
SUBSTITUTE HOUSE BILL 2311

State of Washington

57th Legislature

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By House Committee on Natural Resources (originally sponsored by Representatives Doumit, Sump, Jackley, Rockefeller, Kessler, Eickmeyer, Hatfield, Delvin, Buck, Linville, Upthegrove, Ericksen and Cairnes)

Read first time 01/25/2002. Referred to Committee on .

1 AN ACT Relating to small forest landowners; amending RCW 76.13.110,
2 76.13.120, and 76.13.140; and adding a new section to chapter 76.09
3 RCW.

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

5 **Sec. 1.** RCW 76.13.110 and 2001 c 280 s 1 are each amended to read
6 as follows:

7 (1) The department of natural resources shall establish and
8 maintain a small forest landowner office. The small forest landowner
9 office shall be a resource and focal point for small forest landowner
10 concerns and policies, and shall have significant expertise regarding
11 the management of small forest holdings, governmental programs
12 applicable to such holdings, and the forestry riparian easement
13 program.

14 (2) The small forest landowner office shall administer the
15 provisions of the forestry riparian easement program created under RCW
16 76.13.120. ~~((With respect to that program, the office shall have the
17 authority to contract with private consultants that the office finds
18 qualified to perform timber cruises of forestry riparian easements or
19 to lay out streamside buffers and comply with other forest and fish~~

1 regulatory requirements related to the forest riparian easement
2 program.))

3 (3) The small forest landowner office shall assist in the
4 development of small landowner options through alternate management
5 plans or alternate harvest restrictions appropriate to small
6 landowners. The small forest landowner office shall develop criteria
7 to be adopted by the forest practices board in rules and a manual for
8 alternate management plans or alternate harvest restrictions. These
9 alternate plans or alternate harvest restrictions shall meet riparian
10 functions while requiring less costly regulatory prescriptions. At the
11 landowner's option, alternate plans or alternate harvest restrictions
12 may be used to further meet riparian functions.

13 The small forest landowner office shall evaluate the cumulative
14 impact of such alternate management plans or alternate harvest
15 restrictions on essential riparian functions at the subbasin or
16 watershed level. The small forest landowner office shall adjust future
17 alternate management plans or alternate harvest restrictions in a
18 manner that will minimize the negative impacts on essential riparian
19 functions within a subbasin or watershed.

20 (4) An advisory committee is established to assist the small forest
21 landowner office in developing policy and recommending rules to the
22 forest practices board. The advisory committee shall consist of seven
23 members, including a representative from the department of ecology((7))
24 and the department of fish and wildlife((, and a tribal
25 representative)). ((Four)) Five additional committee members shall be
26 appointed by the commissioner of public lands. A tribal representative
27 shall be chosen from a list of names submitted by the tribal community
28 and shall serve for a term of four years, and four small forest
29 landowners ((who shall be appointed by the commissioner of public
30 lands)) shall be chosen from a list of candidates submitted by the
31 board of directors of the Washington farm forestry association or its
32 successor organization. The association shall submit more than one
33 candidate for each position. The commissioner shall designate two of
34 the initial small forest landowner appointees to serve five-year terms
35 and the other two small forest landowner appointees to serve four-year
36 terms. Thereafter, appointees shall serve for a term of four years.
37 The small forest landowner office shall review draft rules or rule
38 concepts with the committee prior to recommending such rules to the
39 forest practices board. The office shall reimburse nongovernmental

1 committee members for reasonable expenses associated with attending
2 committee meetings as provided in RCW 43.03.050 and 43.03.060.

3 (5) By December 1, 2002, the small forest landowner office shall
4 provide a report to the board and the legislature containing:

5 (a) Estimates of the amounts of nonindustrial forests and woodlands
6 in holdings of twenty acres or less, twenty-one to one hundred acres,
7 one hundred to one thousand acres, and one thousand to five thousand
8 acres, in western Washington and eastern Washington, and the number of
9 persons having total nonindustrial forest and woodland holdings in
10 those size ranges;

11 (b) Estimates of the number of parcels of nonindustrial forests and
12 woodlands held in contiguous ownerships of twenty acres or less, and
13 the percentages of those parcels containing improvements used: (i) As
14 primary residences for half or more of most years; (ii) as vacation
15 homes or other temporary residences for less than half of most years;
16 and (iii) for other uses;

17 (c) The watershed administrative units in which significant
18 portions of the riparian areas or total land area are nonindustrial
19 forests and woodlands;

20 (d) Estimates of the number of forest practices applications and
21 notifications filed per year for forest road construction,
22 silvicultural activities to enhance timber growth, timber harvest not
23 associated with conversion to nonforest land uses, with estimates of
24 the number of acres of nonindustrial forests and woodlands on which
25 forest practices are conducted under those applications and
26 notifications; and

27 (e) Recommendations on ways the board and the legislature could
28 provide more effective incentives to encourage continued management of
29 nonindustrial forests and woodlands for forestry uses in ways that
30 better protect salmon, other fish and wildlife, water quality, and
31 other environmental values.

