33 forest practices application for timber harvest cannot be obtained
34 because of restrictions under the forest practices rules.

35 (c) "Small forest landowner" means a landowner meeting all of the
36 following characteristics: (i) A forest landowner as defined in RCW
37 76.09.020 whose interest in the land and timber is in fee or who has
38 rights to the timber to be included in the forestry riparian easement

1 that extend at least fifty years from the date the forest practices
2 application associated with the easement is submitted; (ii) an entity
3 that has harvested from its own lands in this state during the three
4 years prior to the year of application an average timber volume that
5 would qualify the owner as a small (~~(timber)~~) harvester under RCW
6 (~~(84.33.073(1))~~) 84.33.035; and (iii) an entity that certifies at the
7 time of application that it does not expect to harvest from its own
8 lands more than the volume allowed by RCW (~~(84.33.073(1))~~) 84.33.035
9 during the ten years following application. If a landowner's prior
10 three-year average harvest exceeds the limit of RCW (~~(84.33.073(1))~~)
11 84.33.035, or the landowner expects to exceed this limit during the ten
12 years following application, and that landowner establishes to the
13 department of natural resources' reasonable satisfaction that the
14 harvest limits were or will be exceeded to raise funds to pay estate
15 taxes or equally compelling and unexpected obligations such as court-
16 ordered judgments or extraordinary medical expenses, the landowner
17 shall be deemed to be a small forest landowner.

18 For purposes of determining whether a person qualifies as a small
19 forest landowner, the small forest landowner office, created in RCW
20 76.13.110, shall evaluate the landowner under this definition as of the
21 date that the forest practices application is submitted or the date the
22 landowner notifies the department that the harvest is to begin with
23 which the forestry riparian easement is associated. A small forest
24 landowner can include an individual, partnership, corporate, or other
25 nongovernmental legal entity. If a landowner grants timber rights to
26 another entity for less than five years, the landowner may still
27 qualify as a small forest landowner under this section. If a landowner
28 is unable to obtain an approved forest practices application for timber
29 harvest for any of his or her land because of restrictions under the
30 forest practices rules, the landowner may still qualify as a small
31 forest landowner under this section.

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

35 (3) The department of natural resources is authorized and directed
36 to accept and hold in the name of the state of Washington forestry
37 riparian easements granted by small forest landowners covering
38 qualifying timber and to pay compensation to such landowners in
39 accordance with subsections (6) and (7) of this section. The

1 department of natural resources may not transfer the easements to any
2 entity other than another state agency.

3 (4) Forestry riparian easements shall be effective for fifty years
4 from the date the forest practices application associated with the
5 qualifying timber is submitted to the department of natural resources,
6 unless the easement is terminated earlier by the department of natural
7 resources voluntarily, based on a determination that termination is in
8 the best interest of the state, or under the terms of a termination
9 clause in the easement.

10 (5) Forestry riparian easements shall be restrictive only, and
11 shall preserve all lawful uses of the easement premises by the
12 landowner that are consistent with the terms of the easement and the
13 requirement to protect riparian functions during the term of the
14 easement, subject to the restriction that the leave trees required by
15 the rules to be left on the easement premises may not be cut during the
16 term of the easement. No right of public access to or across, or any
17 public use of the easement premises is created by this statute or by
18 the easement. Forestry riparian easements shall not be deemed to
19 trigger the compensating tax of or otherwise disqualify land from being
20 taxed under chapter 84.33 or 84.34 RCW.

21 (6) Upon application of a small forest landowner for a riparian
22 easement that is associated with a forest practices application and the
23 landowner's marking of the qualifying timber on the qualifying lands,
24 the small forest landowner office shall determine the compensation to
25 be offered to the small forest landowner as provided for in this
26 section. The small forest landowner office shall also determine the
27 compensation to be offered to a small forest landowner for qualifying
28 timber for which an approved forest practices application for timber
29 harvest cannot be obtained because of restrictions under the forest
30 practices rules. The legislature recognizes that there is not readily
31 available market transaction evidence of value for easements of this
32 nature, and thus establishes the following methodology to ascertain the
33 value for forestry riparian easements. Values so determined shall not
34 be considered competent evidence of value for any other purpose.

35 The small forest landowner office shall establish the volume of the
36 qualifying timber. Based on that volume and using data obtained or
37 maintained by the department of revenue under RCW 84.33.074 and
38 84.33.091, the small forest landowner office shall attempt to determine
39 the fair market value of the qualifying timber as of the date the

1 forest practices application associated with the qualifying timber was
2 submitted or the date the landowner notifies the department that the
3 harvest is to begin. ((If, under the forest practices rules adopted
4 under chapter 4, Laws of 1999 sp. sess., some qualifying timber may be
5 removed prior to the expiration of the fifty-year term of the easement,
6 the small forest landowner office shall apply a reduced compensation
7 factor to ascertain the value of those trees based on the proportional
8 economic value, considering income and growth, lost to the landowner))
9 Removal of any qualifying timber before the expiration of the easement
10 must be in accordance with the forest practices rules and the terms of
11 the easement.

