

---

**SUBSTITUTE SENATE BILL 5394**

---

**State of Washington**

**65th Legislature**

**2017 Regular Session**

**By** Senate Natural Resources & Parks (originally sponsored by Senators Rivers, Takko, Hasegawa, Braun, Chase, Warnick, Honeyford, Rolfes, and Zeiger)

READ FIRST TIME 02/09/17.

1 AN ACT Relating to the forestry riparian easement program; and  
2 amending RCW 76.13.120.

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

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

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

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

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

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

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

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

5 (c) "Qualifying timber" means those forest trees for which the  
6 small forest landowner is willing to grant the state a forestry  
7 riparian easement and (~~must~~) meets all of the following:

8 (i) The forest trees are covered by a forest practices  
9 application that the small forest landowner is required to leave  
10 unharvested under the rules adopted under RCW 76.09.040, 76.09.055,  
11 and 76.09.370 or that is made uneconomic to harvest by those rules;

12 (ii) The forest trees are within or bordering a commercially  
13 reasonable harvest unit as determined under rules adopted by the  
14 forest practices board, or for which an approved forest practices  
15 application for timber harvest cannot be obtained because of  
16 restrictions under the forest practices rules;

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

19 (A) Riparian or other sensitive aquatic areas;

20 (B) Channel migration zones; or

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

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

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

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

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

29 (i) A forest landowner as defined in RCW 76.09.020 whose interest  
30 in the land and timber is in fee or who has rights to the timber to  
31 be included in the forestry riparian easement that extend at least  
32 fifty years from the date the completed forestry riparian easement  
33 application associated with the easement is submitted;

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

38 (iii) An entity that certifies at the time of application that it  
39 does not expect to harvest from its own lands more than the volume  
40 allowed by RCW 84.33.035 during the ten years following application.

1 If a landowner's prior three-year average harvest exceeds the limit  
2 of RCW 84.33.035, or the landowner expects to exceed this limit  
3 during the ten years following application, and that landowner  
4 establishes to the department's reasonable satisfaction that the  
5 harvest limits were or will be exceeded to raise funds to pay estate  
6 taxes or equally compelling and unexpected obligations such as court-  
7 ordered judgments or extraordinary medical expenses, the landowner  
8 shall be deemed to be a small forest landowner. For purposes of  
9 determining whether a person qualifies as a small forest landowner,  
10 the small forest landowner office, created in RCW 76.13.110, shall  
11 evaluate the landowner under this definition, pursuant to RCW  
12 76.13.160, as of the date that the forest practices application is  
13 submitted and the date that the department offers compensation for  
14 the forestry riparian easement. A small forest landowner can include  
15 an individual, partnership, corporation, or other nongovernmental  
16 legal entity. If a landowner grants timber rights to another entity  
17 for less than five years, the landowner may still qualify as a small  
18 forest landowner under this section. If a landowner is unable to  
19 obtain an approved forest practices application for timber harvest  
20 for any of his or her land because of restrictions under the forest  
21 practices rules, the landowner may still qualify as a small forest  
22 landowner under this section.

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

26 (3) The department is authorized and directed to accept and hold  
27 in the name of the state of Washington forestry riparian easements  
28 granted by qualifying small forest landowners covering qualifying  
29 timber and to pay compensation to ((such)) the landowners in  
30 accordance with this section. The department may not transfer the  
31 easements to any entity other than another state agency.

32 (4) Forestry riparian easements shall be effective for fifty  
33 years from the date of the completed forestry riparian easement  
34 application, unless the easement is voluntarily terminated earlier by  
35 the department, based on a determination that termination is in the  
36 best interest of the state, or under the terms of a termination  
37 clause in the easement.

38 (5) Forestry riparian easements shall be restrictive only, and  
39 shall preserve all lawful uses of the easement premises by the  
40 landowner that are consistent with the terms of the easement and the

1 requirement to protect riparian functions during the term of the  
2 easement, subject to the restriction that the leave trees required by  
3 the rules to be left on the easement premises may not be cut during  
4 the term of the easement. No right of public access to or across, or  
5 any public use of the easement premises is created by this statute or  
6 by the easement. Forestry riparian easements shall not be deemed to  
7 trigger the compensating tax of or otherwise disqualify land from  
8 being taxed under chapter 84.33 or 84.34 RCW.

