

---

HOUSE BILL 1509

---

State of Washington

62nd Legislature

2011 Regular Session

By Representatives Blake, Dunshee, and Ryu; by request of Commissioner of Public Lands

Read first time 01/24/11. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to the forestry riparian easement program; amending  
2 RCW 76.13.120, 76.13.140, and 76.13.160; creating a new section; and  
3 providing an expiration date.

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

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

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

14 (2) The definitions in this subsection apply throughout this  
15 section and RCW 76.13.100 (~~and~~), 76.13.110, 76.13.140, and 76.13.160  
16 unless the context clearly requires otherwise.

17 (a) "Forestry riparian easement" means an easement covering  
18 qualifying timber granted voluntarily to the state by a qualifying  
19 small forest landowner.

1       (b) "Qualifying small forest landowner" means a landowner meeting  
2 all of the following characteristics as of the date the department of  
3 natural resources offers compensation for a forestry riparian easement:

4       (i) Is a small forest landowner as defined in (d) of this  
5 subsection and whose interest in the land and timber is in fee prior to  
6 July 1, 2011, or the applicant is a lineal descendant of a landowner  
7 meeting this condition;

8       (ii) Is an individual, partnership, corporation, or other  
9 nongovernmental for-profit legal entity; and

10       (iii) Is an enrolled participant in an internationally recognized  
11 forest certification program, or has a forest stewardship plan that has  
12 been approved by the department of natural resources, that includes the  
13 land affected by the associated forestry riparian easement. Qualifying  
14 small forest landowners with completed forestry riparian easement  
15 applications in the queue prior to July 1, 2011, have until July 1,  
16 2012, to meet the criteria of this subsection (2)(b)(iii).

17       (c) "Qualifying timber" means those forest trees for which the  
18 small forest landowner is willing to grant the state a forestry  
19 riparian easement and must meet all of the following:

20       (i) The forest trees are covered by a forest practices application  
21 that the small forest landowner is required to leave unharvested under  
22 the rules adopted under RCW 76.09.055 and 76.09.370 or that is made  
23 uneconomic to harvest by those rules (~~, and for which the small~~  
24 landowner is willing to grant the state a forestry riparian easement.  
25 "Qualifying timber" is timber);

26       (ii) The forest trees are within or bordering a commercially  
27 reasonable harvest unit as determined under rules adopted by the forest  
28 practices board, or (~~timber~~) for which an approved forest practices  
29 application for timber harvest cannot be obtained because of  
30 restrictions under the forest practices rules;

31       (iii) The forest trees are located within, or affected by forest  
32 practices rules pertaining to any one, or all, of the following:

33       (A) Riparian or other sensitive aquatic areas;

34       (B) Channel migration zones; or

35       (C) Areas of potentially unstable slopes or landforms, verified by  
36 the department, and must meet all of the following:

37       (I) Are addressed in a forest practices application;

38       (II) Are adjacent to a commercially reasonable harvest area; and

1        (III) Have the potential to deliver sediment or debris to a public  
2 resource.

3        ~~((+e+))~~ (d) "Small forest landowner" means a landowner meeting all  
4 of the following characteristics:

5        (i) A forest landowner as defined in RCW 76.09.020 whose interest  
6 in the land and timber is in fee or who has rights to the timber to be  
7 included in the forestry riparian easement that extend at least fifty  
8 years from the date the ~~((forest practices))~~ completed forestry  
9 riparian easement application associated with the easement is  
10 submitted;

11        (ii) An entity that has harvested from its own lands in this state  
12 during the three years prior to the year of application an average  
13 timber volume that would qualify the owner as a small harvester under  
14 RCW 84.33.035; and

15        (iii) An entity that certifies at the time of application that it  
16 does not expect to harvest from its own lands more than the volume  
17 allowed by RCW 84.33.035 during the ten years following application.  
18 If a landowner's prior three-year average harvest exceeds the limit of  
19 RCW 84.33.035, or the landowner expects to exceed this limit during the  
20 ten 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. For purposes of  
26 determining whether a person qualifies as a small forest landowner, the  
27 small forest landowner office, created in RCW 76.13.110, shall evaluate  
28 the landowner under this definition, pursuant to RCW 76.13.160, as of  
29 the date that the forest practices application is submitted ~~((or the~~  
30 ~~date the landowner notifies the department that the harvest is to begin~~  
31 ~~with which the forestry riparian easement is associated))~~ and the date  
32 that the department of natural resources offers compensation for the  
33 forestry riparian easement. A small forest landowner can include an  
34 individual, partnership, ~~((corporate))~~ corporation, or other  
35 nongovernmental legal entity. If a landowner grants timber rights to  
36 another entity for less than five years, the landowner may still  
37 qualify as a small forest landowner under this section. If a landowner  
38 is unable to obtain an approved forest practices application for timber

1 harvest for any of his or her land because of restrictions under the  
2 forest practices rules, the landowner may still qualify as a small  
3 forest landowner under this section.

