
SUBSTITUTE HOUSE BILL 2714

State of Washington

66th Legislature

2020 Regular Session

By House Rural Development, Agriculture, & Natural Resources
(originally sponsored by Representatives Hoff, Fitzgibbon, Orcutt,
Blake, Chapman, Lekanoff, Van Werven, Tharinger, and Kretz)

READ FIRST TIME 02/06/20.

1 AN ACT Relating to valuing the carbon in forest riparian
2 easements; amending RCW 76.13.120; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** (1) The legislature finds that working
5 forestland can be part of a climate strategy. The food and
6 agricultural organization of the United Nations issued a report in
7 2016 entitled "forestry for a low-carbon future" with specific
8 recommendations for integrating forests and wood products in climate
9 change strategies.

10 (2) The intergovernmental panel on climate change, or IPCC,
11 released a report in 2019 entitled "IPCC special report on climate
12 change, desertification, land degradation, sustainable land
13 management, food security, and greenhouse gas fluxes in terrestrial
14 ecosystems." This report identifies several measures where
15 sustainable forest management and forest products can be utilized to
16 maintain and enhance carbon sequestration, including afforestation
17 and reforestation, to increase the carbon sequestration potential of
18 trees by maintaining the forestland base.

19 (3) Small forestland owners can enhance the state's ability to
20 continue to sequester carbon by maintaining healthy forests and
21 producing forest products. Small forestland owners should be

1 encouraged to maintain their land as working forests. One way to do
2 so is to recognize the value of sequestered carbon in forest riparian
3 easements created in RCW 76.13.120.

4 **Sec. 2.** RCW 76.13.120 and 2017 c 140 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 forestland owners willing to sell or donate
9 easements to the state provided that the state will not be required
10 to acquire the easements if they are subject to unacceptable
11 liabilities. Therefore the legislature establishes a forestry
12 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 forestland owner.

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

22 (i) Is a small forestland owner as defined in (d) of this
23 subsection; and

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

26 (c) "Qualifying timber" means those forest trees for which the
27 small forestland owner is willing to grant the state a forestry
28 riparian easement and meets all of the following:

29 (i) The forest trees are covered by a forest practices
30 application that the small forestland owner is required to leave
31 unharvested under the rules adopted under RCW 76.09.040, 76.09.055,
32 and 76.09.370 or that is made uneconomic to harvest by those rules;

33 (ii) The forest trees are within or bordering a commercially
34 reasonable harvest unit as determined under rules adopted by the
35 forest practices board, or for which an approved forest practices
36 application for timber harvest cannot be obtained because of
37 restrictions under the forest practices rules;

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

1 (A) Riparian or other sensitive aquatic areas;
2 (B) Channel migration zones; or
3 (C) Areas of potentially unstable slopes or landforms, verified
4 by the department, and must meet all of the following:
5 (I) Are addressed in a forest practices application;
6 (II) Are adjacent to a commercially reasonable harvest area; and
7 (III) Have the potential to deliver sediment or debris to a
8 public resource or threaten public safety.
9 (d) "Small forestland owner" means a landowner meeting all of the
10 following characteristics:
11 (i) A forestland owner as defined in RCW 76.09.020 whose interest
12 in the land and timber is in fee or who has rights to the timber to
13 be included in the forestry riparian easement that extend at least
14 fifty years from the date the completed forestry riparian easement
15 application associated with the easement is submitted;
16 (ii) An entity that has harvested from its own lands in this
17 state during the three years prior to the year of application an
18 average timber volume that would qualify the owner as a small
19 harvester under RCW 84.33.035; and
20 (iii) An entity that certifies at the time of application that it
21 does not expect to harvest from its own lands more than the volume
22 allowed by RCW 84.33.035 during the ten years following application.
23 If a landowner's prior three-year average harvest exceeds the limit
24 of RCW 84.33.035, or the landowner expects to exceed this limit
25 during the ten years following application, and that landowner
26 establishes to the department's reasonable satisfaction that the
27 harvest limits were or will be exceeded to raise funds to pay estate
28 taxes or equally compelling and unexpected obligations such as court-
29 ordered judgments or extraordinary medical expenses, the landowner
30 shall be deemed to be a small forestland owner. For purposes of
31 determining whether a person qualifies as a small forestland owner,
32 the small forestland owner office, created in RCW 76.13.110, shall
33 evaluate the landowner under this definition, pursuant to RCW
34 76.13.160, as of the date that the forest practices application is
35 submitted and the date that the department offers compensation for
36 the forestry riparian easement. A small forestland owner can include
37 an individual, partnership, corporation, or other nongovernmental
38 legal entity. If a landowner grants timber rights to another entity
39 for less than five years, the landowner may still qualify as a small
40 forestland owner under this section. If a landowner is unable to

1 obtain an approved forest practices application for timber harvest
2 for any of his or her land because of restrictions under the forest
3 practices rules, the landowner may still qualify as a small
4 forestland owner under this section.

