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**SENATE BILL 6498**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Senators Braun, Takko, Rolfes, Wagoner, Becker, and Mullet

Read first time 01/20/20. Referred to Committee on Agriculture, Water, Natural Resources & Parks.

1 AN ACT Relating to valuing the carbon in forest riparian  
2 easements; amending RCW 76.13.120; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** (1) The legislature finds that working  
5 forestland can be part of a climate strategy. The food and  
6 agricultural organization of the United Nations issued a report in  
7 2016 entitled "forestry for a low-carbon future" with specific  
8 recommendations for integrating forests and wood products in climate  
9 change strategies.

10 (2) The intergovernmental panel on climate change, or IPCC,  
11 released a report in 2019 entitled "IPCC special report on climate  
12 change, desertification, land degradation, sustainable land  
13 management, food security, and greenhouse gas fluxes in terrestrial  
14 ecosystems." This report identifies several measures where  
15 sustainable forest management and forest products can be utilized to  
16 maintain and enhance carbon sequestration, including afforestation  
17 and reforestation, to increase the carbon sequestration potential of  
18 trees by expanding the forest land base, applying sustainable forest  
19 management techniques to currently unmanaged forests in order to  
20 create a forest with higher growth rates, and transferring carbon  
21 from the standing forest into wood products to avoid carbon sink

1 saturation in the forest and minimize the risk of carbon release  
2 through wildfire, pest infestation, and disease.

3 (3) Small forest landowners can enhance the state's ability to  
4 continue to sequester carbon through forest products. Small  
5 forestland owners should be encouraged to maintain their land as  
6 working forests. One way to do so is to add the value of sequestered  
7 carbon to the value of forest riparian easements created in RCW  
8 76.13.120.

9 **Sec. 2.** RCW 76.13.120 and 2017 c 140 s 1 are each amended to  
10 read as follows:

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

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

21 (a) "Forestry riparian easement" means an easement covering  
22 qualifying timber granted voluntarily to the state by a qualifying  
23 small forestland owner.

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

27 (i) Is a small forestland owner as defined in (d) of this  
28 subsection; and

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

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

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

38 (ii) The forest trees are within or bordering a commercially  
39 reasonable harvest unit as determined under rules adopted by the

1 forest practices board, or for which an approved forest practices  
2 application for timber harvest cannot be obtained because of  
3 restrictions under the forest practices rules;

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

6 (A) Riparian or other sensitive aquatic areas;

7 (B) Channel migration zones; or

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

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

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

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

14 (d) "Small forestland owner" means a landowner meeting all of the  
15 following characteristics:

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

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

25 (iii) An entity that certifies at the time of application that it  
26 does not expect to harvest from its own lands more than the volume  
27 allowed by RCW 84.33.035 during the ten years following application.  
28 If a landowner's prior three-year average harvest exceeds the limit  
29 of RCW 84.33.035, or the landowner expects to exceed this limit  
30 during the ten years following application, and that landowner  
31 establishes to the department's reasonable satisfaction that the  
32 harvest limits were or will be exceeded to raise funds to pay estate  
33 taxes or equally compelling and unexpected obligations such as court-  
34 ordered judgments or extraordinary medical expenses, the landowner  
35 shall be deemed to be a small forestland owner. For purposes of  
36 determining whether a person qualifies as a small forestland owner,  
37 the small forestland owner office, created in RCW 76.13.110, shall  
38 evaluate the landowner under this definition, pursuant to RCW  
39 76.13.160, as of the date that the forest practices application is  
40 submitted and the date that the department offers compensation for

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

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

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

19 (4) Forestry riparian easements shall be effective for fifty  
20 years from the date of the completed forestry riparian easement  
21 application, unless the easement is voluntarily terminated earlier by  
22 the department, based on a determination that termination is in the  
23 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  
31 the term of the easement. No right of public access to or across, or  
32 any public use of the easement premises is created by this statute or  
33 by the easement. Forestry riparian easements shall not be deemed to  
34 trigger the compensating tax of or otherwise disqualify land from  
35 being taxed under chapter 84.33 or 84.34 RCW.

