

SHB 2219 - S COMM AMD

By Committee on Natural Resources, Ocean & Recreation

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) This act is intended to allow the small
4 forest landowner office to begin the process of calculating the
5 compensation that may be offered to a small forest landowner who is
6 participating in the forest riparian easement program shortly after
7 receipt of the landowner's application. Timing the compensation
8 calculation with the receipt of the application, as opposed to
9 initiating the compensation determination upon the appropriation of
10 distributable funds, allows the small forest landowner office to both
11 capture the actual value of the unharvested timber at the time that the
12 forest practices operation was conducted, and allows the small forest
13 landowner office to more accurately estimate for the legislature the
14 budget needs of the forest riparian easement program.

15 (2) To implement the intent of this act:

16 (a) The small forest landowner office shall, by the end of the
17 2007-2009 fiscal biennium, use any funding specifically made available
18 to it for these purposes from the state's capital construction budget
19 to complete the compensation estimates and execute the resulting
20 easement contracts for forest riparian easement contracts received by
21 the small forest landowner office prior to the effective date of this
22 section; and

23 (b) The forest practices board shall initiate and complete a rule-
24 making procedure to amend the current text of WAC 222-21-050 in such a
25 way that the requirement for the small forest landowner office to send
26 a landowner a notice of compensation within sixty days of completion of
27 the requisite timber cruise is substantially modified or repealed.

28 **Sec. 2.** RCW 76.13.120 and 2004 c 102 s 1 are each amended to read
29 as follows:

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

7 (2) The definitions in this subsection apply throughout this
8 section and RCW 76.13.100 and 76.13.110 unless the context clearly
9 requires otherwise.

10 (a) "Forestry riparian easement" means an easement covering
11 qualifying timber granted voluntarily to the state by a small forest
12 landowner.

13 (b) "Qualifying timber" means those trees covered by a forest
14 practices application that the small forest landowner is required to
15 leave unharvested under the rules adopted under RCW 76.09.055 and
16 76.09.370 or that is made uneconomic to harvest by those rules, and for
17 which the small landowner is willing to grant the state a forestry
18 riparian easement. "Qualifying timber" is timber within or bordering
19 a commercially reasonable harvest unit as determined under rules
20 adopted by the forest practices board, or timber for which an approved
21 forest practices application for timber harvest cannot be obtained
22 because of restrictions under the forest practices rules, including
23 restrictions on harvesting in riparian areas and restrictions on
24 harvesting on unstable slopes.

25 (c) "Small forest landowner" means a landowner meeting all of the
26 following characteristics: (i) A forest landowner as defined in RCW
27 76.09.020 whose interest in the land and timber is in fee or who has
28 rights to the timber to be included in the forestry riparian easement
29 that extend at least fifty years from the date the forest practices
30 application associated with the easement is submitted; (ii) an entity
31 that has harvested from its own lands in this state during the three
32 years prior to the year of application an average timber volume that
33 would qualify the owner as a small harvester under RCW 84.33.035; and
34 (iii) an entity that certifies at the time of application that it does
35 not expect to harvest from its own lands more than the volume allowed
36 by RCW 84.33.035 during the ten years following application. If a
37 landowner's prior three-year average harvest exceeds the limit of RCW
38 84.33.035, or the landowner expects to exceed this limit during the ten

1 years following application, and that landowner establishes to the
2 department of natural resources' reasonable satisfaction that the
3 harvest limits were or will be exceeded to raise funds to pay estate
4 taxes or equally compelling and unexpected obligations such as court-
5 ordered judgments or extraordinary medical expenses, the landowner
6 shall be deemed to be a small forest landowner.

7 For purposes of determining whether a person qualifies as a small
8 forest landowner, the small forest landowner office, created in RCW
9 76.13.110, shall evaluate the landowner under this definition, pursuant
10 to RCW 76.13.160, as of the date that the forest practices application
11 is submitted or the date the landowner notifies the department that the
12 harvest is to begin with which the forestry riparian easement is
13 associated. A small forest landowner can include an individual,
14 partnership, corporate, or other nongovernmental legal entity. If a
15 landowner grants timber rights to another entity for less than five
16 years, the landowner may still qualify as a small forest landowner
17 under this section. If a landowner is unable to obtain an approved
18 forest practices application for timber harvest for any of his or her
19 land because of restrictions under the forest practices rules, the
20 landowner may still qualify as a small forest landowner under this
21 section.

