

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1509

Chapter 218, Laws of 2011
(partial veto)

62nd Legislature
2011 Regular Session

FORESTRY RIPARIAN EASEMENT PROGRAM

EFFECTIVE DATE: 07/22/11

Passed by the House April 13, 2011
Yeas 96 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 7, 2011
Yeas 47 Nays 0

BRAD OWEN

President of the Senate

Approved April 29, 2011, 4:24 p.m., with
the exception of Section 7 which is
vetoed.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of
the House of Representatives of
the State of Washington, do hereby
certify that the attached is
**ENGROSSED SUBSTITUTE HOUSE BILL
1509** as passed by the House of
Representatives and the Senate on
the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

April 29, 2011

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1509

AS AMENDED BY THE SENATE

Passed Legislature - 2011 Regular Session

State of Washington

62nd Legislature

2011 Regular Session

By House Agriculture & Natural Resources (originally sponsored by Representatives Blake, Dunshee, and Ryu; by request of Commissioner of Public Lands)

READ FIRST TIME 02/16/11.

1 AN ACT Relating to the forestry riparian easement program; amending
2 RCW 76.13.120, 76.13.140, and 76.13.160; adding new sections to chapter
3 76.13 RCW; creating a new section; providing an effective date;
4 providing an expiration date; and declaring an emergency.

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

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

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

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

18 (a) "Forestry riparian easement" means an easement covering

1 qualifying timber granted voluntarily to the state by a qualifying
2 small forest landowner.

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

6 (i) Is a small forest landowner as defined in (d) of this
7 subsection; and

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

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

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

19 (ii) The forest trees are within or bordering a commercially
20 reasonable harvest unit as determined under rules adopted by the forest
21 practices board, or ((timber)) for which an approved forest practices
22 application for timber harvest cannot be obtained because of
23 restrictions under the forest practices rules;

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

26 (A) Riparian or other sensitive aquatic areas;

27 (B) Channel migration zones; or

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

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

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

32 (III) Have the potential to deliver sediment or debris to a public
33 resource or threaten public safety.

34 ((+e)) (d) "Small forest landowner" means a landowner meeting all
35 of the following characteristics:

36 (i) A forest landowner as defined in RCW 76.09.020 whose interest
37 in the land and timber is in fee or who has rights to the timber to be
38 included in the forestry riparian easement that extend at least fifty

1 years from the date the (~~forest practices~~) completed forestry
2 riparian easement application associated with the easement is
3 submitted;

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

8 (iii) An entity that certifies at the time of application that it
9 does not expect to harvest from its own lands more than the volume
10 allowed by RCW 84.33.035 during the ten years following application.
11 If a landowner's prior three-year average harvest exceeds the limit of
12 RCW 84.33.035, or the landowner expects to exceed this limit during the
13 ten years following application, and that landowner establishes to the
14 (~~department of natural resources~~) department's reasonable
15 satisfaction that the harvest limits were or will be exceeded to raise
16 funds to pay estate taxes or equally compelling and unexpected
17 obligations such as court-ordered judgments or extraordinary medical
18 expenses, the landowner shall be deemed to be a small forest landowner.
19 For purposes of determining whether a person qualifies as a small
20 forest landowner, the small forest landowner office, created in RCW
21 76.13.110, shall evaluate the landowner under this definition, pursuant
22 to RCW 76.13.160, as of the date that the forest practices application
23 is submitted (~~or the date the landowner notifies the department that~~
24 ~~the harvest is to begin with which the forestry riparian easement is~~
25 ~~associated~~) and the date that the department offers compensation for
26 the forestry riparian easement. A small forest landowner can include
27 an individual, partnership, (~~corporate~~) corporation, or other
28 nongovernmental legal entity. If a landowner grants timber rights to
29 another entity for less than five years, the landowner may still
30 qualify as a small forest landowner under this section. If a landowner
31 is unable to obtain an approved forest practices application for timber
32 harvest for any of his or her land because of restrictions under the
33 forest practices rules, the landowner may still qualify as a small
34 forest landowner under this section.

