H-0895.2

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HOUSE BILL 1740**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 68th Legislature 2023 Regular Session**

**By** Representatives Orcutt, Chapman, Dent, Reeves, Morgan, Chandler, Kretz, Klicker, Tharinger, Graham, and Cheney

AN ACT Relating to eligibility, enrollment, and compensation of small forestland owners volunteering for participation in the forestry riparian easement program; and amending RCW 76.13.120, 76.13.130, and 76.13.140.

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

**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 forestland owners 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 forestland owner.

(b) "Qualifying small forestland owner" 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 forestland owner as defined in (d) of this subsection; and

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

(c) "Qualifying timber" means those forest trees on land owned by a qualifying small forestland owner for which the small forestland owner 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 forestland owner 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 forestland owner" means a landowner meeting all of the following characteristics:

(i) A forestland owner 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~~)) 40 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~~)) 10 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~~)) 10 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 forestland owner. For purposes of determining whether a person qualifies as a small forestland owner, the small forestland owner 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 forestland owner 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 forestland owner 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 forestland owner under this section.

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

(3) Nothing in the eligibility limit identified in subsection (2)(c)(i) through (iii) of this section precludes inclusion of land in future mitigation programs.

(4) 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 forestland owners 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)~~)) (5) Forestry riparian easements shall be effective for ((~~fifty~~)) 40 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)~~)) (6) Forestry riparian easements shall be restrictive of the timber 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)~~)) (7) The small forestland owner 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 forestland owner, identification of location and the types of qualifying timber, and notification of completion of harvest, if applicable.

((~~(7)~~)) (8) Upon receipt of the qualifying small forestland owner's forestry riparian easement application, and subject to the availability of amounts appropriated for this specific purpose, the following must occur:

(a) The small forestland owner office must determine the compensation to be offered to the qualifying small forestland owner 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 forestland owner 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~~)) 50 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 forestland owner office and using data obtained or maintained by the department of revenue under RCW 84.33.074 and 84.33.091, the small forestland owner office shall attempt to determine the fair market value of the qualifying timber as of the date of the complete forestry riparian easement application ((~~is~~)). To the extent reasonably possible, the forestry riparian easement applications should be processed in the order 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)~~)) (9)(a) ((~~Except as provided in subsection (9) of this section and subject~~)) Subject to the availability of amounts appropriated for this specific purpose, the small forestland owner office shall offer compensation for qualifying timber to the qualifying small forestland owner in the amount of ((~~fifty~~)) 90 percent of the value determined by the small forestland owner office, plus the compliance and reimbursement costs as determined in accordance with RCW 76.13.140. However, compensation for any qualifying small forestland owner for qualifying timber located on potentially unstable slopes or landforms may not exceed a total of ((~~fifty thousand dollars~~)) $150,000 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 forestland owners 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 forestland owner office.~~))

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

((~~(c)~~)) (iii) 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~~)) 50 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 forestland owners, and the small forestland owner office;

((~~(d)~~)) (iv) 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)~~)) (v) A method to address blowdown of qualified timber falling outside the easement premises;

((~~(f)~~)) (vi) 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)~~)) (vii) High impact regulatory thresholds;

((~~(h)~~)) (viii) 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)~~)) (ix) A method for internal department review of small forestland owner office compensation decisions under this section; and

((~~(j)~~)) (x) 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~~)) 10 years after receipt of compensation for a forestry riparian easement, sells the land on which an easement is located to a nonqualifying landowner.

(b) At least semiannually, the department shall consult with the small forestland owner advisory committee established in RCW 76.13.110(4) to review landowner complaints, administrative processes, rule recommendations, and related issues where the department is actively seeking the small forestland owner advisory committee's advice on potential improved efficiencies and effectiveness.

(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 [forestry]~~)) forestry 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 [forestry]~~)) forestry 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 [forestry]~~)) forestry 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.

(12) The small forestland owner office must complete forestry riparian easement program application transactions within two years of the application receipt consistent with the goals of RCW 70A.65.270(2)(b)(iii).

