

**ESHB 1509** - S COMM AMD

By Committee on Natural Resources & Marine Waters

ADOPTED 04/07/2011

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

3 "Sec. 1. RCW 76.13.120 and 2004 c 102 s 1 are each amended to read  
4 as follows:

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

12 (2) The definitions in this subsection apply throughout this  
13 section and RCW 76.13.100 (~~and~~), 76.13.110, 76.13.140, and 76.13.160  
14 unless the context clearly requires otherwise.

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

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

21 (i) Is a small forest landowner as defined in (d) of this  
22 subsection; and

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

25 (c) "Qualifying timber" means those forest trees for which the  
26 small forest landowner is willing to grant the state a forestry  
27 riparian easement and must meet all of the following:

28 (i) The forest trees are covered by a forest practices application  
29 that the small forest landowner is required to leave unharvested under  
30 the rules adopted under RCW 76.09.055 and 76.09.370 or that is made

1 uneconomic to harvest by those rules(~~(, and for which the small~~  
2 ~~landowner is willing to grant the state a forestry riparian easement.~~  
3 ~~"Qualifying timber" is timber));~~

4 (ii) The forest trees are within or bordering a commercially  
5 reasonable harvest unit as determined under rules adopted by the forest  
6 practices board, or (~~(timber))~~) for which an approved forest practices  
7 application for timber harvest cannot be obtained because of  
8 restrictions under the forest practices rules;

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

11 (A) Riparian or other sensitive aquatic areas;

12 (B) Channel migration zones; or

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

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

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

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

19 ~~((e))~~ (d) "Small forest landowner" means a landowner meeting all  
20 of the following characteristics:

21 (i) A forest landowner as defined in RCW 76.09.020 whose interest  
22 in the land and timber is in fee or who has rights to the timber to be  
23 included in the forestry riparian easement that extend at least fifty  
24 years from the date the (~~(forest practices))~~ completed forestry  
25 riparian easement application associated with the easement is  
26 submitted;

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

31 (iii) An entity that certifies at the time of application that it  
32 does not expect to harvest from its own lands more than the volume  
33 allowed by RCW 84.33.035 during the ten years following application.  
34 If a landowner's prior three-year average harvest exceeds the limit of  
35 RCW 84.33.035, or the landowner expects to exceed this limit during the  
36 ten years following application, and that landowner establishes to the  
37 (~~(department of natural resources)~~) department's reasonable  
38 satisfaction that the harvest limits were or will be exceeded to raise

1 funds to pay estate taxes or equally compelling and unexpected  
2 obligations such as court-ordered judgments or extraordinary medical  
3 expenses, the landowner shall be deemed to be a small forest landowner.  
4 For purposes of determining whether a person qualifies as a small  
5 forest landowner, the small forest landowner office, created in RCW  
6 76.13.110, shall evaluate the landowner under this definition, pursuant  
7 to RCW 76.13.160, as of the date that the forest practices application  
8 is submitted (~~(or the date the landowner notifies the department that~~  
9 ~~the harvest is to begin with which the forestry riparian easement is~~  
10 ~~associated)) and the date that the department offers compensation for  
11 the forestry riparian easement. A small forest landowner can include  
12 an individual, partnership, (~~(corporate))~~ corporation, or other  
13 nongovernmental legal entity. If a landowner grants timber rights to  
14 another entity for less than five years, the landowner may still  
15 qualify as a small forest landowner under this section. If a landowner  
16 is unable to obtain an approved forest practices application for timber  
17 harvest for any of his or her land because of restrictions under the  
18 forest practices rules, the landowner may still qualify as a small  
19 forest landowner under this section.~~

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

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

30 (4) Forestry riparian easements shall be effective for fifty years  
31 from the date (~~(the forest practices application associated with the~~  
32 ~~qualifying timber is submitted to the department of natural resources))~~  
33 of the completed forestry riparian easement application, unless the  
34 easement is voluntarily terminated earlier by the department (~~(of~~  
35 ~~natural resources voluntarily))~~, based on a determination that  
36 termination is in the best interest of the state, or under the terms of  
37 a termination 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 a small forest landowner for a riparian  
13 easement that is associated with a forest practices application and the  
14 landowner's marking of the qualifying timber on the qualifying lands,  
15 the small forest landowner office shall determine the compensation to  
16 be offered to the small forest landowner as provided for in this  
17 section. The small forest landowner office shall also determine the  
18 compensation to be offered to a small forest landowner for qualifying  
19 timber for which an approved forest practices application for timber  
20 harvest cannot be obtained because of restrictions under the forest  
21 practices rules. The legislature recognizes that there is not readily  
22 available market transaction evidence of value for easements of this  
23 nature, and thus establishes the following methodology to ascertain the  
24 value for forestry riparian easements. Values so determined shall not  
25 be considered competent evidence of value for any other purpose.~~