4 ~~((d))~~ (e) "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 qualifying small forest landowners  
10 covering qualifying timber and to pay compensation to such landowners  
11 in 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 of the completed forestry riparian easement, unless the easement is  
18 voluntarily terminated earlier by the department of natural resources  
19 ~~((voluntarily))~~, based on a determination that termination is in the  
20 best interest of the state, or under the terms of a termination clause  
21 in the easement.

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

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

1 compensation to be offered to a small forest landowner for qualifying  
2 timber for which an approved forest practices application for timber  
3 harvest cannot be obtained because of restrictions under the forest  
4 practices rules. The legislature recognizes that there is not readily  
5 available market transaction evidence of value for easements of this  
6 nature, and thus establishes the following methodology to ascertain the  
7 value for forestry riparian easements. Values so determined shall not  
8 be considered competent evidence of value for any other purpose.

9 The small forest landowner office shall establish the volume of the  
10 qualifying timber. Based on that volume and using data obtained or  
11 maintained by the department of revenue under RCW 84.33.074 and  
12 84.33.091, the small forest landowner office shall attempt to determine  
13 the fair market value of the qualifying timber as of the date the  
14 forest practices application associated with the qualifying timber was  
15 submitted or the date the landowner notifies the department that the  
16 harvest is to begin. Removal of any qualifying timber before the  
17 expiration of the easement must be in accordance with the forest  
18 practices rules and the terms of the easement. There shall be no  
19 reduction in compensation for reentry)) The small forest landowner  
20 office shall determine what constitutes a completed application for a  
21 forestry riparian easement. Such an application shall, at a minimum,  
22 include documentation of the owner's status as a qualifying small  
23 forest landowner, identification of location and the types of  
24 qualifying timber, and notification of completion of harvest, if  
25 applicable.

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

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

10 (8)) Upon receipt of the qualifying small forest landowner's  
11 forestry riparian easement application, and subject to the availability  
12 of amounts appropriated for this specific purpose, the following must  
13 occur:

14 (a) The small forest landowner office shall determine the  
15 compensation to be offered to the qualifying small forest landowner  
16 for qualifying timber after the department accepts the completed  
17 forestry riparian easement application and the landowner has completed  
18 marking the boundary of the area containing the qualifying timber. The  
19 legislature recognizes that there is not readily available market  
20 transaction evidence of value for easements of the nature required by  
21 this section, and thus establishes the methodology provided in this  
22 subsection to ascertain the value for forestry riparian easements.  
23 Values so determined may not be considered competent evidence of value  
24 for any other purpose.

25 (b) The small forest landowner office, subject to the availability  
26 of amounts appropriated for this specific purpose, is responsible for  
27 assessing the volume of qualifying timber. Based on the volume  
28 established by the small forest landowner office and using data  
29 obtained or maintained by the department of revenue under RCW 84.33.074  
30 and 84.33.091, the small forest landowner office shall attempt to  
31 determine the fair market value of the qualifying timber as of the date  
32 the complete forestry riparian easement application is received.  
33 Removal of any qualifying timber before the expiration of the easement  
34 must be in accordance with the forest practices rules and the terms of  
35 the easement. There shall be no reduction in compensation for reentry.

36 (8) Except as provided in subsection (9) of this section and  
37 subject to the availability of amounts appropriated for this specific  
38 purpose, the small forest landowner office shall offer compensation for

1 qualifying timber to the qualifying small forest landowner in the  
2 amount of fifty percent of the value determined by the small forest  
3 landowner office, plus the compliance and reimbursement costs as  
4 determined in accordance with RCW 76.13.140. Compensation is capped to  
5 a total of one hundred thousand dollars value for qualifying timber  
6 located on potentially unstable slopes or landforms during any four-  
7 year period. If the landowner accepts the offer for qualifying timber,  
8 the department of natural resources shall pay the compensation promptly  
9 upon: (a) Completion of harvest in the area within a commercially  
10 reasonable harvest unit with which the forestry riparian easement is  
11 associated under an approved forest practices application, unless an  
12 approved forest practices application for timber harvest cannot be  
13 obtained because of restrictions under the forest practices rules; (b)  
14 verification that the landowner has no outstanding violations under  
15 chapter 76.09 RCW or any associated rules; and (c) execution and  
16 delivery of the easement to the department of natural resources. Upon  
17 donation or payment of compensation, the department of natural  
18 resources may record the easement.

