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**SUBSTITUTE HOUSE BILL 1946**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** House Rural Development, Agriculture, & Natural Resources (originally sponsored by Representatives Chapman, Maycumber, Fitzgibbon, Steele, and Ramos)

AN ACT Relating to community forests; amending RCW 76.13.120; adding a new chapter to Title 79 RCW; and providing an expiration date.

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

NEW SECTION. **Sec.**  (1) The legislature finds that:

(a) Rural lands and communities are important to Washington's economy, its people, and its environment, and rural-based economies enhance the economic desirability of the state, help to preserve traditional economic activities, and contribute to the state's overall quality of life.

(b) Rural communities of diverse types and sizes rely on the economic benefits of a forest, including timber and nontimber products, forest management and forest products manufacturing jobs, reliable revenues to fund public services, and recreational tourism. These economic benefits can be enhanced by community-based ownership and management of locally important forestland;

(c) Forests provide many public benefits and play an essential role in public health, including providing clean air and water, managing stormwater, and protecting public water supplies;

(d) Forests are often core to cultural traditions and quality of life, including hunting, fishing, gathering, foraging, and recreating;

(e) Working forests serve all people in the state by mitigating climate change and enhancing climate resilience of local communities by sequestering carbon, reducing flood risk from significant weather events, lowering water and air temperatures, and providing refugia for fish and wildlife;

(f) Community-oriented forests can provide important opportunities for experiential learning, including K-12 conservation education, vocational education programs in forestry and conservation, and providing demonstration sites for sustainable forest management techniques; and

(g) The beneficial relationships between local communities and forests are at risk, including from changes in ownership, management, or land use that have a detrimental impact on the economic condition, public health, recreational activities, or cultural heritage of a community.

(2) It is therefore the policy of the state to empower local communities to establish community forests by acquiring land and managing them as forestland for community benefits.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Account" means the community forestland account created in section 3 of this act.

(2) "Acquisition" means the purchase on a willing seller basis of a fee simple or less than fee simple interest in real property. A less than fee simple interest in real property includes, but is not limited to, options, rights of first refusal, conservation easements, leases, timber rights, mineral rights, and water rights.

(3) "Community forest management plan" means a tract-specific plan developed with community involvement that guides the management and use of a community forest and includes the following components:

(a) A description of all land tracts, including acreage and county location, tax assessment, land use, forest type, and vegetation cover;

(b) Objectives for the community forest and strategies to implement those objectives;

(c) A description of the long-term use and management of the property;

(d) Community benefits to be achieved from the establishment of the community forest;

(e) The role of a community forest in meeting goals of local land use plan, watershed plan, or habitat conservation plan;

(f) A description of planned short-term and long-term timber harvests subject to the state forest practices act according to chapter 76.09 RCW;

(g) A description of ongoing activities that promote community involvement in the development and implementation of the community forest management plan;

(h) Plans for the utilization or demolition of existing structures and proposed needs for further improvements;

(i) A description of public access and the rationale for any limitations on public access, such as protection of cultural or natural resources or public health and safety concerns;

(j) Maps of sufficient scale to show the location of the property in relation to roads, communities, and other improvements as well as nearby parks, refuges, or other protected lands and any additional maps required to display planned management activities; and

(k) A proposed operations plan that shows that the community forest project is at least capable of generating revenue at levels that are, in the long-term and taking into consideration philanthropic donations and endowments, capable of reimbursing management costs.

(4) "Confer" means a dialogue between sponsors and local county and city officials with the purpose of early review of potential projects. The dialogue may include any matter relevant to a particular project, which may include but need not be limited to: Project purpose and scope; project elements; estimated project cost; costs and benefits to the community; plans for project management and maintenance; and public access.

(5) "Department" means the department of natural resources.

(6) "Forest practices rules" has the same meaning as provided in RCW 76.09.020.

(7) "Local agencies" includes a city, county, town, special purpose district, port district, or other political subdivision of the state providing services to less than the entire state.

(8) "Qualified nonprofit organization" means a nonprofit nature conservancy corporation or association as defined in RCW 84.34.250.

