
HOUSE BILL 2714

State of Washington

66th Legislature

2020 Regular Session

By Representatives Hoff, Fitzgibbon, Orcutt, Blake, Chapman, Lekanoff, Van Werven, Tharinger, and Kretz

Read first time 01/20/20. Referred to Committee on Rural Development, Agriculture, & Natural Resources.

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 expanding the forest land base, applying sustainable forest
19 management techniques to currently unmanaged forests in order to
20 create a forest with higher growth rates, and transferring carbon
21 from the standing forest into wood products to avoid carbon sink

1 saturation in the forest and minimize the risk of carbon release
2 through wildfire, pest infestation, and disease.

3 (3) Small forest landowners can enhance the state's ability to
4 continue to sequester carbon through forest products. Small
5 forestland owners should be encouraged to maintain their land as
6 working forests. One way to do so is to add the value of sequestered
7 carbon to the value of forest riparian easements created in RCW
8 76.13.120.

9 **Sec. 2.** RCW 76.13.120 and 2017 c 140 s 1 are each amended to
10 read as follows:

11 (1) The legislature finds that the state should acquire easements
12 primarily along riparian and other sensitive aquatic areas from
13 qualifying small forestland owners willing to sell or donate
14 easements to the state provided that the state will not be required
15 to acquire the easements if they are subject to unacceptable
16 liabilities. Therefore the legislature establishes a forestry
17 riparian easement program.

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

21 (a) "Forestry riparian easement" means an easement covering
22 qualifying timber granted voluntarily to the state by a qualifying
23 small forestland owner.

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

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

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

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

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

38 (ii) The forest trees are within or bordering a commercially
39 reasonable harvest unit as determined under rules adopted by the

1 forest practices board, or for which an approved forest practices
2 application for timber harvest cannot be obtained because of
3 restrictions under the forest practices rules;

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

6 (A) Riparian or other sensitive aquatic areas;

7 (B) Channel migration zones; or

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

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

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

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

14 (d) "Small forestland owner" means a landowner meeting all of the
15 following characteristics:

16 (i) A forestland owner as defined in RCW 76.09.020 whose interest
17 in the land and timber is in fee or who has rights to the timber to
18 be included in the forestry riparian easement that extend at least
19 fifty years from the date the completed forestry riparian easement
20 application associated with the easement is submitted;

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

25 (iii) An entity that certifies at the time of application that it
26 does not expect to harvest from its own lands more than the volume
27 allowed by RCW 84.33.035 during the ten years following application.
28 If a landowner's prior three-year average harvest exceeds the limit
29 of RCW 84.33.035, or the landowner expects to exceed this limit
30 during the ten years following application, and that landowner
31 establishes to the department's reasonable satisfaction that the
32 harvest limits were or will be exceeded to raise funds to pay estate
33 taxes or equally compelling and unexpected obligations such as court-
34 ordered judgments or extraordinary medical expenses, the landowner
35 shall be deemed to be a small forestland owner. For purposes of
36 determining whether a person qualifies as a small forestland owner,
37 the small forestland owner office, created in RCW 76.13.110, shall
38 evaluate the landowner under this definition, pursuant to RCW
39 76.13.160, as of the date that the forest practices application is
40 submitted and the date that the department offers compensation for

1 the forestry riparian easement. A small forestland owner can include
2 an individual, partnership, corporation, or other nongovernmental
3 legal entity. If a landowner grants timber rights to another entity
4 for less than five years, the landowner may still qualify as a small
5 forestland owner under this section. If a landowner is unable to
6 obtain an approved forest practices application for timber harvest
7 for any of his or her land because of restrictions under the forest
8 practices rules, the landowner may still qualify as a small
9 forestland owner under this section.

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

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

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

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

36 (6) The small forestland owner office shall determine what
37 constitutes a completed application for a forestry riparian easement.
38 An application shall, at a minimum, include documentation of the
39 owner's status as a qualifying small forestland owner, identification

1 of location and the types of qualifying timber, and notification of
2 completion of harvest, if applicable.

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

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

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

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

1 amount of fifty percent of the value determined by the small
2 forestland owner office, plus the compliance and reimbursement costs
3 as determined in accordance with RCW 76.13.140. However, compensation
4 for any qualifying small forestland owner for qualifying timber
5 located on potentially unstable slopes or landforms may not exceed a
6 total of 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
15 violations 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 for which the
20 regulatory impact is greater than the average percentage impact for
21 all small forestland owners as determined by an analysis by the
22 department under the regulatory fairness act, chapter 19.85 RCW, the
23 compensation offered will be increased to one hundred percent for
24 that portion of the regulatory impact that is in excess of the
25 average. Regulatory impact includes all trees identified as
26 qualifying timber. A separate average or high impact regulatory
27 threshold shall be established for western and eastern Washington.
28 Criteria for these measurements and payments shall be established by
29 the small forestland owner office.

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

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

37 (b) Standards for descriptions of the easement premises with a
38 degree of precision that is reasonable in relation to the values
39 involved;

1 (c) Methods and standards for cruises and valuation of forestry
2 riparian easements for purposes of establishing the compensation. The
3 department shall perform the timber cruises of forestry riparian
4 easements required under this chapter and chapter 76.09 RCW. Timber
5 cruises are subject to amounts appropriated for this purpose.
6 However, no more than fifty percent of the total appropriated funding
7 for the forestry riparian easement program may be applied to
8 determine the volume of qualifying timber for completed forestry
9 riparian easement applications. Any rules concerning the methods and
10 standards for valuations of forestry riparian easements shall apply
11 only to the department, qualifying small forestland owners, and the
12 small forestland owner 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 forestry riparian easement where a commercially
16 reasonable harvest is not possible or a forest practices application
17 that has been submitted cannot be approved because of restrictions
18 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
24 with eminent domain authority, based on the present value of the
25 department's and the landowner's relative interests in the qualified
26 timber;

27 (g) High impact regulatory thresholds;

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

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

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

38 (11) The legislature finds that the overall societal benefits of
39 economically viable working forests are multiple, and include the
40 protection of clean, cold water, the provision of wildlife habitat,

1 the sheltering of cultural resources from development, and the
2 natural carbon storage potential of growing trees. As such, working
3 forests and the forest riparian easement program may be part of the
4 state's overall carbon sequestration strategy. If the state creates a
5 climate strategy, the department must share information regarding the
6 carbon sequestration benefits of the forest riparian easement program
7 with other state programs using methods and protocols established in
8 the state climate strategy that attempt to quantify carbon storage or
9 account for carbon emissions. The department must promote the
10 expansion of funding for the forest riparian easement program and the
11 ecosystem services supported by the program based on the findings
12 stated in RCW 76.13.100. Nothing in this subsection allows a
13 landowner to be reimbursed by the state more than once for the same
14 forest riparian easement application.

--- END ---