
SUBSTITUTE HOUSE BILL 2893

State of Washington

58th Legislature

2004 Regular Session

By House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Orcutt, Hatfield, Sump, Blake, Kristiansen and Pearson)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to establishing timelines for the forest riparian
2 easement program; and 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 2002 c 120 s 2 are each amended to read
5 as follows:

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

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

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

18 (b) "Qualifying timber" means those trees covered by a forest
19 practices application that the small forest landowner is required to

1 leave unharvested under the rules adopted under RCW 76.09.055 and
2 76.09.370 or that is made uneconomic to harvest by those rules, and for
3 which the small landowner is willing to grant the state a forestry
4 riparian easement. "Qualifying timber" is timber within or bordering
5 a commercially reasonable harvest unit as determined under rules
6 adopted by the forest practices board, or timber for which an approved
7 forest practices application for timber harvest cannot be obtained
8 because of restrictions under the forest practices rules.

9 (c) "Small forest landowner" means a landowner meeting all of the
10 following characteristics: (i) A forest landowner as defined in RCW
11 76.09.020 whose interest in the land and timber is in fee or who has
12 rights to the timber to be included in the forestry riparian easement
13 that extend at least fifty years from the date the forest practices
14 application associated with the easement is submitted; (ii) an entity
15 that has harvested from its own lands in this state during the three
16 years prior to the year of application an average timber volume that
17 would qualify the owner as a small harvester under RCW 84.33.035; and
18 (iii) an entity that certifies at the time of application that it does
19 not expect to harvest from its own lands more than the volume allowed
20 by RCW 84.33.035 during the ten years following application. If a
21 landowner's prior three-year average harvest exceeds the limit of RCW
22 84.33.035, or the landowner expects to exceed this limit during the ten
23 years following application, and that landowner establishes to the
24 department of natural resources' reasonable satisfaction that the
25 harvest limits were or will be exceeded to raise funds to pay estate
26 taxes or equally compelling and unexpected obligations such as court-
27 ordered judgments or extraordinary medical expenses, the landowner
28 shall be deemed to be a small forest landowner.

29 For purposes of determining whether a person qualifies as a small
30 forest landowner, the small forest landowner office, created in RCW
31 76.13.110, shall evaluate the landowner under this definition as of the
32 date that the forest practices application is submitted or the date the
33 landowner notifies the department that the harvest is to begin with
34 which the forestry riparian easement is associated. A small forest
35 landowner can include an individual, partnership, corporate, or other
36 nongovernmental legal entity. If a landowner grants timber rights to
37 another entity for less than five years, the landowner may still
38 qualify as a small forest landowner under this section. If a landowner

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

5 (d) "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 of natural resources is authorized and directed
9 to accept and hold in the name of the state of Washington forestry
10 riparian easements granted by small forest landowners covering
11 qualifying timber and to pay compensation to such landowners in
12 accordance with subsections (6) and (7) of this section. The
13 department of natural resources may not transfer the easements to any
14 entity other than another state agency.

15 (4) Forestry riparian easements shall be effective for fifty years
16 from the date the forest practices application associated with the
17 qualifying timber is submitted to the department of natural resources,
18 unless the easement is terminated earlier by the department of natural
19 resources voluntarily, based on a determination that termination is in
20 the best interest of the state, or under the terms of a termination
21 clause in the easement.

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

33 (6) ~~((Open))~~ Within sixty days of the department's receipt of a
34 completed application ~~((of))~~ from a small forest landowner for a
35 riparian easement that is associated with a forest practices
36 application and the landowner's marking of the qualifying timber on the
37 qualifying lands, the small forest landowner office shall determine the
38 compensation to be offered to the small forest landowner as provided

1 for in this section and simultaneously present the landowner with both
2 a compensation offer and a completed easement contract. The small
3 forest landowner office shall also, within sixty days from the time of
4 a completed application, determine the compensation to be offered to a
5 small forest landowner for qualifying timber for which an approved
6 forest practices application for timber harvest cannot be obtained
7 because of restrictions under the forest practices rules and
8 simultaneously present the landowner with both a compensation offer and
9 a completed easement contract. The legislature recognizes that there
10 is not readily available market transaction evidence of value for
11 easements of this nature, and thus establishes the following
12 methodology to ascertain the value for forestry riparian easements.
13 Values so determined shall not be considered competent evidence of
14 value for any other purpose.

15 The small forest landowner office shall establish the volume of the
16 qualifying timber. Based on that volume and using data obtained or
17 maintained by the department of revenue under RCW 84.33.074 and
18 84.33.091, the small forest landowner office shall attempt to determine
19 the fair market value of the qualifying timber as of the date the
20 forest practices application associated with the qualifying timber was
21 submitted or the date the landowner notifies the department that the
22 harvest is to begin. Removal of any qualifying timber before the
23 expiration of the easement must be in accordance with the forest
24 practices rules and the terms of the easement. There shall be no
25 reduction in compensation for reentry.

26 (7) Except as provided in subsection (8) of this section, the small
27 forest landowner office shall, subject to available funding, offer
28 compensation to the small forest landowner in the amount of fifty
29 percent of the value determined in subsection (6) of this section, plus
30 the compliance and reimbursement costs as determined in accordance with
31 RCW 76.13.140. If the landowner accepts the offer for qualifying
32 timber that will be harvested pursuant to an approved forest practices
33 application, the department of natural resources shall pay the
34 compensation promptly upon (a) completion of harvest in the area
35 covered by the forestry riparian easement; (b) verification that there
36 has been compliance with the rules requiring leave trees in the
37 easement area; and (c) execution and delivery of the easement to the
38 department of natural resources. If the landowner accepts the offer

1 for qualifying timber for which an approved forest practices
2 application for timber harvest cannot be obtained because of
3 restrictions under the forest practices rules, the department of
4 natural resources shall pay the compensation promptly upon (i)
5 verification that there has been compliance with the rules requiring
6 leave trees in the easement area; and (ii) execution and delivery of
7 the easement to the department of natural resources. Upon donation or
8 payment of compensation, the department of natural resources may record
9 the easement.

10 (8) For approved forest practices applications where the regulatory
11 impact is greater than the average percentage impact for all small
12 landowners as determined by the department of natural resources
13 analysis under the regulatory fairness act, chapter 19.85 RCW, the
14 compensation offered will be increased to one hundred percent for that
15 portion of the regulatory impact that is in excess of the average.
16 Regulatory impact includes trees left in buffers, special management
17 zones, and those rendered uneconomic to harvest by these rules. A
18 separate average or high impact regulatory threshold shall be
19 established for western and eastern Washington. Criteria for these
20 measurements and payments shall be established by the small forest
21 landowner office.

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

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

28 (b) Standards for descriptions of the easement premises with a
29 degree of precision that is reasonable in relation to the values
30 involved;

31 (c) Methods and standards for cruises and valuation of forestry
32 riparian easements for purposes of establishing the compensation. The
33 department of natural resources shall perform the timber cruises of
34 forestry riparian easements required under this chapter and chapter
35 76.09 RCW. Any rules concerning the methods and standards for
36 valuations of forestry riparian easements shall apply only to the
37 department of natural resources, small forest landowners, and the small
38 forest 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 forest 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 department
13 of natural resources' and the landowner's relative interests in the
14 qualified 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; and

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

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