12 (7) Except as provided in subsection (8) of this section, the small
13 forest landowner office shall, subject to available funding, offer
14 compensation to the small forest landowner in the amount of fifty
15 percent of the value determined in subsection (6) of this section, plus
16 the compliance costs as determined in accordance with RCW 76.13.140.
17 If the landowner accepts the offer for qualifying timber that will be
18 harvested pursuant to an approved forest practices application, the
19 department of natural resources shall pay the compensation promptly
20 upon (a) completion of harvest in the area covered by the forestry
21 riparian easement; (b) verification that there has been compliance with
22 the rules requiring leave trees in the easement area; and (c) execution
23 and delivery of the easement to the department of natural resources.
24 If the landowner accepts the offer for qualifying timber for which an
25 approved forest practices application for timber harvest cannot be
26 obtained because of restrictions under the forest practices rules, the
27 department of natural resources shall pay the compensation promptly
28 upon (i) verification that there has been compliance with the rules
29 requiring leave trees in the easement area; and (ii) execution and
30 delivery of the easement to the department of natural resources. Upon
31 donation or payment of compensation, the department of natural
32 resources may record the easement.

33 (8) For approved forest practices applications where the regulatory
34 impact is greater than the average percentage impact for all small
35 landowners as determined by the department of natural resources
36 analysis under the regulatory fairness act, chapter 19.85 RCW, the
37 compensation offered will be increased to one hundred percent for that
38 portion of the regulatory impact that is in excess of the average.
39 Regulatory impact includes trees left in buffers, special management

1 zones, and those rendered uneconomic to harvest by these rules. A
2 separate average or high impact regulatory threshold shall be
3 established for western and eastern Washington. Criteria for these
4 measurements and payments shall be established by the small forest
5 landowner office.

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

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

12 (b) Standards for descriptions of the easement premises with a
13 degree of precision that is reasonable in relation to the values
14 involved;

15 (c) Methods and standards for cruises and valuation of forestry
16 riparian easements for purposes of establishing the compensation. The
17 department of natural resources shall perform the timber cruises of
18 forestry riparian easements required under this chapter and chapter
19 76.09 RCW. Any rules concerning the methods and standards for
20 valuations of forestry riparian easements shall apply only to the
21 department of natural resources, small forest landowners, and the small
22 forest landowner office;

23 (d) A method to determine that a forest practices application
24 involves a commercially reasonable harvest, and adopt criteria for
25 entering into a forest riparian easement where a commercially
26 reasonable harvest is not possible or a forest practices application
27 that has been submitted cannot be approved because of restrictions
28 under the forest practices rules;

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

31 (f) A formula for sharing of proceeds in relation to the
32 acquisition of qualified timber covered by an easement through the
33 exercise or threats of eminent domain by a federal or state agency with
34 eminent domain authority, based on the present value of the department
35 of natural resources' and the landowner's relative interests in the
36 qualified timber;

37 (g) High impact regulatory thresholds;

1 (h) A method to determine timber that is qualifying timber because
2 it is rendered uneconomic to harvest by the rules adopted under RCW
3 76.09.055 and 76.09.370; and

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

7 **Sec. 3.** RCW 76.13.140 and 2001 c 280 s 3 are each amended to read
8 as follows:

9 In order to assist small forest landowners to remain economically
10 viable, the legislature intends that the small forest landowners be
11 able to net fifty percent of the value of the trees left in the buffer
12 areas. The amount of compensation offered in RCW 76.13.120 shall also
13 include the compliance costs for participation in the riparian easement
14 program. For purposes of this section, "compliance costs" includes the
15 cost of cruising the timber, laying out the streamside buffers, and
16 marking the qualifying timber, the cost of preparing and recording the
17 easement, and any business and occupation tax and real estate excise
18 tax imposed because of entering into the easement. Reimbursement is
19 also subject to the rights and limitations in RCW 76.13.110(2).

20 NEW SECTION. **Sec. 4.** A new section is added to chapter 76.09 RCW
21 to read as follows:

22 The forest practices board shall adopt a manual and rules for
23 alternate management plans and alternate harvest restrictions for use
24 by small forest landowners in accordance with the criteria developed by
25 the small forest landowner office and the directives in RCW 76.13.110.
26 Alternate management plans or alternate harvest restrictions must meet
27 riparian functions while requiring less costly regulatory
28 prescriptions. At the small forest landowner's option, alternate
29 plans or alternate harvest restrictions may be used to further riparian
30 functions.

31 As used in this section, "small forest landowner" has the same
32 meaning as defined in RCW 76.13.120(2).

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