(9) "Sponsor" includes state agencies, local agencies, tribes, and qualified nonprofit organizations that are permitted to apply for funds for the acquisition and development of community forests under this chapter.

(10) "State agencies" includes the state parks and recreation commission, the department of natural resources, the department of enterprise services, the state conservation commission, and the department of fish and wildlife.

(11) "Tribes" means any Indian tribe whose traditional lands and territories included parts of the state.

NEW SECTION. **Sec.**  (1)(a) The community forestland account is established in the state treasury. All receipts from moneys appropriated to the account must be deposited in the account. Moneys in the account may only be spent after appropriation. The department shall administer the account in accordance with this chapter and shall allocate moneys deposited in the account in accordance with the community forest grant program described in this chapter.

(b) Moneys appropriated to the account that are not obligated to a specific project may be used to fund projects from lists of alternate projects in biennia succeeding the biennium in which the moneys were originally appropriated.

(2) The department may retain a portion of the funds appropriated to the account for the administration of the programs and purposes specified in this chapter. The portion of the funds retained for administration may not be more than fifteen percent of the funds appropriated.

NEW SECTION. **Sec.**  (1) The department shall adopt rules for distributions from the account consistent with this chapter, including, consistent with section 5 of this act, criteria to be used for the identification and prioritization of forestland that is suitable for funding under the community forest grant program.

(2)(a) State agencies, local agencies, tribes, and qualified nonprofit organizations may apply for funds for the acquisition, development, and restoration activities of community forest projects under this chapter.

(b) The department may not, as a condition of application, require a minimum standard of forest management for the resulting community forest that is more restrictive than that required under the forest practices rules.

(3) All applicants shall confer with the county or city with jurisdiction over the project area prior to applying for funds for the acquisition of property under this chapter. To the extent possible, projects awarded funding under this chapter should be consistent with local land use plans, the department's forest health plan developed under RCW 79.10.530, or a regional, statewide, or federal recreational or integrated resource enhancement plan.

(4) All land acquired under this chapter with funding from the account must be by a voluntary transaction. Eligible applicants must engage in a fair and transparent consultation with the existing landowner in land acquisition negotiations, including a landowner acknowledgment of a state funding request to support acquisition goals to be considered in the application process.

(5) A sponsor may be required to provide matching funds not to exceed fifteen percent. Matching funds may be committed to at the time of application, but repaid in the future out of proceeds from the resulting community forest on a timeline agreed upon by the department and the applicant. All matching funds paid through proceeds earned from the community forest must be deposited in the community forestland account.

(6) The community forest grant program must be managed consistent with the following community forest principles:

(a) A community forest is owned and managed by or on behalf of a local community;

(b) The governance structure of a community forest ensures collaboration and community participation in, and responsibility for, management decisions and the allocation of revenue generated from the forest;

(c) The community has secure and reliable access to the values and benefits of the forest;

(d) The forest is managed in accordance with a community forest management plan; and

(e) The conservation values of the forest ecosystem are protected and incorporated into a community forest management plan through adherence with the forest practices rules or an equally protective standard.

(7) The types of benefits that may accrue to a community from a community forest include, but are not limited to, the following:

(a) Economic benefits, such as forest harvest, forest products manufacturing, and nontimber products and jobs;

(b) Environmental benefits, including clean air and water, stormwater management, and wildlife habitat;

(c) Benefits from forest-based experiential learning, including: K–12 conservation education programs; vocational education programs in disciplines such as forestry and environmental biology; and environmental education through individual study or organized programs of study;

(d) Benefits from providing stewardship support to other small forest holdings;

(e) Benefits from recreational and culturally important activities such as hiking, hunting, and fishing.

(8) It is presumed that community forests serve the public interest if they have been established through an inclusive, collaborative process, and are managed in accordance with the community forest principles and other requirements of this chapter. For any project awarded funding under this chapter, a deed of right must convey to the people of the state of Washington the rights to preserve, protect, and use the property for public purposes consistent with this chapter. Any action or inaction inconsistent with this deed of right must be treated as a conversion subject to the rules and procedures developed by the department pursuant to subsection (9) of this section.