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

1 (3) The department (~~(of natural resources)~~) is authorized and
2 directed to accept and hold in the name of the state of Washington
3 forestry riparian easements granted by qualifying small forest
4 landowners covering qualifying timber and to pay compensation to such
5 landowners in accordance with (~~(subsections (6) and (7) of)~~) this
6 section. The department (~~(of natural resources)~~) may not transfer the
7 easements to any 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 of the completed forestry riparian easement application, unless the
12 easement is voluntarily terminated earlier by the department (~~(of~~
13 ~~natural resources voluntarily)~~), based on a determination that
14 termination is in the best interest of the state, or under the terms of
15 a termination clause in the easement.

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

27 (6) (~~(Upon application of a small forest landowner for a riparian~~
28 ~~easement that is associated with a forest practices application and the~~
29 ~~landowner's marking of the qualifying timber on the qualifying lands,~~
30 ~~the small forest landowner office shall determine the compensation to~~
31 ~~be offered to the small forest landowner as provided for in this~~
32 ~~section. 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. The legislature recognizes that there is not readily~~
37 ~~available market transaction evidence of value for easements of this~~

1 nature, and thus establishes the following methodology to ascertain the
2 value for forestry riparian easements. Values so determined shall not
3 be considered competent evidence of value for any other purpose.

4 The small forest landowner office shall establish the volume of the
5 qualifying timber. Based on that volume and using data obtained or
6 maintained by the department of revenue under RCW 84.33.074 and
7 84.33.091, the small forest landowner office shall attempt to determine
8 the fair market value of the qualifying timber as of the date the
9 forest practices application associated with the qualifying timber was
10 submitted or the date the landowner notifies the department that the
11 harvest is to begin. Removal of any qualifying timber before the
12 expiration of the easement must be in accordance with the forest
13 practices rules and the terms of the easement. There shall be no
14 reduction in compensation for reentry.) The small forest landowner
15 office shall determine what constitutes a completed application for a
16 forestry riparian easement. Such an application shall, at a minimum,
17 include documentation of the owner's status as a qualifying small
18 forest landowner, identification of location and the types of
19 qualifying timber, and notification of completion of harvest, if
20 applicable.

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

1 ~~leave trees in the easement area; and (ii) execution and delivery of~~
2 ~~the easement to the department of natural resources. Upon donation or~~
3 ~~payment of compensation, the department of natural resources may record~~
4 ~~the easement.~~

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

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

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

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

1 amount of fifty percent of the value determined by the small forest
2 landowner office, plus the compliance and reimbursement costs as
3 determined in accordance with RCW 76.13.140. However, compensation for
4 any qualifying small forest landowner for qualifying timber located on
5 potentially unstable slopes or landforms may not exceed a total of
6 fifty thousand dollars during any biennial funding period.

7 (b) If the landowner accepts the offer for qualifying timber, the
8 department shall pay the compensation promptly upon:

9 (i) 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;

14 (ii) Verification that the landowner has no outstanding violations
15 under chapter 76.09 RCW or any associated rules; and

16 (iii) Execution and delivery of the easement to the department.

17 (c) Upon donation or payment of compensation, the department may
18 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)~~) shall perform the timber cruises of
7 forestry riparian easements required under this chapter and chapter
8 76.09 RCW. Timber cruises are subject to amounts appropriated for this
9 purpose. However, no more than fifty percent of the total appropriated
10 funding for the forestry riparian easement program may be applied to
11 determine the volume of qualifying timber for completed forestry
12 riparian easement applications. Any rules concerning the methods and
13 standards for valuations of forestry riparian easements shall apply
14 only to the department (~~(of natural resources)~~), qualifying small
15 forest landowners, and the small forest landowner office;

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

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

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

30 (g) High impact regulatory thresholds;

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

34 (i) A method for internal department (~~(of natural resources)~~)
35 review of small forest landowner office compensation decisions under
36 (~~(subsection (7) of)~~) this section; and

37 (j) Consistent with section 5 of this act, a method to collect
38 reimbursement from landowners who received compensation for a forestry

1 riparian easement and who, within the first ten years after receipt of
2 compensation for a forestry riparian easement, sells the land on which
3 an easement is located to a nonqualifying landowner.

