
HOUSE BILL 1600

State of Washington

63rd Legislature

2013 Regular Session

By Representatives Orcutt, Blake, and Chandler

Read first time 02/01/13. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to helping to ensure the viability of small forest
2 landowners; amending RCW 76.13.130 and 76.13.120; adding a new section
3 to chapter 76.13 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that providing for
6 long-term stewardship of nonindustrial forests and woodlands in
7 projected growth areas and rural areas is an important factor in
8 maintaining Washington's special character and quality of life.

9 (2) The legislature further finds that in order to encourage and
10 maintain nonindustrial forests and woodlands for their present and
11 future benefit to all citizens, Washington's nonindustrial forest and
12 woodland owners' long-term commitments to stewardship of forest
13 resources must be recognized and supported by the citizens of
14 Washington.

15 (3) The legislature further finds that the adoption of forest
16 practices rules consistent with the forests and fish report, as defined
17 in RCW 76.09.020, has imposed substantial financial burdens on small
18 forest landowners.

1 (4) The legislature further finds that forest practices rules
2 adopted since the forests and fish report have not provided small
3 forest landowners with the alternate plan processes or alternate
4 harvest restrictions that were intended by the legislature to lower the
5 overall cost of regulation to small forest landowners while meeting the
6 public resource protection standard set forth in RCW 76.09.370(3).

7 (5) The legislature further finds that in order to maintain the
8 economic viability of eighty-nine thousand family forest owners
9 managing five million acres of forestland across the state, small
10 forest landowners must be provided with incentives to keep their land
11 in long-term forestry. The legislature intends to provide regulatory
12 certainty and remove disincentives in order to encourage ownership
13 tenure for generations to come.

14 **Sec. 2.** RCW 76.13.130 and 1999 sp.s. c 4 s 505 are each amended to
15 read as follows:

16 ~~((On parcels))~~ (1) Except as provided in section 3 of this act on
17 harvest units of twenty contiguous acres or less, small forest
18 landowners ~~((with a total parcel ownership of less than eighty acres))~~,
19 as that term is defined in RCW 76.13.120, shall not be required to
20 leave riparian buffers adjacent to streams according to forest
21 practices rules adopted under the forests and fish report as defined in
22 RCW 76.09.020. These landowners shall be subject to the permanent
23 forest practices rules in effect as of January 1, 1999, but may
24 additionally be required to leave timber adjacent to streams that is
25 equivalent to no greater than fifteen percent of a volume of timber
26 contained in a stand of well managed fifty-year old commercial timber
27 covering the harvest area. The additional fifteen percent leave tree
28 level shall be computed as a rotating stand volume and shall be
29 regulated through flexible forest practices as the stream buffer is
30 managed over time to meet riparian functions.

31 (2) On parcels of twenty contiguous acres or less the small forest
32 landowner office shall work with landowners with a total parcel
33 ownership of less than eighty acres to develop alternative management
34 plans for riparian buffers. Such alternative plans shall provide for
35 the removal of leave trees as other new trees grow in order to ensure
36 the most effective protection of critical riparian function. The
37 office may recommend reasonable modifications in alternative management

1 plans of such landowners to further reduce risks to public resources
2 and endangered species so long as the anticipated operating costs are
3 not unreasonably increased and the landowner is not required to leave
4 a greater volume than the threshold level. To qualify for the
5 provisions of this section, parcels must be twenty acres or less in
6 contiguous ownership, and owners cannot have ownership interests in a
7 total of more than eighty acres of forest lands within the state.

8 NEW SECTION. **Sec. 3.** A new section is added to chapter 76.13 RCW
9 to read as follows:

10 (1) The department of natural resources must monitor all harvests
11 conducted by small forest landowners under the authority provided in
12 RCW 76.13.130 and its associated rules and provide an annual report to
13 the forest practices board on the miles of stream negatively impacted
14 by these harvests. If the department's annual report concludes that
15 more than ten percent of a watershed administrative unit, as that term
16 is defined by WAC 222-16-010 as it existed on the effective date of
17 this section, is negatively impacted by harvests permitted under RCW
18 76.13.130, then no further harvests will be allowed in that watershed
19 administrative unit under the rules associated with RCW 76.13.130 until
20 the forest practices board decides that further harvest is appropriate.

21 (2) A small forest landowner located in a watershed administrative
22 unit that is not eligible for harvests under RCW 76.13.130 and its
23 associated rules pursuant to this section may still conduct harvests
24 consistent with the remainder of the forest practice rules.

25 **Sec. 4.** RCW 76.13.120 and 2011 c 218 s 1 are each amended to read
26 as follows:

27 (1) The legislature finds that the state should acquire easements
28 primarily along riparian and other sensitive aquatic areas from
29 qualifying small forest landowners willing to sell or donate such
30 easements to the state provided that the state will not be required to
31 acquire such easements if they are subject to unacceptable liabilities.
32 The legislature therefore establishes a forestry riparian easement
33 program.

34 (2) The definitions in this subsection apply throughout this
35 section and RCW 76.13.100, 76.13.110, 76.13.140, and 76.13.160 unless
36 the context clearly requires otherwise.

1 (a) "Forestry riparian easement" means an easement covering
2 qualifying timber granted voluntarily to the state by a qualifying
3 small forest landowner.