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

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

14 (4) Forestry riparian easements shall be effective for fifty
15 years from the date of the completed forestry riparian easement
16 application, unless the easement is voluntarily terminated earlier by
17 the department, based on a determination that termination is in the
18 best interest of the state, or under the terms of a termination
19 clause in the easement.

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

31 (6) The small forestland owner office shall determine what
32 constitutes a completed application for a forestry riparian easement.
33 An application shall, at a minimum, include documentation of the
34 owner's status as a qualifying small forestland owner, identification
35 of location and the types of qualifying timber, and notification of
36 completion of harvest, if applicable.

37 (7) Upon receipt of the qualifying small forestland owner's
38 forestry riparian easement application, and subject to the
39 availability of amounts appropriated for this specific purpose, the
40 following must occur:

1 (a) The small forestland owner office must determine the
2 compensation to be offered to the qualifying small forestland owner
3 for qualifying timber after the department accepts the completed
4 forestry riparian easement application and the landowner has
5 completed marking the boundary of the area containing the qualifying
6 timber. The legislature recognizes that there is not readily
7 available market transaction evidence of value for easements of the
8 nature required by this section, and thus establishes the methodology
9 provided in this subsection to ascertain the value for forestry
10 riparian easements. Values so determined may not be considered
11 competent evidence of value for any other purpose.

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

27 (8) Any state program that places a value on carbon must
28 recognize and include the value of the carbon stored in forest
29 riparian easements.

30 (a) For riparian easement applications received after the
31 effective date of this section, the department shall calculate the
32 amount of carbon stored in the qualifying timber using established
33 formulas.

34 (b) For all existing riparian easements, the landowner may market
35 the carbon stored in the easement.

36 (c) If the state develops methods, protocols, and markets for
37 valuing carbon, future riparian easements must include the full value
38 of carbon stored in all the qualifying timber or the landowner may
39 market the value of the carbon separately.

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

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

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

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

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

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

24 ~~((+9+))~~ (10) For approved forest practices applications for which
25 the regulatory impact is greater than the average percentage impact
26 for all small forestland owners as determined by an analysis by the
27 department under the regulatory fairness act, chapter 19.85 RCW, the
28 compensation offered will be increased to one hundred percent for
29 that portion of the regulatory impact that is in excess of the
30 average. Regulatory impact includes all trees identified as
31 qualifying timber. A separate average or high impact regulatory
32 threshold shall be established for western and eastern Washington.
33 Criteria for these measurements and payments shall be established by
34 the small forestland owner office.

35 ~~((+10+))~~ (11) The forest practices board shall adopt rules under
36 the administrative procedure act, chapter 34.05 RCW, to implement the
37 forestry riparian easement program, including the following:

38 (a) A standard version of a forestry riparian easement
39 application as well as all additional documents necessary or

1 advisable to create the forestry riparian easements as provided for
2 in this section;

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

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

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

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

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

32 (g) High impact regulatory thresholds;

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

36 (i) A method for internal department review of small forestland
37 owner office compensation decisions under this section; and

38 (j) Consistent with RCW 76.13.180, a method to collect
39 reimbursement from landowners who received compensation for a
40 forestry riparian easement and who, within the first ten years after

1 receipt of compensation for a forestry riparian easement, sells the
2 land on which an easement is located to a nonqualifying landowner.

3 ~~((11))~~ (12) The legislature finds that the overall societal
4 benefits of economically viable working forests are multiple, and
5 include the protection of clean, cold water, the provision of
6 wildlife habitat, the sheltering of cultural resources from
7 development, and the natural carbon storage potential of growing
8 trees. As such, working forests and the forest riparian easement
9 program may be part of the state's overall carbon sequestration
10 strategy. If the state creates a climate strategy, the department
11 must share information regarding the carbon sequestration benefits of
12 the forest riparian easement program with other state programs using
13 methods and protocols established in the state climate strategy that
14 attempt to quantify carbon storage or account for carbon emissions.
15 The department must promote the expansion of funding for the forest
16 riparian easement program and the ecosystem services supported by the
17 program based on the findings stated in RCW 76.13.100. Nothing in
18 this subsection allows a landowner to be reimbursed by the state more
19 than once for the same forest riparian easement application for
20 timber or carbon, but reimbursement for timber and carbon on
21 qualifying timber is permissible.

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