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**SUBSTITUTE HOUSE BILL 2219**

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**State of Washington                      60th Legislature                      2007 Regular Session**

**By** House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Orcutt, B. Sullivan, Kessler and Kretz)

READ FIRST TIME 02/28/07.

1            AN ACT Relating to forest practices regulations applicable to small  
2 forest landowners; amending RCW 76.13.120 and 76.13.140; and creating  
3 a new section.

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

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

17            (2) To implement the intent of this act:

18            (a) The small forest landowner office shall, by the end of the  
19 2007-2009 fiscal biennium, use any funding specifically made available

1 to it for these purposes from the state's capital construction budget  
2 to complete the compensation estimates and execute the resulting  
3 easement contracts for forest riparian easement contracts received by  
4 the small forest landowner office prior to the effective date of this  
5 section; and

6 (b) The forest practices board shall initiate and complete a rule-  
7 making procedure to amend the current text of WAC 222-21-050 in such a  
8 way that the requirement for the small forest landowner office to send  
9 a landowner a notice of compensation within sixty days of completion of  
10 the requisite timber cruise is substantially modified or repealed.

11 **Sec. 2.** RCW 76.13.120 and 2004 c 102 s 1 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: (i) 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; and (ii) those trees covered by a forest practices  
31 application that a small forest landowner who is eligible for the  
32 exemption provided in RCW 76.13.130 voluntarily leaves unharvested, to  
33 the extent that the landowner would have been required to leave those  
34 trees unharvested under the rules adopted under RCW 76.09.370, if the  
35 landowner was not eligible for the exemption provided in RCW 76.13.130.

36 "Qualifying timber" is timber within or bordering a commercially  
37 reasonable harvest unit as determined under rules adopted by the forest

1 practices board, or timber for which an approved forest practices  
2 application for timber harvest cannot be obtained because of  
3 restrictions under the forest practices rules, including restrictions  
4 on harvesting in riparian areas and restrictions on harvesting on  
5 unstable slopes.

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

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

1 land because of restrictions under the forest practices rules, the  
2 landowner may still qualify as a small forest landowner under this  
3 section.

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

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

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

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

32 (6) Upon application (~~of~~) from a small forest landowner for a  
33 riparian easement that is associated with a forest practices  
34 application and the landowner's marking of the qualifying timber on the  
35 qualifying lands, the small forest landowner office shall determine the  
36 compensation to be offered to the small forest landowner as provided  
37 for in this section.

1       **(b)** The small forest landowner office shall also determine the  
2 compensation to be offered to a small forest landowner for qualifying  
3 timber for which an approved forest practices application for timber  
4 harvest cannot be obtained because of restrictions under the forest  
5 practices rules.

6       **(c)** The legislature recognizes that there is not readily available  
7 market transaction evidence of value for easements of this nature, and  
8 thus establishes the (~~following~~) methodology contained in this  
9 section to ascertain the value for forestry riparian easements. Values  
10 so determined shall not be considered competent evidence of value for  
11 any other purpose.

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

23       **(e)** The small forest landowner office shall initiate the process  
24 for determining the compensation amount as soon as possible after  
25 receipt of an application. No duty to present an actual offer for  
26 compensation exists until appropriations allow.

27       (7) Except as provided in subsection (8) of this section, the small  
28 forest landowner office shall, subject to available funding, offer  
29 compensation to the small forest landowner in the amount of fifty  
30 percent of the value determined in subsection (6) of this section, plus  
31 the compliance and reimbursement costs as determined in accordance with  
32 RCW 76.13.140. If the landowner accepts the offer for qualifying  
33 timber that will be harvested pursuant to an approved forest practices  
34 application, the department of natural resources shall pay the  
35 compensation promptly upon (a) completion of harvest in the area  
36 covered by the forestry riparian easement; (b) verification that there  
37 has been compliance with the rules requiring leave trees in the  
38 easement area; and (c) execution and delivery of the easement to the

1 department of natural resources. If the landowner accepts the offer  
2 for qualifying timber for which an approved forest practices  
3 application for timber harvest cannot be obtained because of  
4 restrictions under the forest practices rules, the department of  
5 natural resources shall pay the compensation promptly upon (i)  
6 verification that there has been compliance with the rules requiring  
7 leave trees in the easement area; and (ii) execution and delivery of  
8 the easement to the department of natural resources. Upon donation or  
9 payment of compensation, the department of natural resources may record  
10 the easement.

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

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

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

29 (b) Standards for descriptions of the easement premises with a  
30 degree of precision that is reasonable in relation to the values  
31 involved;

32 (c) Methods and standards for cruises and valuation of forestry  
33 riparian easements for purposes of establishing the compensation. The  
34 department of natural resources shall perform the timber cruises of  
35 forestry riparian easements required under this chapter and chapter  
36 76.09 RCW. Any rules concerning the methods and standards for  
37 valuations of forestry riparian easements shall apply only to the

1 department of natural resources, small forest landowners, and the small  
2 forest landowner office;

3 (d) A method to determine that a forest practices application  
4 involves a commercially reasonable harvest, and adopt criteria for  
5 entering into a forest riparian easement where a commercially  
6 reasonable harvest is not possible or a forest practices application  
7 that has been submitted cannot be approved because of restrictions  
8 under the forest practices rules;

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

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

17 (g) High impact regulatory thresholds;

18 (h) A method to determine timber that is qualifying timber because  
19 it is rendered uneconomic to harvest by the rules adopted under RCW  
20 76.09.055 and 76.09.370; and

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

24 **Sec. 3.** RCW 76.13.140 and 2002 c 120 s 3 are each amended to read  
25 as follows:

26 (1) In order to assist small forest landowners to remain  
27 economically viable, the legislature intends that the small forest  
28 landowners be able to net fifty percent of the value of the trees left  
29 in the buffer areas.

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

36 (3) The office may contract with private consultants that the  
37 office finds qualified to perform timber cruises of forestry riparian

1 easements or to lay out streamside buffers and comply with other forest  
2 and fish regulatory requirements related to the forest riparian  
3 easement program.

4 (4) Once a contract has been executed for the forestry riparian  
5 easement program, the department shall reimburse small forest  
6 landowners for the actual costs incurred for laying out the streamside  
7 buffers ((and)), marking the qualifying timber ((once a contract has  
8 been executed for the forestry riparian easement program)), and hiring  
9 a qualified expert to prepare a geotechnical report as part of the  
10 forest practices application upon which the easement application is  
11 based. Reimbursement is subject to the work being acceptable to the  
12 department. The small forest landowner office shall determine how the  
13 reimbursement costs will be calculated.

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