

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 2318

Chapter 102, Laws of 2004

58th Legislature
2004 Regular Session

FOREST RIPARIAN EASEMENT PROGRAM

EFFECTIVE DATE: 6/10/04

Passed by the House February 11, 2004
Yeas 95 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 3, 2004
Yeas 47 Nays 0

BRAD OWEN

President of the Senate

Approved March 24, 2004.

GARY F. LOCKE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 2318** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

March 24, 2004 - 2:17 p.m.

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 2318

Passed Legislature - 2004 Regular Session

State of Washington 58th Legislature 2004 Regular Session

By Representatives Orcutt, Hatfield, Mielke, Rockefeller and Newhouse
Prefiled 12/23/2003. Read first time 01/12/2004. Referred to
Committee on Agriculture & Natural Resources.

1 AN ACT Relating to the verification of small forest landowner
2 status for a forest riparian easement program application; amending RCW
3 76.13.120; adding a new section to chapter 76.13 RCW; and adding a new
4 section to chapter 84.33 RCW.

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

6 **Sec. 1.** RCW 76.13.120 and 2002 c 120 s 2 are each amended to read
7 as follows:

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

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

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

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

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

31 For purposes of determining whether a person qualifies as a small
32 forest landowner, the small forest landowner office, created in RCW
33 76.13.110, shall evaluate the landowner under this definition, pursuant
34 to section 2 of this act, as of the date that the forest practices
35 application is submitted or the date the landowner notifies the
36 department that the harvest is to begin with which the forestry
37 riparian easement is associated. A small forest landowner can include
38 an individual, partnership, corporate, or other nongovernmental legal

1 entity. If a landowner grants timber rights to another entity for less
2 than five years, the landowner may still qualify as a small forest
3 landowner under this section. If a landowner is unable to obtain an
4 approved forest practices application for timber harvest for any of his
5 or her land because of restrictions under the forest practices rules,
6 the landowner may still qualify as a small forest landowner under this
7 section.

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

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

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

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

36 (6) Upon application of a small forest landowner for a riparian
37 easement that is associated with a forest practices application and the
38 landowner's marking of the qualifying timber on the qualifying lands,

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

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

23 (7) Except as provided in subsection (8) of this section, the small
24 forest landowner office shall, subject to available funding, offer
25 compensation to the small forest landowner in the amount of fifty
26 percent of the value determined in subsection (6) of this section, plus
27 the compliance and reimbursement costs as determined in accordance with
28 RCW 76.13.140. If the landowner accepts the offer for qualifying
29 timber that will be harvested pursuant to an approved forest practices
30 application, the department of natural resources shall pay the
31 compensation promptly upon (a) completion of harvest in the area
32 covered by the forestry riparian easement; (b) verification that there
33 has been compliance with the rules requiring leave trees in the
34 easement area; and (c) execution and delivery of the easement to the
35 department of natural resources. If the landowner accepts the offer
36 for qualifying timber for which an approved forest practices
37 application for timber harvest cannot be obtained because of
38 restrictions under the forest practices rules, the department of

1 natural resources shall pay the compensation promptly upon (i)
2 verification that there has been compliance with the rules requiring
3 leave trees in the easement area; and (ii) execution and delivery of
4 the easement to the department of natural resources. Upon donation or
5 payment of compensation, the department of natural resources may record
6 the easement.

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

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

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

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

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

36 (d) A method to determine that a forest practices application
37 involves a commercially reasonable harvest, and adopt criteria for
38 entering into a forest riparian easement where a commercially

1 reasonable harvest is not possible or a forest practices application
2 that has been submitted cannot be approved because of restrictions
3 under the forest practices rules;

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

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

12 (g) High impact regulatory thresholds;

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

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

19 NEW SECTION. **Sec. 2.** A new section is added to chapter 76.13 RCW
20 to read as follows:

21 When establishing a forest riparian easement program applicant's
22 status as a qualifying small forest landowner pursuant to RCW
23 76.13.120, the department shall not review the applicant's timber
24 harvest records, or any other tax-related documents, on file with the
25 department of revenue. The department of revenue may confirm or deny
26 an applicant's status as a small forest landowner at the request of the
27 department; however, for the purposes of this section, the department
28 of revenue may not disclose more information than whether or not the
29 applicant has reported a harvest or harvests totaling greater than or
30 less than the qualifying thresholds established in RCW 76.13.120.
31 Nothing in this section, or section 3 of this act, prohibits the
32 department from reviewing aggregate or general information provided by
33 the department of revenue.

34 NEW SECTION. **Sec. 3.** A new section is added to chapter 84.33 RCW
35 to read as follows:

36 The department shall, when contacted by the department of natural

1 resources under section 2 of this act, rely on submitted tax-related
2 documents to confirm or deny that an applicant for the forest riparian
3 easement program established in RCW 76.13.120 satisfies the definition
4 of a small forest landowner, as that term is defined in RCW 76.13.120.
5 Nothing in this section, or section 2 of this act, prohibits the
6 department from providing the department of natural resources with
7 aggregate or general information.

Passed by the House February 11, 2004.

Passed by the Senate March 3, 2004.

Approved by the Governor March 24, 2004.

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