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

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

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

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

14 (i) The forest trees are covered by a forest practices application
15 that the small forest landowner is required to leave unharvested under
16 the rules adopted under RCW 76.09.055 and 76.09.370 or that is made
17 uneconomic to harvest by those rules;

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

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

25 (A) Riparian or other sensitive aquatic areas;

26 (B) Channel migration zones; or

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

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

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

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

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

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

1 years from the date the completed forestry riparian easement
2 application associated with the easement is submitted;

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

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

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

34 (3) The department is authorized and directed to accept and hold in
35 the name of the state of Washington forestry riparian easements granted
36 by qualifying small forest landowners covering qualifying timber and to
37 pay compensation to such landowners in accordance with this section.

1 The department may not transfer the easements to any entity other than
2 another state agency.

3 (4) Forestry riparian easements shall be effective for fifty years
4 from the date of the completed forestry riparian easement application,
5 unless the easement is voluntarily terminated earlier by the
6 department, based on a determination that termination is in the best
7 interest of the state, or under the terms of a termination clause in
8 the easement.

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

20 (6) The small forest landowner office shall determine what
21 constitutes a completed application for a forestry riparian easement.
22 Such an application shall, at a minimum, include documentation of the
23 owner's status as a qualifying small forest landowner, identification
24 of location and the types of qualifying timber, and notification of
25 completion of harvest, if applicable.

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

30 (a) The small forest landowner office shall determine the
31 compensation to be offered to the qualifying small forest landowner for
32 qualifying timber after the department accepts the completed forestry
33 riparian easement application and the landowner has completed marking
34 the boundary of the area containing the qualifying timber. The
35 legislature recognizes that there is not readily available market
36 transaction evidence of value for easements of the nature required by
37 this section, and thus establishes the methodology provided in this

1 subsection to ascertain the value for forestry riparian easements.
2 Values so determined may not be considered competent evidence of value
3 for any other purpose.

4 (b) The small forest landowner office, subject to the availability
5 of amounts appropriated for this specific purpose, is responsible for
6 assessing the volume of qualifying timber. However, no more than fifty
7 percent of the total amounts appropriated for the forestry riparian
8 easement program may be applied to determine the volume of qualifying
9 timber for completed forestry riparian easement applications. Based on
10 the volume established by the small forest landowner office and using
11 data obtained or maintained by the department of revenue under RCW
12 84.33.074 and 84.33.091, the small forest landowner office shall
13 attempt to determine the fair market value of the qualifying timber as
14 of the date the complete forestry riparian easement application is
15 received. Removal of any qualifying timber before the expiration of
16 the easement must be in accordance with the forest practices rules and
17 the terms of the easement. There shall be no reduction in compensation
18 for reentry.

19 (8)(a) Except as provided in subsection (9) of this section and
20 subject to the availability of amounts appropriated for this specific
21 purpose, the small forest landowner office shall offer compensation for
22 qualifying timber to the qualifying small forest landowner in the
23 amount of fifty percent of the value determined by the small forest
24 landowner office, plus the compliance and reimbursement costs as
25 determined in accordance with RCW 76.13.140. However, compensation for
26 any qualifying small forest landowner for qualifying timber located on
27 potentially unstable slopes or landforms may not exceed a total of
28 fifty thousand dollars during any biennial funding period.

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

31 (i) Completion of harvest in the area within a commercially
32 reasonable harvest unit with which the forestry riparian easement is
33 associated under an approved forest practices application, unless an
34 approved forest practices application for timber harvest cannot be
35 obtained because of restrictions under the forest practices rules;

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

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

1 (c) Upon donation or payment of compensation, the department may
2 record the easement.

3 (9) For approved forest practices applications for which the
4 regulatory impact is greater than the average percentage impact for all
5 small forest landowners as determined by an analysis by the department
6 under the regulatory fairness act, chapter 19.85 RCW, the compensation
7 offered will be increased to one hundred percent for that portion of
8 the regulatory impact that is in excess of the average. Regulatory
9 impact includes all trees identified as qualifying timber. A separate
10 average or high impact regulatory threshold shall be established for
11 western and eastern Washington. Criteria for these measurements and
12 payments shall be established by the small forest landowner office.

13 (10) Small forest landowners choosing to conduct a harvest under
14 the authority provided in RCW 76.13.130 and the associated rules may
15 not participate in the forestry riparian easement program for the
16 affected harvest units.

17 (11) The forest practices board shall adopt rules under the
18 administrative procedure act, chapter 34.05 RCW, to implement the
19 forestry riparian easement program, including the following:

20 (a) A standard version of a forestry riparian easement application
21 as well as all additional documents necessary or advisable to create
22 the forestry riparian easements as provided for in this section;

23 (b) Standards for descriptions of the easement premises with a
24 degree of precision that is reasonable in relation to the values
25 involved;

26 (c) Methods and standards for cruises and valuation of forestry
27 riparian easements for purposes of establishing the compensation. The
28 department shall perform the timber cruises of forestry riparian
29 easements required under this chapter and chapter 76.09 RCW. Timber
30 cruises are subject to amounts appropriated for this purpose. However,
31 no more than fifty percent of the total appropriated funding for the
32 forestry riparian easement program may be applied to determine the
33 volume of qualifying timber for completed forestry riparian easement
34 applications. Any rules concerning the methods and standards for
35 valuations of forestry riparian easements shall apply only to the
36 department, qualifying small forest landowners, and the small forest
37 landowner office;

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

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

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

15 (g) High impact regulatory thresholds;

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

19 (i) A method for internal department review of small forest
20 landowner office compensation decisions under this section; and

21 (j) Consistent with RCW 76.13.180, a method to collect
22 reimbursement from landowners who received compensation for a forestry
23 riparian easement and who, within the first ten years after receipt of
24 compensation for a forestry riparian easement, sells the land on which
25 an easement is located to a nonqualifying landowner.

--- END ---