

SHB 2219 - S COMM AMD

By Committee on Natural Resources, Ocean & Recreation

1       Strike everything after the enacting clause and insert the  
2 following:

3       "NEW SECTION. **Sec. 1.** This act is intended to allow the small  
4 forest landowner office to begin the process of calculating the  
5 compensation that may be offered to a small forest landowner who is  
6 participating in the forest riparian easement program shortly after  
7 receipt of the landowner's application. Timing the compensation  
8 calculation with the receipt of the application, as opposed to  
9 initiating the compensation determination upon the appropriation of  
10 distributable funds, allows the small forest landowner office to both  
11 capture the actual value of the unharvested timber at the time that the  
12 forest practices operation was conducted, and allows the small forest  
13 landowner office to more accurately estimate for the legislature the  
14 budget needs of the forest riparian easement program.

15       This act is also intended to ensure that family forest landowners,  
16 for whom the forest riparian easement program was initially designed,  
17 are compensated under the program before all other qualifying  
18 landowners.

19       NEW SECTION. **Sec. 2.** To implement the intent of this act:

20       (1) The small forest landowner office shall, by the end of the  
21 2007-2009 fiscal biennium, use any funding specifically made available  
22 to it for these purposes from the state's capital construction budget  
23 to complete the compensation estimates for forest riparian easement  
24 applications received by the small forest landowner office prior to the  
25 effective date of this section.

26       (2) The forest practices board shall initiate and complete a rule-  
27 making procedure to remove the requirement for the small forest  
28 landowner office to send a landowner a notice of compensation within  
29 sixty days of completion of the requisite timber cruise.

1 (3) This section expires July 1, 2009.

2 **Sec. 3.** RCW 76.13.120 and 2004 c 102 s 1 are each amended to read  
3 as follows:

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

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

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

16 (b) "Qualifying timber" means: (i) Those trees covered by a forest  
17 practices application that the small forest landowner is required to  
18 leave unharvested under the rules adopted under RCW 76.09.055 and  
19 76.09.370 or that is made uneconomic to harvest by those rules, and for  
20 which the small landowner is willing to grant the state a forestry  
21 riparian easement; and (ii) those trees covered by a forest practices  
22 application that a small forest landowner, who is eligible for the  
23 exemption provided in RCW 76.13.130 and who took ownership of the  
24 property after June 5, 2006, voluntarily leaves unharvested, to the  
25 extent that the landowner would have been required to leave those trees  
26 unharvested under the rules adopted under RCW 76.09.370, if the  
27 landowner was not eligible for the exemption provided in RCW 76.13.130;  
28 but not (iii) those trees covered by a forest practices application  
29 with a proposal to convert to a use other than commercial timber  
30 production. "Qualifying timber" is timber within or bordering a  
31 commercially reasonable harvest unit as determined under rules adopted  
32 by the forest practices board, or timber for which an approved forest  
33 practices application for timber harvest cannot be obtained because of  
34 restrictions under the forest practices rules, including restrictions  
35 on harvesting in riparian areas, on groundwater recharge areas, and on  
36 unstable slopes.

1 (c) "Small forest landowner" means a landowner meeting all of the  
2 following characteristics: (i) A forest landowner as defined in RCW  
3 76.09.020 whose interest in the land and timber is in fee or who has  
4 rights to the timber to be included in the forestry riparian easement  
5 that extend at least fifty years from the date the forest practices  
6 application associated with the easement is submitted; (ii) an entity  
7 that has harvested from its own lands in this state during the three  
8 years prior to the year of application an average timber volume that  
9 would qualify the owner as a small harvester under RCW 84.33.035; and  
10 (iii) an entity that certifies at the time of application that it does  
11 not expect to harvest from its own lands more than the volume allowed  
12 by RCW 84.33.035 during the ten years following application. If a  
13 landowner's prior three-year average harvest exceeds the limit of RCW  
14 84.33.035, or the landowner expects to exceed this limit during the ten  
15 years following application, and that landowner establishes to the  
16 department of natural resources' reasonable satisfaction that the  
17 harvest limits were or will be exceeded to raise funds to pay estate  
18 taxes or equally compelling and unexpected obligations such as court-  
19 ordered judgments or extraordinary medical expenses, the landowner  
20 shall be deemed to be a small forest landowner.

21 For purposes of determining whether a person qualifies as a small  
22 forest landowner, the small forest landowner office, created in RCW  
23 76.13.110, shall evaluate the landowner under this definition, pursuant  
24 to RCW 76.13.160, as of the date that the forest practices application  
25 is submitted or the date the landowner notifies the department that the  
26 harvest is to begin with which the forestry riparian easement is  
27 associated. A small forest landowner can include an individual,  
28 partnership, corporate, or other nongovernmental legal entity. If a  
29 landowner grants timber rights to another entity for less than five  
30 years, the landowner may still qualify as a small forest landowner  
31 under this section. If a landowner is unable to obtain an approved  
32 forest practices application for timber harvest for any of his or her  
33 land because of restrictions under the forest practices rules, the  
34 landowner may still qualify as a small forest landowner under this  
35 section.