(9) Property or property interests acquired with moneys appropriated from the account for this chapter may not, without prior approval of the department, be converted to a use other than that for which funds were originally approved. The department shall adopt rules and procedures governing the approval of such a conversion.

(10) Any revenue produced from property funded by this chapter must be allocated:

(a) In support of the property management objectives identified in the community forest management plan;

(b) In support of other activities that generate or reinforce one or more of the community benefits identified in this section, which may include land acquisitions that expand the community forest, investments in forest products or water infrastructure, and activities and outreach that increase involvement in the community forest; and

(c) In furtherance of other activities having a direct benefit to local communities and the general public, which may include investments in public infrastructure, schools, and roads.

(11) The ownership of property acquired with funding from this program may be transferred, without compensation, to another owner that is eligible to be a sponsor under this chapter. The department must approve the transfer, which may not be reasonably denied. The new owner must agree to the terms and obligations of the existing, an amended, or a new or funding agreement, consistent with the intent of the program, prior to any transfer of ownership. No owner is permitted to sell or market property acquired with funding from this program.

(12) After receiving a grant under this chapter, the recipient must submit to the department a postacquisition review every five years that the land has not been sold or converted to nonforest uses or a use inconsistent with the purposes of the grant program or approved management plan. Grant recipients are subject to a spot check by the department or appropriate state agency in order to verify the implementation of a postacquisition management plan. Failure to submit a postacquisition review or failure to demonstrate management consistent with the stated objectives of the underlying plan, makes that entity ineligible for future funding from the community forest grant program.

(13) The owner of a community forest funded under this section is not eligible for participation in forest riparian easement program established in RCW 76.13.120.

NEW SECTION. **Sec.**  (1) The community forest grant program created in this chapter must be administered as a competitive grant program.

(2) The department, in developing the rules to score applicants, must give preferential considerations to applications that can demonstrate the highest number of the following:

(a) Compliance with the principles stated in section 4(6) of this act;

(b) Secured community access to benefits stated in section 4(7) of this act;

(c) Likelihood of the conversion of the site to nonforest or uses inconsistent with the community benefits stated in section 4(7) of this act;

(d) The viability of the site for continued use as an economically sustainable working forest capable of generating revenues from forest harvests and other sources for the permissible uses described under section 4(10) of this act;

(e) Identification of persons and organizations that support the project and their specific role in acquiring the land and establishing and managing the community forest;

(f) The applicant can show consultation and approval of the proposed plan with community members including, as appropriate, county government, community leaders, neighboring landowners, and representatives of the local forest products harvest and milling infrastructure;

(g) The applicant can show sources of match funding from public and private sources and that the use of those funds is consistent with the conditions of land use stated in this chapter; and

(h) Consistency with local land use plans, the department's forest health plan developed under RCW 79.10.530, or a regional, statewide, or federal recreational or integrated resource enhancement plan.

NEW SECTION. **Sec.**  Before November 1st of each even-numbered year, the department shall recommend to the governor a prioritized list of all projects to be funded consistent with this chapter. The governor may remove projects from the list recommended by the department and shall submit this amended list in the capital budget request to the legislature. The list must include, but not be limited to, a description of each project, any particular match provided or plan to raise revenue to fund the match, and any project-specific restrictions to public access.

NEW SECTION. **Sec.**  (1) The department must, consistent with RCW 43.01.036, submit a report to the legislature by October 31, 2025, that summarizes the outcomes of the community forest grant program created under this chapter.

(2) The report required under this section must at least include:

(a) A breakdown of the number of community forests created by the program, including total acreage, types of grantees, and preacquisition status and use of the purchased land;

(b) Total revenue derived from each community forest created by the program, total timber harvest excise taxes paid by each community forest, and general use of revenues;

(c) Impacts of other economic considerations, such as but not limited to: Avoided costs to community services from the retention and restoration of forests, benefits of restored forestland, access to recreation space, jobs supported, enterprise development and other community wealth building activities that occur as the result of community forest development;

(d) The results of any postacquisition reviews conducted under section 4(12) of this act;

(e) The average number of preferential considerations identified under section 5 of this act that were provided by applicants chosen for legislative consideration under section 5 of this act; and

(f) Any recommendations to change the provisions of this chapter based on lessons learned.

