

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE HOUSE BILL 2311

Chapter 120, Laws of 2002

57th Legislature
2002 Regular Session

SMALL FOREST LANDOWNERS

EFFECTIVE DATE: 6/13/02

Passed by the House February 14, 2002
Yeas 97 Nays 0

FRANK CHOPP
**Speaker of the House of
Representatives**

Passed by the Senate March 6, 2002
Yeas 47 Nays 0

BRAD OWEN
President of the Senate

Approved March 26, 2002

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 2311** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER
Chief Clerk

FILED

March 26, 2002 - 8:54 a.m.

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 2311

Passed Legislature - 2002 Regular Session

State of Washington

57th Legislature

2002 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Doumit, Sump, Jackley, Rockefeller, Kessler, Eickmeyer, Hatfield, Delvin, Buck, Linville, Upthegrove, Ericksen and Cairnes)

Read first time 02/09/2002.

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.))~~

3 (3) The small forest landowner office shall assist in the
4 development of small landowner options through alternate management
5 plans or alternate harvest restrictions appropriate to small
6 landowners. The small forest landowner office shall develop criteria
7 to be adopted by the forest practices board in rules and a manual for
8 alternate management plans or alternate harvest restrictions. These
9 alternate plans or alternate harvest restrictions shall meet riparian
10 functions while requiring less costly regulatory prescriptions. At the
11 landowner's option, alternate plans or alternate harvest restrictions
12 may be used to further meet riparian 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. The
30 commissioner shall designate two of the initial small forest landowner
31 appointees to serve five-year terms and the other two small forest
32 landowner appointees to serve four-year terms. Thereafter, appointees
33 shall serve for a term of four years. The small forest landowner
34 office shall review draft rules or rule concepts with the committee
35 prior to recommending such rules to the forest practices board. The
36 office shall reimburse nongovernmental committee members for reasonable
37 expenses associated with attending committee meetings as provided in
38 RCW 43.03.050 and 43.03.060.

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

3 (a) Estimates of the amounts of nonindustrial forests and woodlands
4 in holdings of twenty acres or less, twenty-one to one hundred acres,
5 one hundred to one thousand acres, and one thousand to five thousand
6 acres, in western Washington and eastern Washington, and the number of
7 persons having total nonindustrial forest and woodland holdings in
8 those size ranges;

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

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

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

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

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

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

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

38 (c) Whether, how, and to what extent: (i) The board and
39 legislature implemented recommendations made in the previous report;

1 and (ii) implementation of or failure to implement those
2 recommendations affected those trends.

3 **Sec. 2.** RCW 76.13.120 and 2001 c 280 s 2 are each amended to read
4 as follows:

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

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

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

17 (b) "Qualifying timber" means those trees covered by a forest
18 practices application that the small forest landowner is required to
19 leave unharvested under the rules adopted under RCW 76.09.055 and
20 76.09.370 or that is made uneconomic to harvest by those rules, and for
21 which the small landowner is willing to grant the state a forestry
22 riparian easement. "Qualifying timber" is timber within or bordering
23 a commercially reasonable harvest unit as determined under rules
24 adopted by the forest practices board, or timber for which an approved
25 forest practices application for timber harvest cannot be obtained
26 because of restrictions under the forest practices rules.

27 (c) "Small forest landowner" means a landowner meeting all of the
28 following characteristics: (i) A forest landowner as defined in RCW
29 76.09.020 whose interest in the land and timber is in fee or who has
30 rights to the timber to be included in the forestry riparian easement
31 that extend at least fifty years from the date the forest practices
32 application associated with the easement is submitted; (ii) an entity
33 that has harvested from its own lands in this state during the three
34 years prior to the year of application an average timber volume that
35 would qualify the owner as a small (~~timber~~) harvester under RCW
36 (~~(84.33.073(1))~~) 84.33.035; and (iii) an entity that certifies at the
37 time of application that it does not expect to harvest from its own
38 lands more than the volume allowed by RCW (~~(84.33.073(1))~~) 84.33.035

1 during the ten years following application. If a landowner's prior
2 three-year average harvest exceeds the limit of RCW ((84.33.073(1)))
3 84.33.035, or the landowner expects to exceed this limit during the ten
4 years following application, and that landowner establishes to the
5 department of natural resources' reasonable satisfaction that the
6 harvest limits were or will be exceeded to raise funds to pay estate
7 taxes or equally compelling and unexpected obligations such as court-
8 ordered judgments or extraordinary medical expenses, the landowner
9 shall be deemed to be a small forest landowner.