19 (9) For approved forest practices applications ((where)) for which  
20 the regulatory impact is greater than the average percentage impact for  
21 all small forest landowners as determined by an analysis by the  
22 department of natural resources ((analysis)) under the regulatory  
23 fairness act, chapter 19.85 RCW, the compensation offered will be  
24 increased to one hundred percent for that portion of the regulatory  
25 impact that is in excess of the average. Regulatory impact includes  
26 all trees ((left in buffers, special management zones, and those  
27 rendered uneconomic to harvest by these rules)) identified as  
28 qualifying timber. A separate average or high impact regulatory  
29 threshold shall be established for western and eastern Washington.  
30 Criteria for these measurements and payments shall be established by  
31 the small forest landowner office.

32 ((+9)) (10) The forest practices board shall adopt rules under the  
33 administrative procedure act, chapter 34.05 RCW, to implement the  
34 forestry riparian easement program, including the following:

35 (a) A standard version ((or versions of all)) of a forestry  
36 riparian easement application as well as all additional documents  
37 necessary or advisable to create the forestry riparian easements as  
38 provided for in this section;

1 (b) Standards for descriptions of the easement premises with a  
2 degree of precision that is reasonable in relation to the values  
3 involved;

4 (c) Methods and standards for cruises and valuation of forestry  
5 riparian easements for purposes of establishing the compensation. The  
6 department of natural resources, subject to the availability of amounts  
7 appropriated for this specific purpose, shall perform the timber  
8 cruises of forestry riparian easements required under this chapter and  
9 chapter 76.09 RCW. Any rules concerning the methods and standards for  
10 valuations of forestry riparian easements shall apply only to the  
11 department of natural resources, qualifying small forest landowners,  
12 and the small forest landowner office;

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

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

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

27 (g) High impact regulatory thresholds;

28 (h) A method to determine timber that is qualifying timber because  
29 it is rendered uneconomic to harvest by the rules adopted under RCW  
30 76.09.055 and 76.09.370; and

31 (i) A method for internal department of natural resources review of  
32 small forest landowner office compensation decisions under ((~~subsection~~  
33 ~~(7) of~~)) this section.

34 **Sec. 2.** RCW 76.13.140 and 2002 c 120 s 3 are each amended to read  
35 as follows:

36 In order to assist small forest landowners to remain economically  
37 viable, the legislature intends that the qualifying small forest



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

20 **Sec. 3.** RCW 76.13.160 and 2004 c 102 s 2 are each amended to read  
21 as follows:

22 When establishing a ~~((forest))~~ forestry riparian easement program  
23 applicant's status as a qualifying small forest landowner pursuant to  
24 RCW 76.13.120, the department shall not review the applicant's timber  
25 harvest records, or any other tax-related documents, on file with the  
26 department of revenue. The department of revenue may confirm or deny  
27 an applicant's status as a small forest landowner at the request of the  
28 department~~((+))~~. However, for the purposes of this section, the  
29 department of revenue may not disclose more information than whether or  
30 not the applicant has reported a harvest or harvests totaling greater  
31 than or less than the qualifying thresholds established in RCW  
32 76.13.120. Nothing in this section, or RCW 84.33.280, prohibits the  
33 department from reviewing aggregate or general information provided by  
34 the department of revenue.

35 NEW SECTION. **Sec. 4.** (1) The chair of the forest practices board  
36 shall invite relevant stakeholders to participate in a process that

1 investigates, and ultimately recommends, potential new long-term  
2 funding sources for the forestry riparian easement program established  
3 in chapter 76.13 RCW.

4 (2) The findings of, and recommendations from, the process required  
5 by this section must be reported to the appropriate committees of the  
6 legislature in the manner prescribed in RCW 43.01.036 by October 31,  
7 2011.

8 (3) This section expires July 31, 2012.

--- END ---