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

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

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

29 When establishing a ~~((forest))~~ forestry riparian easement program
30 applicant's status as a qualifying small forest landowner pursuant to
31 RCW 76.13.120, the department shall not review the applicant's timber
32 harvest records, or any other tax-related documents, on file with the
33 department of revenue. The department of revenue may confirm or deny
34 an applicant's status as a small forest landowner at the request of the
35 department~~((+))~~. However, for the purposes of this section, the
36 department of revenue may not disclose more information than whether or

1 not the applicant has reported a harvest or harvests totaling greater
2 than or less than the qualifying thresholds established in RCW
3 76.13.120. Nothing in this section, or RCW 84.33.280, prohibits the
4 department from reviewing aggregate or general information provided by
5 the department of revenue.

6 NEW SECTION. **Sec. 4.** A new section is added to chapter 76.13 RCW
7 to read as follows:

8 (1) Before November 1st of each even-numbered year, the department
9 must recommend to the governor a list of all forest riparian easement
10 applications to be funded under RCW 76.13.120. The governor must
11 determine the number of applications to receive funding and then submit
12 the list in the capital budget request to the legislature. The list
13 must include, but not be limited to, the date of the forestry riparian
14 easement application, the type of qualifying timber, estimates of the
15 value of the easement, aerial photograph maps of the application area,
16 and an estimate of administrative costs for purchase of easements.

17 (2) The governor or the legislature may remove an application from
18 the list if there is evidence that the applicant is a nonqualifying
19 landowner for a forestry riparian easement.

20 NEW SECTION. **Sec. 5.** A new section is added to chapter 76.13 RCW
21 to read as follows:

22 If, within the first ten years after receipt of compensation for a
23 forestry riparian easement, a landowner sells the land on which an
24 easement is located to a nonqualifying landowner, then the selling
25 landowner must reimburse the state for the full compensation received
26 for the forestry riparian easement. The department continues to hold,
27 in the name of the state, the forestry riparian easement for the full
28 term of the easement. The department may not transfer the easement to
29 any entity other than another state agency.

30 NEW SECTION. **Sec. 6.** (1) The chair of the forest practices board
31 shall invite relevant stakeholders to participate in a process that
32 investigates, and ultimately recommends, a potential long-term funding
33 source for the forestry riparian easement program established in
34 chapter 76.13 RCW.

1 (2) The findings of, and recommendations from, the process required
2 by this section must be reported to the appropriate committees of the
3 legislature in the manner prescribed in RCW 43.01.036 by May 31, 2012.

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

5 ***NEW SECTION. Sec. 7. This act is necessary for the immediate**
6 **preservation of the public peace, health, or safety, or support of the**
7 **state government and its existing public institutions, and takes effect**
8 **July 1, 2011.**

**Sec. 7 was vetoed. See message at end of chapter.*

Passed by the House April 13, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor April 29, 2011, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State April 29, 2011.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Section 7,
Engrossed Substitute House Bill 1509 entitled:

"AN ACT Relating to the forestry riparian easement program."

This bill resolves eligibility requirements for participation and
compensation in the Forest Riparian Easement Program and fine-tunes
what easements to protect riparian habitat the program will purchase
if funding is available. There is no emergent need for the bill to
become effective immediately, and therefore the emergency clause in
Section 7 of this bill is unnecessary.

For this reason I have vetoed Section 7 of Engrossed Substitute House
Bill 1509.

With the exception of Section 7 Engrossed Substitute House Bill 1509
is approved."