

**SHB 2573** - H AMD to H AMD (H-5292.2/04)  
 By Representative Orcutt

1           On page 82, after line 7, insert the following:  
 2           "**Sec. 920.** RCW 76.13.120 and 2002 c 120 s 2 are each amended  
 3 to read as follows:  
 4           (1) The legislature finds that the state should acquire  
 5 easements along riparian and other sensitive aquatic areas from  
 6 small forest landowners willing to sell or donate such easements to  
 7 the state provided that the state will not be required to acquire  
 8 such easements if they are subject to unacceptable liabilities.  
 9 The legislature therefore establishes a forestry riparian easement  
 10 program.  
 11           (2) The definitions in this subsection apply throughout this  
 12 section and RCW 76.13.100 and 76.13.110 unless the context clearly  
 13 requires otherwise.  
 14           (a) "Forestry riparian easement" means an easement covering  
 15 qualifying timber granted voluntarily to the state by a small  
 16 forest landowner.  
 17           (b) "Qualifying timber" means those trees covered by a forest  
 18 practices application that the small forest landowner is required  
 19 to leave unharvested under the rules adopted under RCW 76.09.055  
 20 and 76.09.370 or that is made uneconomic to harvest by those rules,  
 21 and for which the small landowner is willing to grant the state a  
 22 forestry riparian easement. "Qualifying timber" is timber within  
 23 or bordering a commercially reasonable harvest unit as determined  
 24 under rules adopted by the forest practices board, or timber for  
 25 which an approved forest practices application for timber harvest  
 26 cannot be obtained because of restrictions under the forest  
 27 practices rules.  
 28           (c) "Small forest landowner" means a landowner meeting all of  
 29 the following characteristics: (i) A forest landowner as defined  
 30 in RCW 76.09.020 whose interest in the land and timber is in fee or  
 31 who has rights to the timber to be included in the forestry

1 riparian easement that extend at least fifty years from the date  
2 the forest practices application associated with the easement is  
3 submitted; (ii) an entity that has harvested from its own lands in  
4 this state during the three years prior to the year of application  
5 an average timber volume that would qualify the owner as a small  
6 harvester under RCW 84.33.035; and (iii) an entity that certifies  
7 at the time of application that it does not expect to harvest from  
8 its own lands more than the volume allowed by RCW 84.33.035 during  
9 the ten years following application. If a landowner's prior three-  
10 year average harvest exceeds the limit of RCW 84.33.035, or the  
11 landowner expects to exceed this limit during the ten years  
12 following application, and that landowner establishes to the  
13 department of natural resources' reasonable satisfaction that the  
14 harvest limits were or will be exceeded to raise funds to pay  
15 estate taxes or equally compelling and unexpected obligations such  
16 as court-ordered judgments or extraordinary medical expenses, the  
17 landowner shall be deemed to be a small forest landowner.

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

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

36 (3) The department of natural resources is authorized and  
37 directed to accept and hold in the name of the state of Washington  
38 forestry riparian easements granted by small forest landowners  
39 covering qualifying timber and to pay compensation to such

1 landowners in accordance with subsections (6) and (7) of this  
2 section. The department of natural resources may not transfer the  
3 easements to any entity other than another state agency.

4 (4) Forestry riparian easements shall be effective for fifty  
5 years from the date the forest practices application associated  
6 with the qualifying timber is submitted to the department of  
7 natural resources, unless the easement is terminated earlier by the  
8 department of natural resources voluntarily, based on a  
9 determination that termination is in the best interest of the  
10 state, or under the terms of a termination clause in the easement.

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

22 (6) ~~((Upon))~~ Within sixty days of the department's receipt of  
23 a completed application ((of)) from a small forest landowner for a  
24 riparian easement that is associated with a forest practices  
25 application and the landowner's marking of the qualifying timber on  
26 the qualifying lands, the small forest landowner office shall  
27 determine the compensation to be offered to the small forest  
28 landowner as provided for in this section and simultaneously  
29 present the landowner with both a compensation offer and a  
30 completed easement contract. The small forest landowner office  
31 shall also, within sixty days from the time of a completed  
32 application, determine the compensation to be offered to a small  
33 forest landowner for qualifying timber for which an approved forest  
34 practices application for timber harvest cannot be obtained because  
35 of restrictions under the forest practices rules and simultaneously  
36 present the landowner with both a compensation offer and a  
37 completed easement contract. The legislature recognizes that there  
38 is not readily available market transaction evidence of value for  
39 easements of this nature, and thus establishes the following