32 (6) By December 1, 2004, and every four years thereafter, the small
33 forest landowner office shall provide to the board and the legislature
34 an update of the report described in subsection (5) of this section,
35 containing more recent information and describing:

36 (a) Trends in the items estimated under subsection (5)(a) through
37 (d) of this section;

38 (b) Whether, how, and to what extent the forest practices act and
39 rules contributed to those trends; and

1 (c) Whether, how, and to what extent: (i) The board and
2 legislature implemented recommendations made in the previous report;
3 and (ii) implementation of or failure to implement those
4 recommendations affected those trends.

5 **Sec. 2.** RCW 76.13.120 and 2001 c 280 s 2 are each amended to read
6 as follows:

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

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

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

19 (b) "Qualifying timber" means those trees covered by a forest
20 practices application that the small forest landowner is required to
21 leave unharvested under the rules adopted under RCW 76.09.055 and
22 76.09.370 or that is made uneconomic to harvest by those rules, and for
23 which the small landowner is willing to grant the state a forestry
24 riparian easement. "Qualifying timber" is timber within or bordering
25 a commercially reasonable harvest unit as determined under rules
26 adopted by the forest practices board, or timber for which an approved
27 forest practices application for timber harvest cannot be obtained
28 because of restrictions under the forest practices rules.

29 (c) "Small forest landowner" means a landowner meeting all of the
30 following characteristics: (i) A forest landowner as defined in RCW
31 76.09.020 whose interest in the land and timber is in fee or who has
32 rights to the timber to be included in the forestry riparian easement
33 that extend at least fifty years from the date the forest practices
34 application associated with the easement is submitted; (ii) an entity
35 that has harvested from its own lands in this state during the three
36 years prior to the year of application an average timber volume that
37 would qualify the owner as a small ((timber)) harvester under RCW
38 ((84.33.073(1))) 84.33.035; and (iii) an entity that certifies at the

1 time of application that it does not expect to harvest from its own
2 lands more than the volume allowed by RCW ((84.33.073(1))) 84.33.035
3 during the ten years following application. If a landowner's prior
4 three-year average harvest exceeds the limit of RCW ((84.33.073(1)))
5 84.33.035, or the landowner expects to exceed this limit during the ten
6 years following application, and that landowner establishes to the
7 department of natural resources' reasonable satisfaction that the
8 harvest limits were or will be exceeded to raise funds to pay estate
9 taxes or equally compelling and unexpected obligations such as court-
10 ordered judgments or extraordinary medical expenses, the landowner
11 shall be deemed to be a small forest landowner.

12 For purposes of determining whether a person qualifies as a small
13 forest landowner, the small forest landowner office, created in RCW
14 76.13.110, shall evaluate the landowner under this definition as of the
15 date that the forest practices application is submitted or the date the
16 landowner notifies the department that the harvest is to begin with
17 which the forestry riparian easement is associated. A small forest
18 landowner can include an individual, partnership, corporate, or other
19 nongovernmental legal entity. If a landowner grants timber rights to
20 another entity for less than five years, the landowner may still
21 qualify as a small forest landowner under this section. If a landowner
22 is unable to obtain an approved forest practices application for timber
23 harvest for any of his or her land because of restrictions under the
24 forest practices rules, the landowner may still qualify as a small
25 forest landowner under this section.

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

29 (3) The department of natural resources is authorized and directed
30 to accept and hold in the name of the state of Washington forestry
31 riparian easements granted by small forest landowners covering
32 qualifying timber and to pay compensation to such landowners in
33 accordance with subsections (6) and (7) of this section. The
34 department of natural resources may not transfer the easements to any
35 entity other than another state agency.

36 (4) Forestry riparian easements shall be effective for fifty years
37 from the date the forest practices application associated with the
38 qualifying timber is submitted to the department of natural resources,
39 unless the easement is terminated earlier by the department of natural

1 resources voluntarily, based on a determination that termination is in
2 the best interest of the state, or under the terms of a termination
3 clause in the easement.

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

15 (6) Upon application of a small forest landowner for a riparian
16 easement that is associated with a forest practices application and the
17 landowner's marking of the qualifying timber on the qualifying lands,
18 the small forest landowner office shall determine the compensation to
19 be offered to the small forest landowner as provided for in this
20 section. The small forest landowner office shall also determine the
21 compensation to be offered to a small forest landowner for qualifying
22 timber for which an approved forest practices application for timber
23 harvest cannot be obtained because of restrictions under the forest
24 practices rules. The legislature recognizes that there is not readily
25 available market transaction evidence of value for easements of this
26 nature, and thus establishes the following methodology to ascertain the
27 value for forestry riparian easements. Values so determined shall not
28 be considered competent evidence of value for any other purpose.