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

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

32 (4) Forestry riparian easements shall be effective for fifty years
33 from the date the forest practices application associated with the
34 qualifying timber is submitted to the department of natural resources,
35 unless the easement is terminated earlier by the department of natural
36 resources voluntarily, based on a determination that termination is in
37 the best interest of the state, or under the terms of a termination
38 clause in the easement.

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

12 (6) Upon application (~~(of)~~) from a small forest landowner for a
13 riparian easement that is associated with a forest practices
14 application and the landowner's marking of the qualifying timber on the
15 qualifying lands, the small forest landowner office shall determine the
16 compensation to be offered to the small forest landowner as provided
17 for in this section.

18 (b) The small forest landowner office shall also determine the
19 compensation to be offered to a small forest landowner for qualifying
20 timber for which an approved forest practices application for timber
21 harvest cannot be obtained because of restrictions under the forest
22 practices rules.

23 (c) The legislature recognizes that there is not readily available
24 market transaction evidence of value for easements of this nature, and
25 thus establishes the (~~following~~) methodology contained in this
26 section to ascertain the value for forestry riparian easements. Values
27 so determined shall not be considered competent evidence of value for
28 any other purpose.

29 (d) The small forest landowner office shall establish the volume of
30 the 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. Removal of any qualifying timber before the
37 expiration of the easement must be in accordance with the forest

1 practices rules and the terms of the easement. There shall be no
2 reduction in compensation for reentry.

3 (e) The small forest landowner office shall initiate the process
4 for determining the compensation amount as soon as possible after
5 receipt of an application. No duty to present an actual offer for
6 compensation exists until appropriations allow.

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

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

1 established for western and eastern Washington. Criteria for these
2 measurements and payments shall be established by the small forest
3 landowner office.

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

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

10 (b) Standards for descriptions of the easement premises with a
11 degree of precision that is reasonable in relation to the values
12 involved;

13 (c) Methods and standards for cruises and valuation of forestry
14 riparian easements for purposes of establishing the compensation. The
15 department of natural resources shall perform the timber cruises of
16 forestry riparian easements required under this chapter and chapter
17 76.09 RCW. Any rules concerning the methods and standards for
18 valuations of forestry riparian easements shall apply only to the
19 department of natural resources, small forest landowners, and the small
20 forest landowner office;

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

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

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

35 (g) High impact regulatory thresholds;

36 (h) A method to determine timber that is qualifying timber because
37 it is rendered uneconomic to harvest by the rules adopted under RCW
38 76.09.055 and 76.09.370; and

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

4 **Sec. 3.** RCW 76.13.140 and 2002 c 120 s 3 are each amended to read
5 as follows:

6 (1) In order to assist small forest landowners to remain
7 economically viable, the legislature intends that the small forest
8 landowners be able to net fifty percent of the value of the trees left
9 in the buffer areas.

10 (2) The amount of compensation offered in RCW 76.13.120 shall also
11 include the compliance costs for participation in the riparian easement
12 program. For purposes of this section, "compliance costs" includes the
13 cost of preparing and recording the easement, and any business and
14 occupation tax and real estate excise tax imposed because of entering
15 into the easement.

16 (3) The office may contract with private consultants that the
17 office finds qualified to perform timber cruises of forestry riparian
18 easements or to lay out streamside buffers and comply with other forest
19 and fish regulatory requirements related to the forest riparian
20 easement program.

21 (4) Once a contract has been executed for the forestry riparian
22 easement program, the department shall reimburse small forest
23 landowners for the actual costs incurred for laying out the streamside
24 buffers ((and)), marking the qualifying timber ((once a contract has
25 been executed for the forestry riparian easement program)), and hiring
26 a qualified expert to prepare a geotechnical report as part of the
27 forest practices application upon which the easement application is
28 based. Reimbursement is subject to the work being acceptable to the
29 department. The small forest landowner office shall determine how the
30 reimbursement costs will be calculated."

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1 On page 1, line 2 of the title, after "landowners;" strike the
2 remainder of the title and insert "amending RCW 76.13.120 and
3 76.13.140; and creating a new section."

EFFECT: Removes language that expands the scope of the forest
riparian easement program to include timber left unharvested by
landowners who qualify for the 20-acre exemption to the forests and
fish rules.

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