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

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

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

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

26 (6)(a) Upon application ((of)) from a small forest landowner for a  
27 riparian easement that is associated with a forest practices  
28 application and the landowner's marking of the qualifying timber on the  
29 qualifying lands, the small forest landowner office shall determine the  
30 compensation to be offered to the small forest landowner as provided  
31 for in this section.

32 (b) The small forest landowner office shall also determine the  
33 compensation to be offered to a small forest landowner for qualifying  
34 timber for which an approved forest practices application for timber  
35 harvest cannot be obtained because of restrictions under the forest  
36 practices rules.

37 (c) The legislature recognizes that there is not readily available  
38 market transaction evidence of value for easements of this nature, and

1 thus establishes the (~~following~~) methodology contained in this  
2 section to ascertain the value for forestry riparian easements. Values  
3 so determined shall not be considered competent evidence of value for  
4 any other purpose.

5 (d) The small forest landowner office shall establish the volume of  
6 the qualifying timber. Based on that volume and using data obtained or  
7 maintained by the department of revenue under RCW 84.33.074 and  
8 84.33.091, the small forest landowner office shall attempt to determine  
9 the fair market value of the qualifying timber as of the date the  
10 forest practices application associated with the qualifying timber was  
11 submitted or the date the landowner notifies the department that the  
12 harvest is to begin. Removal of any qualifying timber before the  
13 expiration of the easement must be in accordance with the forest  
14 practices rules and the terms of the easement. There shall be no  
15 reduction in compensation for reentry.

16 (e) Small forest landowners who are not nonprofit organizations or  
17 municipalities, municipal corporations, or special districts have  
18 priority for payment under this section.

19 (f) The small forest landowner office shall initiate the process  
20 for determining the compensation amount as soon as possible after  
21 receipt of an application. No duty to present an actual offer for  
22 compensation exists until appropriations allow.

23 (7) Except as provided in subsection (8) of this section, the small  
24 forest landowner office shall, subject to available funding, offer  
25 compensation to the small forest landowner in the amount of fifty  
26 percent of the value determined in subsection (6) of this section, plus  
27 the compliance and reimbursement costs as determined in accordance with  
28 RCW 76.13.140. If the landowner accepts the offer for qualifying  
29 timber that will be harvested pursuant to an approved forest practices  
30 application, the department of natural resources shall pay the  
31 compensation promptly upon (a) completion of harvest in the area  
32 covered by the forestry riparian easement; (b) verification that there  
33 has been compliance with the rules requiring leave trees in the  
34 easement area; and (c) execution and delivery of the easement to the  
35 department of natural resources. If the landowner accepts the offer  
36 for qualifying timber for which an approved forest practices  
37 application for timber harvest cannot be obtained because of  
38 restrictions under the forest practices rules, the department of

1 natural resources shall pay the compensation promptly upon (i)  
2 verification that there has been compliance with the rules requiring  
3 leave trees in the easement area; and (ii) execution and delivery of  
4 the easement to the department of natural resources. Upon donation or  
5 payment of compensation, the department of natural resources may record  
6 the easement.

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

1 reasonable harvest is not possible or a forest practices application  
2 that has been submitted cannot be approved because of restrictions  
3 under the forest practices rules;

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

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

12 (g) High impact regulatory thresholds;

13 (h) A method to determine timber that is qualifying timber because  
14 it is rendered uneconomic to harvest by the rules adopted under RCW  
15 76.09.055 and 76.09.370; and

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

19 **Sec. 4.** RCW 76.13.140 and 2002 c 120 s 3 are each amended to read  
20 as follows:

21 (1) In order to assist small forest landowners to remain  
22 economically viable, the legislature intends that the small forest  
23 landowners be able to net fifty percent of the value of the trees left  
24 in the buffer areas.

25 (2) The amount of compensation offered in RCW 76.13.120 shall also  
26 include the compliance costs for participation in the riparian easement  
27 program. For purposes of this section, "compliance costs" includes the  
28 cost of preparing and recording the easement, and any business and  
29 occupation tax and real estate excise tax imposed because of entering  
30 into the easement.

31 (3) The office may contract with private consultants that the  
32 office finds qualified to perform timber cruises of forestry riparian  
33 easements or to lay out streamside buffers and comply with other forest  
34 and fish regulatory requirements related to the forest riparian  
35 easement program.

36 (4) Once a contract has been executed for the forestry riparian  
37 easement program, the department shall reimburse small forest

1 landowners for the actual costs incurred for laying out the streamside  
2 buffers ~~((and)),~~ marking the qualifying timber ~~((once a contract has  
3 been executed for the forestry riparian easement program)),~~ and hiring  
4 a qualified expert to complete required studies or reports as part of  
5 the forest practices application upon which the easement application is  
6 based. Reimbursement is subject to the work being acceptable to the  
7 department. The small forest landowner office shall determine how the  
8 reimbursement costs will be calculated."

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9 On page 1, line 2 of the title, after "landowners;" strike the  
10 remainder of the title and insert "amending RCW 76.13.120 and  
11 76.13.140; creating new sections; and providing an expiration date."

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