29 The small forest landowner office shall establish the volume of the
30 qualifying timber. Based on that volume and using data obtained or
31 maintained by the department of revenue under RCW 84.33.074 and
32 84.33.091, the small forest landowner office shall attempt to determine
33 the fair market value of the qualifying timber as of the date the
34 forest practices application associated with the qualifying timber was
35 submitted or the date the landowner notifies the department that the
36 harvest is to begin. ~~((If, under the forest practices rules adopted
37 under chapter 4, Laws of 1999 sp. sess., some qualifying timber may be
38 removed prior to the expiration of the fifty-year term of the easement,
39 the small forest landowner office shall apply a reduced compensation~~

1 ~~factor to ascertain the value of those trees based on the proportional~~
2 ~~economic value, considering income and growth, lost to the landowner))~~
3 Removal of any qualifying timber before the expiration of the easement
4 must be in accordance with the forest practices rules and the terms of
5 the easement. There shall be no reduction in compensation for reentry.

6 (7) Except as provided in subsection (8) of this section, the small
7 forest landowner office shall, subject to available funding, offer
8 compensation to the small forest landowner in the amount of fifty
9 percent of the value determined in subsection (6) of this section, plus
10 the compliance and reimbursement costs as determined in accordance with
11 RCW 76.13.140. If the landowner accepts the offer for qualifying
12 timber that will be harvested pursuant to an approved forest practices
13 application, the department of natural resources shall pay the
14 compensation promptly upon (a) completion of harvest in the area
15 covered by the forestry riparian easement; (b) verification that there
16 has been compliance with the rules requiring leave trees in the
17 easement area; and (c) execution and delivery of the easement to the
18 department of natural resources. If the landowner accepts the offer
19 for qualifying timber for which an approved forest practices
20 application for timber harvest cannot be obtained because of
21 restrictions under the forest practices rules, the department of
22 natural resources shall pay the compensation promptly upon (i)
23 verification that there has been compliance with the rules requiring
24 leave trees in the easement area; and (ii) execution and delivery of
25 the easement to the department of natural resources. Upon donation or
26 payment of compensation, the department of natural resources may record
27 the easement.

28 (8) For approved forest practices applications where the regulatory
29 impact is greater than the average percentage impact for all small
30 landowners as determined by the department of natural resources
31 analysis under the regulatory fairness act, chapter 19.85 RCW, the
32 compensation offered will be increased to one hundred percent for that
33 portion of the regulatory impact that is in excess of the average.
34 Regulatory impact includes trees left in buffers, special management
35 zones, and those rendered uneconomic to harvest by these rules. A
36 separate average or high impact regulatory threshold shall be
37 established for western and eastern Washington. Criteria for these
38 measurements and payments shall be established by the small forest
39 landowner office.

1 (9) The forest practices board shall adopt rules under the
2 administrative procedure act, chapter 34.05 RCW, to implement the
3 forestry riparian easement program, including the following:

4 (a) A standard version or versions of all documents necessary or
5 advisable to create the forestry riparian easements as provided for in
6 this section;

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

10 (c) Methods and standards for cruises and valuation of forestry
11 riparian easements for purposes of establishing the compensation. The
12 department of natural resources shall perform the timber cruises of
13 forestry riparian easements required under this chapter and chapter
14 76.09 RCW. Any rules concerning the methods and standards for
15 valuations of forestry riparian easements shall apply only to the
16 department of natural resources, small forest landowners, and the small
17 forest landowner 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 forest 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 with
29 eminent domain authority, based on the present value of the department
30 of natural resources' and the landowner's relative interests in the
31 qualified timber;

32 (g) High impact regulatory thresholds;

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

36 (i) A method for internal department of natural resources review of
37 small forest landowner office compensation decisions under subsection
38 (7) of this section.

1 **Sec. 3.** RCW 76.13.140 and 2001 c 280 s 3 are each amended to read
2 as follows:

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

22 NEW SECTION. **Sec. 4.** A new section is added to chapter 76.09 RCW
23 to read as follows:

24 The legislature intends that small forest landowners have access to
25 alternate plan processes or alternate harvest restrictions, or both if
26 necessary, that meet the public resource protection standard set forth
27 in RCW 76.09.370(3), but which also lowers the overall cost of
28 regulation to small forest landowners including, but not limited to,
29 timber value forgone, layout costs, and operating costs. The forest
30 practices board shall consult with the small forest landowner office
31 advisory committee in developing these alternate approaches. By July
32 1, 2003, the forest practices board shall provide the legislature with
33 a written report that describes the board's progress in developing
34 alternate plan processes or alternate harvest restrictions, or both if
35 necessary, that meet legislative intent.

1 As used in this section, "small forest landowner" has the same
2 meaning as defined in RCW 76.13.120(2).

--- **END** ---