10 For purposes of determining whether a person qualifies as a small
11 forest landowner, the small forest landowner office, created in RCW
12 76.13.110, shall evaluate the landowner under this definition as of the
13 date that the forest practices application is submitted or the date the
14 landowner notifies the department that the harvest is to begin with
15 which the forestry riparian easement is associated. A small forest
16 landowner can include an individual, partnership, corporate, or other
17 nongovernmental legal entity. If a landowner grants timber rights to
18 another entity for less than five years, the landowner may still
19 qualify as a small forest landowner under this section. If a landowner
20 is unable to obtain an approved forest practices application for timber
21 harvest for any of his or her land because of restrictions under the
22 forest practices rules, the landowner may still qualify as a small
23 forest landowner under this section.

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

27 (3) The department of natural resources is authorized and directed
28 to accept and hold in the name of the state of Washington forestry
29 riparian easements granted by small forest landowners covering
30 qualifying timber and to pay compensation to such landowners in
31 accordance with subsections (6) and (7) of this section. The
32 department of natural resources may not transfer the easements to any
33 entity other than another state agency.

34 (4) Forestry riparian easements shall be effective for fifty years
35 from the date the forest practices application associated with the
36 qualifying timber is submitted to the department of natural resources,
37 unless the easement is terminated earlier by the department of natural
38 resources voluntarily, based on a determination that termination is in

1 the best interest of the state, or under the terms of a termination
2 clause in the easement.

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

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

28 The small forest landowner office shall establish the volume of the
29 qualifying timber. Based on that volume and using data obtained or
30 maintained by the department of revenue under RCW 84.33.074 and
31 84.33.091, the small forest landowner office shall attempt to determine
32 the fair market value of the qualifying timber as of the date the
33 forest practices application associated with the qualifying timber was
34 submitted or the date the landowner notifies the department that the
35 harvest is to begin. ~~((If, under the forest practices rules adopted
36 under chapter 4, Laws of 1999 sp. sess., some qualifying timber may be
37 removed prior to the expiration of the fifty-year term of the easement,
38 the small forest landowner office shall apply a reduced compensation
39 factor to ascertain the value of those trees based on the proportional~~

1 ~~economic value, considering income and growth, lost to the landowner))~~
2 Removal of any qualifying timber before the expiration of the easement
3 must be in accordance with the forest practices rules and the terms of
4 the easement. There shall be no reduction in compensation for reentry.

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

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

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

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

7 (b) Standards for descriptions of the easement premises with a
8 degree of precision that is reasonable in relation to the values
9 involved;

10 (c) Methods and standards for cruises and valuation of forestry
11 riparian easements for purposes of establishing the compensation. The
12 department of natural resources shall perform the timber cruises of
13 forestry riparian easements required under this chapter and chapter
14 76.09 RCW. Any rules concerning the methods and standards for
15 valuations of forestry riparian easements shall apply only to the
16 department of natural resources, small forest landowners, and the small
17 forest landowner office;

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

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

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

32 (g) High impact regulatory thresholds;

33 (h) A method to determine timber that is qualifying timber because
34 it is rendered uneconomic to harvest by the rules adopted under RCW
35 76.09.055 and 76.09.370; and

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

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

3 In order to assist small forest landowners to remain economically
4 viable, the legislature intends that the small forest landowners be
5 able to net fifty percent of the value of the trees left in the buffer
6 areas. The amount of compensation offered in RCW 76.13.120 shall also
7 include the compliance costs for participation in the riparian easement
8 program. For purposes of this section, "compliance costs" includes the
9 cost of preparing and recording the easement, and any business and
10 occupation tax and real estate excise tax imposed because of entering
11 into the easement. The office may contract with private consultants
12 that the office finds qualified to perform timber cruises of forestry
13 riparian easements or to lay out streamside buffers and comply with
14 other forest and fish regulatory requirements related to the forest
15 riparian easement program. The department shall reimburse small forest
16 landowners for the actual costs incurred for laying out the streamside
17 buffers and marking the qualifying timber once a contract has been
18 executed for the forestry riparian easement program. Reimbursement is
19 subject to the work being acceptable to the department. The small
20 forest landowner office shall determine how the reimbursement costs
21 will be calculated.

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

24 The legislature intends that small forest landowners have access to
25 alternate plan processes or alternate harvest restrictions, or both if
26 necessary, that meet the public resource protection standard set forth
27 in RCW 76.09.370(3), but which also lowers the overall cost of
28 regulation to small forest landowners including, but not limited to,
29 timber value forgone, layout costs, and operating costs. The forest
30 practices board shall consult with the small forest landowner office
31 advisory committee in developing these alternate approaches. By July
32 1, 2003, the forest practices board shall provide the legislature with
33 a written report that describes the board's progress in developing
34 alternate plan processes or alternate harvest restrictions, or both if
35 necessary, that meet legislative intent.

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

Passed the House February 14, 2002.
Passed the Senate March 6, 2002.
Approved by the Governor March 26, 2002.
Filed in Office of Secretary of State March 26, 2002.