26 ~~The small forest landowner office shall establish the volume of the  
27 qualifying timber. Based on that volume and using data obtained or  
28 maintained by the department of revenue under RCW 84.33.074 and  
29 84.33.091, the small forest landowner office shall attempt to determine  
30 the fair market value of the qualifying timber as of the date the  
31 forest practices application associated with the qualifying timber was  
32 submitted or the date the landowner notifies the department that the  
33 harvest is to begin. Removal of any qualifying timber before the  
34 expiration of the easement must be in accordance with the forest  
35 practices rules and the terms of the easement. There shall be no  
36 reduction in compensation for reentry)) The small forest landowner  
37 office shall determine what constitutes a completed application for a  
38 forestry riparian easement. Such an application shall, at a minimum,~~

1 include documentation of the owner's status as a qualifying small  
2 forest landowner, identification of location and the types of  
3 qualifying timber, and notification of completion of harvest, if  
4 applicable.

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

27 (8)) Upon receipt of the qualifying small forest landowner's  
28 forestry riparian easement application, and subject to the availability  
29 of amounts appropriated for this specific purpose, the following must  
30 occur:

31 (a) The small forest landowner office shall determine the  
32 compensation to be offered to the qualifying small forest landowner  
33 for qualifying timber after the department accepts the completed  
34 forestry riparian easement application and the landowner has completed  
35 marking the boundary of the area containing the qualifying timber. The  
36 legislature recognizes that there is not readily available market  
37 transaction evidence of value for easements of the nature required by  
38 this section, and thus establishes the methodology provided in this

1 subsection to ascertain the value for forestry riparian easements.  
2 Values so determined may not be considered competent evidence of value  
3 for any other purpose.

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

19 (8)(a) Except as provided in subsection (9) of this section and  
20 subject to the availability of amounts appropriated for this specific  
21 purpose, the small forest landowner office shall offer compensation for  
22 qualifying timber to the qualifying small forest landowner in the  
23 amount of fifty percent of the value determined by the small forest  
24 landowner office, plus the compliance and reimbursement costs as  
25 determined in accordance with RCW 76.13.140. However, compensation for  
26 any qualifying small forest landowner for qualifying timber located on  
27 potentially unstable slopes or landforms may not exceed a total of  
28 fifty thousand dollars during any biennial funding period.

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

31 (i) Completion of harvest in the area within a commercially  
32 reasonable harvest unit with which the forestry riparian easement is  
33 associated under an approved forest practices application, unless an  
34 approved forest practices application for timber harvest cannot be  
35 obtained because of restrictions under the forest practices rules;

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

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

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

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

16        ((+9)) (10) The forest practices board shall adopt rules under the  
17 administrative procedure act, chapter 34.05 RCW, to implement the  
18 forestry riparian easement program, including the following:

19        (a) A standard version ((or versions of all)) of a forestry  
20 riparian easement application as well as all additional documents  
21 necessary or advisable to create the forestry riparian easements as  
22 provided for in this section;

23        (b) Standards for descriptions of the easement premises with a  
24 degree of precision that is reasonable in relation to the values  
25 involved;

26        (c) Methods and standards for cruises and valuation of forestry  
27 riparian easements for purposes of establishing the compensation. The  
28 department ((of natural resources)) shall perform the timber cruises of  
29 forestry riparian easements required under this chapter and chapter  
30 76.09 RCW. Timber cruises are subject to amounts appropriated for this  
31 purpose. However, no more than fifty percent of the total appropriated  
32 funding for the forestry riparian easement program may be applied to  
33 determine the volume of qualifying timber for completed forestry  
34 riparian easement applications. Any rules concerning the methods and  
35 standards for valuations of forestry riparian easements shall apply  
36 only to the department ((of natural resources)), qualifying small  
37 forest landowners, and the small 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~~) forestry riparian easement where a  
4 commercially reasonable harvest is not possible or a forest practices  
5 application that has been submitted cannot be approved because of  
6 restrictions 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  
13 (~~department of natural resources~~) department's and the landowner's  
14 relative interests in the 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~~)  
20 review of small forest landowner office compensation decisions under  
21 (~~subsection (7) of~~) this section; and

22 (j) Consistent with section 5 of this act, a method to collect  
23 reimbursement from landowners who received compensation for a forestry  
24 riparian easement and who, within the first ten years after receipt of  
25 compensation for a forestry riparian easement, sells the land on which  
26 an easement is located to a nonqualifying landowner.