9 (6) The small forest landowner office shall determine what  
10 constitutes a completed application for a forestry riparian easement.  
11 (~~Such~~) An application shall, at a minimum, include documentation of  
12 the owner's status as a qualifying small forest landowner,  
13 identification of location and the types of qualifying timber, and  
14 notification of completion of harvest, if applicable.

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

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

30 (b) The small forest landowner office, subject to the  
31 availability of amounts appropriated for this specific purpose, is  
32 responsible for assessing the volume of qualifying timber. However,  
33 no more than fifty percent of the total amounts appropriated for the  
34 forestry riparian easement program may be applied to determine the  
35 volume of qualifying timber for completed forestry riparian easement  
36 applications. Based on the volume established by the small forest  
37 landowner office and using data obtained or maintained by the  
38 department of revenue under RCW 84.33.074 and 84.33.091, the small  
39 forest landowner office shall attempt to determine the fair market  
40 value of the qualifying timber as of the date the complete forestry

1 riparian easement application is received. Removal of any qualifying  
2 timber before the expiration of the easement must be in accordance  
3 with the forest practices rules and the terms of the easement. There  
4 shall be no reduction in compensation for reentry.

5 (8)(a) Except as provided in subsection (9) of this section and  
6 subject to the availability of amounts appropriated for this specific  
7 purpose, the small forest landowner office shall offer compensation  
8 for qualifying timber to the qualifying small forest landowner in the  
9 amount of fifty percent of the value determined by the small forest  
10 landowner office, plus the compliance and reimbursement costs as  
11 determined in accordance with RCW 76.13.140. However, compensation  
12 for any qualifying small forest landowner for qualifying timber  
13 located on potentially unstable slopes or landforms may not exceed a  
14 total of fifty thousand dollars during any biennial funding period.

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

17 (i) Completion of harvest in the area within a commercially  
18 reasonable harvest unit with which the forestry riparian easement is  
19 associated under an approved forest practices application, unless an  
20 approved forest practices application for timber harvest cannot be  
21 obtained because of restrictions under the forest practices rules;

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

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

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

27 (9) For approved forest practices applications for which the  
28 regulatory impact is greater than the average percentage impact for  
29 all small forest landowners as determined by an analysis by the  
30 department under the regulatory fairness act, chapter 19.85 RCW, the  
31 compensation offered will be increased to one hundred percent for  
32 that portion of the regulatory impact that is in excess of the  
33 average. Regulatory impact includes all trees identified as  
34 qualifying timber. A separate average or high impact regulatory  
35 threshold shall be established for western and eastern Washington.  
36 Criteria for these measurements and payments shall be established by  
37 the small forest landowner office.

38 (10) The forest practices board shall adopt rules under the  
39 administrative procedure act, chapter 34.05 RCW, to implement the  
40 forestry riparian easement program, including the following:

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

5 (b) Standards for descriptions of the easement premises with a  
6 degree of precision that is reasonable in relation to the values  
7 involved;

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

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

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

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

34 (g) High impact regulatory thresholds;

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

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

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

6 (11) The legislature finds that the overall societal benefits of  
7 economically viable working forests are multiple, and include the  
8 protection of clean, cold water, the provision of wildlife habitat,  
9 the sheltering of cultural resources from development, and the  
10 natural carbon storage potential of growing trees. As such, working  
11 forests and the forest riparian easement program are an important  
12 part of the state's overall carbon reduction strategy. The department  
13 must share information regarding the carbon sequestration benefits of  
14 the forest riparian easement program with other state programs  
15 attempting to quantify carbon storage or account for carbon emissions  
16 and promote the expansion of funding for the forest riparian easement  
17 program as one part of the state's overall climate strategy.

--- END ---