(a) Funding through the natural climate solutions account created in RCW 70A.65.270 for payments to the forestry riparian easement program are provided solely for the easement timber value and are not considered payment for the net carbon value of the timber remaining on-site, nor its potential for sequestering additional carbon during the term of the forestry riparian easement program easement.

(b) If the amounts appropriated are insufficient to cover program reimbursement over the upcoming two-year period, the department shall make a declaration that will temporarily allow all small forestland owners to be eligible for small parcel alternative management plans under RCW 76.13.130, provided the parcel's harvests do not exceed 20 acres as described in RCW 76.13.130. If a small forestland owner chooses to participate in a small parcel alternative management plan due to their eligibility under this subsection, they are not eligible for forestry riparian easement compensation on that harvest.

**Sec.**  RCW 76.13.130 and 1999 sp.s. c 4 s 505 are each amended to read as follows:

(1) On parcels of ((~~twenty~~)) 20 contiguous acres or less, landowners with a total parcel ownership of less than ((~~eighty~~)) 80 acres shall not be required to leave riparian buffers adjacent to streams according to forest practices rules adopted under the forests and fish report as defined in RCW 76.09.020. These landowners shall be subject to the permanent forest practices rules in effect as of January 1, 1999, but may additionally be required to leave timber adjacent to streams that is equivalent to no greater than ((~~fifteen~~)) 15 percent of a volume of timber contained in a stand of well managed ((~~fifty-year~~)) 50-year old commercial timber covering the harvest area. The additional ((~~fifteen~~)) 15 percent leave tree level shall be computed as a rotating stand volume and shall be regulated through flexible forest practices as the stream buffer is managed over time to meet riparian functions.

(2) On parcels of ((~~twenty~~)) 20 contiguous acres or less the small forestland owner office shall work with landowners with a total parcel ownership of less than ((~~eighty~~)) 80 acres to develop alternative management plans for riparian buffers. Such alternative plans shall provide for the removal of leave trees as other new trees grow in order to ensure the most effective protection of critical riparian function. The office may recommend reasonable modifications in alternative management plans of such landowners to further reduce risks to public resources and endangered species so long as the anticipated operating costs are not unreasonably increased and the landowner is not required to leave a greater volume than the threshold level. To qualify for the provisions of this section, parcels must be ((~~twenty~~)) 20 acres or less in contiguous ownership, and owners cannot have ownership interests in a total of more than ((~~eighty~~)) 80 acres of forestlands within the state.

(3) If the department declares that there is insufficient funding for the forestry riparian easement program, the small parcel alternative management plan option under this section is available to all small forestland owners provided their harvest units are no larger than 20 acres. When sufficient funding becomes available, the department may stop accepting small forestland owner forest practice harvest applications that qualify under this section, provided that any forest practice harvest applications already received may be allowed to continue.

**Sec.**  RCW 76.13.140 and 2011 c 218 s 2 are each amended to read as follows:

In order to assist small forestland owners to remain economically viable, the legislature intends that the qualifying small forestland owners be able to net ((~~fifty~~)) 90 percent of the value of the trees left in the buffer areas. The small forestland owner office may utilize landowners' actual mill receipts to help determine fair market value but may not require these documents in any valuation process. The amount of compensation offered in RCW 76.13.120 shall also include the compliance costs for participation in the forestry riparian easement program, including the cost of preparing and recording the forestry riparian easement, and any business and occupation tax and real estate excise tax imposed because of entering into the forestry riparian easement. The small forestland owner office may contract with private consultants that the office finds qualified to perform timber cruises of forestry riparian easements or to lay out streamside buffers and comply with other forest practices regulatory requirements related to the forestry riparian easement program. The department shall reimburse qualifying small forestland owners for the actual costs incurred for laying out the streamside buffers and marking the qualifying timber once a contract has been executed for the forestry riparian easement program. Reimbursement is subject to the work being acceptable to the department. The small forestland owner office shall determine how the reimbursement costs will be calculated.

**--- END ---**