27 **Sec. 2.** RCW 76.13.140 and 2002 c 120 s 3 are each amended to read  
28 as follows:

29 In order to assist small forest landowners to remain economically  
30 viable, the legislature intends that the qualifying small forest  
31 landowners be able to net fifty percent of the value of the trees left  
32 in the buffer areas. The amount of compensation offered in RCW  
33 76.13.120 shall also include the compliance costs for participation in  
34 the forestry riparian easement program(~~(. For purposes of this~~  
35 ~~section, "compliance costs" includes)), including the cost of preparing  
36 and recording the forestry riparian easement, and any business and  
37 occupation tax and real estate excise tax imposed because of entering~~



1 into the forestry riparian easement. The small forest landowner office  
2 may contract with private consultants that the office finds qualified  
3 to perform timber cruises of forestry riparian easements or to lay out  
4 streamside buffers and comply with other forest ~~((and fish))~~ practices  
5 regulatory requirements related to the ~~((forest))~~ forestry riparian  
6 easement program. The department shall reimburse qualifying small  
7 forest landowners for the actual costs incurred for laying out the  
8 streamside buffers and marking the qualifying timber once a contract  
9 has been executed for the forestry riparian easement program.  
10 Reimbursement is subject to the work being acceptable to the  
11 department. The small forest landowner office shall determine how the  
12 reimbursement costs will be calculated.

13 **Sec. 3.** RCW 76.13.160 and 2004 c 102 s 2 are each amended to read  
14 as follows:

15 When establishing a ~~((forest))~~ forestry riparian easement program  
16 applicant's status as a qualifying small forest landowner pursuant to  
17 RCW 76.13.120, the department shall not review the applicant's timber  
18 harvest records, or any other tax-related documents, on file with the  
19 department of revenue. The department of revenue may confirm or deny  
20 an applicant's status as a small forest landowner at the request of the  
21 department~~((+))~~. However, for the purposes of this section, the  
22 department of revenue may not disclose more information than whether or  
23 not the applicant has reported a harvest or harvests totaling greater  
24 than or less than the qualifying thresholds established in RCW  
25 76.13.120. Nothing in this section, or RCW 84.33.280, prohibits the  
26 department from reviewing aggregate or general information provided by  
27 the department of revenue.

28 NEW SECTION. **Sec. 4.** A new section is added to chapter 76.13 RCW  
29 to read as follows:

30 (1) Before November 1st of each even-numbered year, the department  
31 must recommend to the governor a list of all forest riparian easement  
32 applications to be funded under RCW 76.13.120. The governor must  
33 determine the number of applications to receive funding and then submit  
34 the list in the capital budget request to the legislature. The list  
35 must include, but not be limited to, the date of the forestry riparian

1 easement application, the type of qualifying timber, estimates of the  
2 value of the easement, aerial photograph maps of the application area,  
3 and an estimate of administrative costs for purchase of easements.

4 (2) The governor or the legislature may remove an application from  
5 the list if there is evidence that the applicant is a nonqualifying  
6 landowner for a forestry riparian easement.

7 NEW SECTION. **Sec. 5.** A new section is added to chapter 76.13 RCW  
8 to read as follows:

9 If, within the first ten years after receipt of compensation for a  
10 forestry riparian easement, a landowner sells the land on which an  
11 easement is located to a nonqualifying landowner, then the selling  
12 landowner must reimburse the state for the full compensation received  
13 for the forestry riparian easement. The department continues to hold,  
14 in the name of the state, the forestry riparian easement for the full  
15 term of the easement. The department may not transfer the easement to  
16 any entity other than another state agency.

17 NEW SECTION. **Sec. 6.** (1) The chair of the forest practices board  
18 shall invite relevant stakeholders to participate in a process that  
19 investigates, and ultimately recommends, a potential long-term funding  
20 source for the forestry riparian easement program established in  
21 chapter 76.13 RCW.

22 (2) The findings of, and recommendations from, the process required  
23 by this section must be reported to the appropriate committees of the  
24 legislature in the manner prescribed in RCW 43.01.036 by May 31, 2012.

25 (3) This section expires July 31, 2012.

26 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
27 preservation of the public peace, health, or safety, or support of the  
28 state government and its existing public institutions, and takes effect  
29 July 1, 2011."

**ESHB 1509** - S COMM AMD

By Committee on Natural Resources & Marine Waters

**ADOPTED 04/07/2011**

1        On page 1, line 1 of the title, after "program;" strike the  
2 remainder of the title and insert "amending RCW 76.13.120, 76.13.140,  
3 and 76.13.160; adding new sections to chapter 76.13 RCW; creating a new  
4 section; providing an effective date; providing an expiration date; and  
5 declaring an emergency."

--- END ---