
HOUSE BILL 2908

State of Washington 60th Legislature 2008 Regular Session

By Representatives Orcutt, Blake, Kretz, McCune, and VanDeWege

Read first time 01/17/08. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to forest practices regulations applicable to small
2 forest landowners; amending RCW 76.13.120 and 76.13.140; creating new
3 sections; and providing an expiration date.

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

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

17 This act is also intended to ensure that family forest landowners,
18 for whom the forest riparian easement program was initially designed,

1 are compensated under the program before all other qualifying
2 landowners.

3 NEW SECTION. **Sec. 2.** To implement the intent of this act:

4 (1) The small forest landowner office shall, by the end of the
5 2007-2009 fiscal biennium, use any funding specifically made available
6 to it for these purposes from the state's capital construction budget
7 to complete the compensation estimates and execute the resulting
8 easement contracts for forest riparian easement contracts received by
9 the small forest landowner office prior to the effective date of this
10 section.

11 (2) The forest practices board shall initiate and complete a rule-
12 making procedure to remove the requirement for the small forest
13 landowner office to send a landowner a notice of compensation within
14 sixty days of completion of the requisite timber cruise.

15 (3) This section expires July 1, 2009.

16 **Sec. 3.** RCW 76.13.120 and 2004 c 102 s 1 are each amended to read
17 as follows:

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

24 (2) The definitions in this subsection apply throughout this
25 section and RCW 76.13.100 and 76.13.110 unless the context clearly
26 requires otherwise.

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

30 (b) "Qualifying timber" means: (i) Those trees covered by a forest
31 practices application that the small forest landowner is required to
32 leave unharvested under the rules adopted under RCW 76.09.055 and
33 76.09.370 or that is made uneconomic to harvest by those rules, and for
34 which the small landowner is willing to grant the state a forestry
35 riparian easement; and (ii) those trees covered by a forest practices
36 application that a small forest landowner who is eligible for the

1 exemption provided in RCW 76.13.130 before June 5, 2006, voluntarily
2 leaves unharvested, to the extent that the landowner would have been
3 required to leave those trees unharvested under the rules adopted under
4 RCW 76.09.370, if the landowner was not eligible for the exemption
5 provided in RCW 76.13.130; but not (iii) those trees covered by a
6 forest practices application with a proposal to convert to a use other
7 than commercial timber production. "Qualifying timber" is timber
8 within or bordering a commercially reasonable harvest unit as
9 determined under rules adopted by the forest practices board, or timber
10 for which an approved forest practices application for timber harvest
11 cannot be obtained because of restrictions under the forest practices
12 rules, including restrictions on harvesting in riparian areas and
13 restrictions on harvesting on unstable slopes.

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

34 For purposes of determining whether a person qualifies as a small
35 forest landowner, the small forest landowner office, created in RCW
36 76.13.110, shall evaluate the landowner under this definition, pursuant
37 to RCW 76.13.160, as of the date that the forest practices application
38 is submitted or the date the landowner notifies the department that the

1 harvest is to begin with which the forestry riparian easement is
2 associated. A small forest landowner can include an individual,
3 partnership, corporate, or other nongovernmental legal entity. If a
4 landowner grants timber rights to another entity for less than five
5 years, the landowner may still qualify as a small forest landowner
6 under this section. If a landowner is unable to obtain an approved
7 forest practices application for timber harvest for any of his or her
8 land because of restrictions under the forest practices rules, the
9 landowner may still qualify as a small forest landowner under this
10 section.

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

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

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

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

1 (6)(a) Upon application ((ef)) from a small forest landowner for a
2 riparian easement that is associated with a forest practices
3 application and the landowner's marking of the qualifying timber on the
4 qualifying lands, the small forest landowner office shall determine the
5 compensation to be offered to the small forest landowner as provided
6 for in this section.

7 **(b)** The small forest landowner office shall also determine the
8 compensation to be offered to a small forest landowner for qualifying
9 timber for which an approved forest practices application for timber
10 harvest cannot be obtained because of restrictions under the forest
11 practices rules.

12 **(c)** The legislature recognizes that there is not readily available
13 market transaction evidence of value for easements of this nature, and
14 thus establishes the ((following)) methodology contained in this
15 section to ascertain the value for forestry riparian easements. Values
16 so determined shall not be considered competent evidence of value for
17 any other purpose.

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

29 **(e)** Small forest landowners who are not nonprofit organizations or
30 municipalities, municipal corporations, or special districts have
31 priority for payment under this section.

32 **(f)** The small forest landowner office shall initiate the process
33 for determining the compensation amount as soon as possible after
34 receipt of an application. No duty to present an actual offer for
35 compensation exists until appropriations allow.

36 (7) Except as provided in subsection (8) of this section, the small
37 forest landowner office shall, subject to available funding, offer
38 compensation to the small forest landowner in the amount of fifty

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

20 (8) For approved forest practices applications where the regulatory
21 impact is greater than the average percentage impact for all small
22 landowners as determined by the department of natural resources
23 analysis under the regulatory fairness act, chapter 19.85 RCW, the
24 compensation offered will be increased to one hundred percent for that
25 portion of the regulatory impact that is in excess of the average.
26 Regulatory impact includes trees left in buffers, special management
27 zones, and those rendered uneconomic to harvest by these rules. A
28 separate average or high impact regulatory threshold shall be
29 established for western and eastern Washington. Criteria for these
30 measurements and payments shall be established by the small forest
31 landowner office.

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

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

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

4 (c) Methods and standards for cruises and valuation of forestry
5 riparian easements for purposes of establishing the compensation. The
6 department of natural resources shall perform the timber cruises of
7 forestry riparian easements required under this chapter and chapter
8 76.09 RCW. Any rules concerning the methods and standards for
9 valuations of forestry riparian easements shall apply only to the
10 department of natural resources, small forest landowners, and the small
11 forest landowner office;

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

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

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

26 (g) High impact regulatory thresholds;

27 (h) A method to determine timber that is qualifying timber because
28 it is rendered uneconomic to harvest by the rules adopted under RCW
29 76.09.055 and 76.09.370; and

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

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

35 (1) In order to assist small forest landowners to remain
36 economically viable, the legislature intends that the small forest

1 landowners be able to net fifty percent of the value of the trees left
2 in the buffer areas.

3 (2) The amount of compensation offered in RCW 76.13.120 shall also
4 include the compliance costs for participation in the riparian easement
5 program. For purposes of this section, "compliance costs" includes the
6 cost of preparing and recording the easement, and any business and
7 occupation tax and real estate excise tax imposed because of entering
8 into the easement.

9 (3) The office may contract with private consultants that the
10 office finds qualified to perform timber cruises of forestry riparian
11 easements or to lay out streamside buffers and comply with other forest
12 and fish regulatory requirements related to the forest riparian
13 easement program.

14 (4) Once a contract has been executed for the forestry riparian
15 easement program, the department shall reimburse small forest
16 landowners for the actual costs incurred for laying out the streamside
17 buffers ((and)), marking the qualifying timber ((once a contract has
18 been executed for the forestry riparian easement program)), and hiring
19 a qualified expert to complete required studies or reports as part of
20 the forest practices application upon which the easement application is
21 based. Reimbursement is subject to the work being acceptable to the
22 department. The small forest landowner office shall determine how the
23 reimbursement costs will be calculated.

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