(3) This section expires June 30, 2026.

NEW SECTION. **Sec.**  Sections 1 through 7 of this act constitute a new chapter in Title 79 RCW.

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

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

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

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

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

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

(ii) Is an individual, partnership, corporation, or other nongovernmental for-profit legal entity; and

(iii) Is not a community forest created in chapter 79.--- RCW (the new chapter created in section 8 of this act).

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

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

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

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

(A) Riparian or other sensitive aquatic areas;

(B) Channel migration zones; or

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

(I) Are addressed in a forest practices application;

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

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

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

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

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

(iii) An entity that certifies at the time of application that it does not expect to harvest from its own lands more than the volume allowed by RCW 84.33.035 during the ten years following application. If a landowner's prior three-year average harvest exceeds the limit of RCW 84.33.035, or the landowner expects to exceed this limit during the ten years following application, and that landowner establishes to the department's reasonable satisfaction that the harvest limits were or will be exceeded to raise funds to pay estate taxes or equally compelling and unexpected obligations such as court-ordered judgments or extraordinary medical expenses, the landowner shall be deemed to be a small forest landowner. For purposes of determining whether a person qualifies as a small forest landowner, the small forest landowner office, created in RCW 76.13.110, shall evaluate the landowner under this definition, pursuant to RCW 76.13.160, as of the date that the forest practices application is submitted and the date that the department offers compensation for the forestry riparian easement. A small forest landowner can include an individual, partnership, corporation, or other nongovernmental legal entity. If a landowner grants timber rights to another entity for less than five years, the landowner may still qualify as a small forest landowner under this section. If a landowner is unable to obtain an approved forest practices application for timber harvest for any of his or her land because of restrictions under the forest practices rules, the landowner may still qualify as a small forest landowner under this section.

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

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

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

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

(6) The small forest landowner office shall determine what constitutes a completed application for a forestry riparian easement. An application shall, at a minimum, include documentation of the owner's status as a qualifying small forest landowner, identification of location and the types of qualifying timber, and notification of completion of harvest, if applicable.

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

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

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

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

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

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

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

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

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

(9) For approved forest practices applications for which the regulatory impact is greater than the average percentage impact for all small forest landowners as determined by an analysis by the department under the regulatory fairness act, chapter 19.85 RCW, the compensation offered will be increased to one hundred percent for that portion of the regulatory impact that is in excess of the average. Regulatory impact includes all trees identified as qualifying timber. A separate average or high impact regulatory threshold shall be established for western and eastern Washington. Criteria for these measurements and payments shall be established by the small forest landowner office.

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

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

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

(c) Methods and standards for cruises and valuation of forestry riparian easements for purposes of establishing the compensation. The department shall perform the timber cruises of forestry riparian easements required under this chapter and chapter 76.09 RCW. Timber cruises are subject to amounts appropriated for this purpose. However, no more than fifty percent of the total appropriated funding for the forestry riparian easement program may be applied to determine the volume of qualifying timber for completed forestry riparian easement applications. Any rules concerning the methods and standards for valuations of forestry riparian easements shall apply only to the department, qualifying small forest landowners, and the small forest landowner office;

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

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

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

(g) High impact regulatory thresholds;

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

(i) A method for internal department review of small forest landowner office compensation decisions under this section; and

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

(11) The legislature finds that the overall societal benefits of economically viable working forests are multiple, and include the protection of clean, cold water, the provision of wildlife habitat, the sheltering of cultural resources from development, and the natural carbon storage potential of growing trees. As such, working forests and the forest riparian easement program may be part of the state's overall carbon sequestration strategy. If the state creates a climate strategy, the department must share information regarding the carbon sequestration benefits of the forest riparian easement program with other state programs using methods and protocols established in the state climate strategy that attempt to quantify carbon storage or account for carbon emissions. The department must promote the expansion of funding for the forest riparian easement program and the ecosystem services supported by the program based on the findings stated in RCW 76.13.100. Nothing in this subsection allows a landowner to be reimbursed by the state more than once for the same forest riparian easement application.

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