36 (6) The small forestland owner office shall determine what  
37 constitutes a completed application for a forestry riparian easement.  
38 An application shall, at a minimum, include documentation of the  
39 owner's status as a qualifying small forestland owner, identification

1 of location and the types of qualifying timber, and notification of  
2 completion of harvest, if applicable.

3 (7) Upon receipt of the qualifying small forestland owner's  
4 forestry riparian easement application, and subject to the  
5 availability of amounts appropriated for this specific purpose, the  
6 following must occur:

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

18 (b) The small forestland owner office, subject to the  
19 availability of amounts appropriated for this specific purpose, is  
20 responsible for assessing the volume of qualifying timber. However,  
21 no more than fifty percent of the total amounts appropriated for the  
22 forestry riparian easement program may be applied to determine the  
23 volume of qualifying timber for completed forestry riparian easement  
24 applications. Based on the volume established by the small forestland  
25 owner office and using data obtained or maintained by the department  
26 of revenue under RCW 84.33.074 and 84.33.091, the small forestland  
27 owner office shall attempt to determine the fair market value of the  
28 qualifying timber as of the date the complete forestry riparian  
29 easement application is received. Removal of any qualifying timber  
30 before the expiration of the easement must be in accordance with the  
31 forest practices rules and the terms of the easement. There shall be  
32 no reduction in compensation for reentry. For all applications  
33 received after the effective date of this section, the fair market  
34 value of the qualifying timber must also include any value  
35 attributable to the carbon stored in the qualifying timber or reserve  
36 that carbon value to be otherwise used or marketed by the landowner.

37 (8) (a) Except as provided in subsection (9) of this section and  
38 subject to the availability of amounts appropriated for this specific  
39 purpose, the small forestland owner office shall offer compensation  
40 for qualifying timber to the qualifying small forestland owner in the

1 amount of fifty percent of the value determined by the small  
2 forestland owner office, plus the compliance and reimbursement costs  
3 as determined in accordance with RCW 76.13.140. However, compensation  
4 for any qualifying small forestland owner for qualifying timber  
5 located on potentially unstable slopes or landforms may not exceed a  
6 total of fifty thousand dollars during any biennial funding period.

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

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

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

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

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

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

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

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

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

1 (c) Methods and standards for cruises and valuation of forestry  
2 riparian easements for purposes of establishing the compensation. The  
3 department shall perform the timber cruises of forestry riparian  
4 easements required under this chapter and chapter 76.09 RCW. Timber  
5 cruises are subject to amounts appropriated for this purpose.  
6 However, no more than fifty percent of the total appropriated funding  
7 for the forestry riparian easement program may be applied to  
8 determine the volume of qualifying timber for completed forestry  
9 riparian easement applications. Any rules concerning the methods and  
10 standards for valuations of forestry riparian easements shall apply  
11 only to the department, qualifying small forestland owners, and the  
12 small forestland owner office;

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

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

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

27 (g) High impact regulatory thresholds;

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

31 (i) A method for internal department review of small forestland  
32 owner office compensation decisions under this section; and

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

38 (11) The legislature finds that the overall societal benefits of  
39 economically viable working forests are multiple, and include the  
40 protection of clean, cold water, the provision of wildlife habitat,

1 the sheltering of cultural resources from development, and the  
2 natural carbon storage potential of growing trees. As such, working  
3 forests and the forest riparian easement program may be part of the  
4 state's overall carbon sequestration strategy. If the state creates a  
5 climate strategy, the department must share information regarding the  
6 carbon sequestration benefits of the forest riparian easement program  
7 with other state programs using methods and protocols established in  
8 the state climate strategy that attempt to quantify carbon storage or  
9 account for carbon emissions. The department must promote the  
10 expansion of funding for the forest riparian easement program and the  
11 ecosystem services supported by the program based on the findings  
12 stated in RCW 76.13.100. Nothing in this subsection allows a  
13 landowner to be reimbursed by the state more than once for the same  
14 forest riparian easement application.

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