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

4 The small forest landowner office shall establish the volume of  
5 the qualifying timber. Based on that volume and using data  
6 obtained or maintained by the department of revenue under RCW  
7 84.33.074 and 84.33.091, the small forest landowner office shall  
8 attempt to determine the fair market value of the qualifying timber  
9 as of the date the forest practices application associated with the  
10 qualifying timber was submitted or the date the landowner notifies  
11 the department that the harvest is to begin. Removal of any  
12 qualifying timber before the expiration of the easement must be in  
13 accordance with the forest practices rules and the terms of the  
14 easement. There shall be no reduction in compensation for reentry.

15 (7)(a) Except as provided in subsection (8) of this section,  
16 the small forest landowner office shall, subject to available  
17 funding, offer compensation to the small forest landowner in the  
18 amount of fifty percent of the value determined in subsection (6)  
19 of this section, plus the compliance and reimbursement costs as  
20 determined in accordance with RCW 76.13.140.

21 (b) If the landowner accepts the offer for qualifying timber  
22 that will be harvested pursuant to an approved forest practices  
23 application, the department (~~((of natural resources))~~) shall pay the  
24 compensation (~~((promptly upon (a)))~~) within thirty days of:

25 (i) Completion of harvest in the area covered by the forestry  
26 riparian easement; ~~((+b))~~

27 (ii) Verification that there has been compliance with the rules  
28 requiring leave trees in the easement area; and ~~((+c))~~

29 (iii) Execution and delivery of the easement to the department  
30 (~~((of natural resources))~~).

31 (c) If the landowner accepts the offer for qualifying timber  
32 for which an approved forest practices application for timber  
33 harvest cannot be obtained because of restrictions under the forest  
34 practices rules, the department (~~((of natural resources))~~) shall pay  
35 the compensation (~~((promptly upon))~~) within thirty days of:

36 (i) Verification that there has been compliance with the rules  
37 requiring leave trees in the easement area; and

38 (ii) Execution and delivery of the easement to the department  
39 (~~((of natural resources))~~).

1       (d) If the department fails to pay the agreed to compensation  
2 within the thirty days required by this section, the department is  
3 responsible for reimbursing the landowner all interest that accrues  
4 on the amount owed each day after the thirtieth day until final  
5 payment is delivered. Interest must be calculated according to the  
6 rules adopted by the department of revenue under RCW 84.69.100.

7       (e) Upon donation or payment of compensation, the department of  
8 natural resources may record the easement.

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

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

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

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

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

38       (d) A method to determine that a forest practices application  
39 involves a commercially reasonable harvest, and adopt criteria for

1 entering into a forest riparian easement where a commercially  
2 reasonable harvest is not possible or a forest practices  
3 application that has been submitted cannot be approved because of  
4 restrictions under the forest practices rules;

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

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

13 (g) High impact regulatory thresholds;

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

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

20 (10) The department of natural resources must provide payment,  
21 no more than thirty days after the effective date of this section,  
22 to any applicant to the forest riparian easement program who has  
23 satisfied, by the effective date of this section, the requirements  
24 for payment in this section. If the department of natural  
25 resources fails to provide payment to the applicant within the  
26 required timelines, then interest will be payable to the applicant  
27 as specified in this section.

28 NEW SECTION. Sec. 921. Section 920 of this act expires June  
29 30, 2005."

30 Renumber remaining sections consecutively, correct internal  
31 references accordingly, and correct the title.

**EFFECT:** For the remainder of the 2003-05 biennium, the Small  
Forest Landowner Office in DNR must determine the compensation  
to be offered to a landowner for an easement within 60 days of

the landowner's application for the Forest Riparian Easement Program, and provide the landowner with a compensation offer and a completed contract within the 60-day time line. The Small Forest Landowner Office is required to provide the agreed-to compensation to a participant in the FREP program within 30 days of the landowner completing his or her requirements and accepting the contract. If the DNR fails to make payment within 30 days, the landowner will be entitled to the interest that accrues on the payment between the 30th day and when final payment is delivered. Beginning July 1, 2005, the previous law applies.