

SSB 5667 - H COMM AMD
By Committee on Capital Budget

NOT ADOPTED 03/01/2024

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 76.13.120 and 2017 c 140 s 1 are each amended to
4 read as follows:

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

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

15 (a) "Forestry riparian easement" means an easement covering
16 qualifying timber granted voluntarily to the state by a qualifying
17 small forestland owner.

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

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

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

25 (c) "Qualifying timber" means those forest trees on land owned by
26 a qualifying small forestland owner for which the small forestland
27 owner is willing to grant the state a forestry riparian easement and
28 meets all of the following:

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

1 (ii) The forest trees are within or bordering a commercially
2 reasonable harvest unit as determined under rules adopted by the
3 forest practices board, or for which an approved forest practices
4 application for timber harvest cannot be obtained because of
5 restrictions under the forest practices rules;

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

8 (A) Riparian or other sensitive aquatic areas;

9 (B) Channel migration zones; or

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

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

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

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

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

18 (i) A forestland owner as defined in RCW 76.09.020 whose interest
19 in the land and timber is in fee or who has rights to the timber to
20 be included in the forestry riparian easement that extend at least
21 (~~fifty~~) 40 years from the date the completed forestry riparian
22 easement application associated with the easement is submitted;

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

27 (iii) An entity that certifies at the time of application that it
28 does not expect to harvest from its own lands more than the volume
29 allowed by RCW 84.33.035 during the (~~ten~~) 10 years following
30 application. If a landowner's prior three-year average harvest
31 exceeds the limit of RCW 84.33.035, or the landowner expects to
32 exceed this limit during the (~~ten~~) 10 years following application,
33 and that landowner establishes to the department's reasonable
34 satisfaction that the harvest limits were or will be exceeded to
35 raise funds to pay estate taxes or equally compelling and unexpected
36 obligations such as court-ordered judgments or extraordinary medical
37 expenses, the landowner shall be deemed to be a small forestland
38 owner. For purposes of determining whether a person qualifies as a
39 small forestland owner, the small forestland owner office, created in
40 RCW 76.13.110, shall evaluate the landowner under this definition,

1 pursuant to RCW 76.13.160, as of the date that the forest practices
2 application is submitted and the date that the department offers
3 compensation for the forestry riparian easement. A small forestland
4 owner can include an individual, partnership, corporation, or other
5 nongovernmental legal entity. If a landowner grants timber rights to
6 another entity for less than five years, the landowner may still
7 qualify as a small forestland owner under this section. If a
8 landowner is unable to obtain an approved forest practices
9 application for timber harvest for any of his or her land because of
10 restrictions under the forest practices rules, the landowner may
11 still qualify as a small forestland owner under this section.

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

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

19 (4) The department is authorized and directed to accept and hold
20 in the name of the state of Washington forestry riparian easements
21 granted by qualifying small forestland owners covering qualifying
22 timber and to pay compensation to the landowners in accordance with
23 this section. The department may not transfer the easements to any
24 entity other than another state agency.

25 (~~((4))~~) (5) Forestry riparian easements shall be effective for
26 (~~((fifty))~~) 40 years from the date of the completed forestry riparian
27 easement application, unless the easement is voluntarily terminated
28 earlier by the department, based on a determination that termination
29 is in the best interest of the state, or under the terms of a
30 termination clause in the easement.

31 (~~((5))~~) (6) Forestry riparian easements shall be restrictive of
32 the timber only, and shall preserve all lawful uses of the easement
33 premises by the landowner that are consistent with the terms of the
34 easement and the requirement to protect riparian functions during the
35 term of the easement, subject to the restriction that the leave trees
36 required by the rules to be left on the easement premises may not be
37 cut during the term of the easement. No right of public access to or
38 across, or any public use of the easement premises is created by this
39 statute or by the easement. Forestry riparian easements shall not be

1 deemed to trigger the compensating tax of or otherwise disqualify
2 land from being taxed under chapter 84.33 or 84.34 RCW.

3 ~~((+6))~~ (7) The small forestland owner office shall determine
4 what constitutes a completed application for a forestry riparian
5 easement. An application shall, at a minimum, include documentation
6 of the owner's status as a qualifying small forestland owner,
7 identification of location and the types of qualifying timber, and
8 notification of completion of harvest, if applicable.

9 ~~((+7))~~ (8) Upon receipt of the qualifying small forestland
10 owner's forestry riparian easement application, and subject to the
11 availability of amounts appropriated for this specific purpose, the
12 following must occur:

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

24 (b) The small forestland owner office, subject to the
25 availability of amounts appropriated for this specific purpose, is
26 responsible for assessing the volume of qualifying timber. However,
27 no more than ~~((fifty))~~ 50 percent of the total amounts appropriated
28 for the forestry riparian easement program may be applied to
29 determine the volume of qualifying timber for completed forestry
30 riparian easement applications. Based on the volume established by
31 the small forestland owner office and using data obtained or
32 maintained by the department of revenue under RCW 84.33.074 and
33 84.33.091, the small forestland owner office shall attempt to
34 determine the fair market value of the qualifying timber as of the
35 date of the ~~((complete forestry riparian easement application is))~~
36 completed harvest. To the extent reasonably possible, the forestry
37 riparian easement applications should be processed in the order
38 received. Removal of any qualifying timber before the expiration of
39 the easement must be in accordance with the forest practices rules

1 and the terms of the easement. There shall be no reduction in
2 compensation for reentry.

3 ~~((8))~~ (9) (a) ~~((Except as provided in subsection (9) of this~~
4 ~~section and subject))~~ Subject to the availability of amounts
5 appropriated for this specific purpose, the small forestland owner
6 office shall offer compensation for qualifying timber to the
7 qualifying small forestland owner in the amount of ~~((fifty))~~ 70
8 percent of the value determined by the small forestland owner office,
9 plus the compliance and reimbursement costs as determined in
10 accordance with RCW 76.13.140. However, compensation for any
11 qualifying small forestland owner for qualifying timber located on
12 potentially unstable slopes or landforms may not exceed a total of
13 ~~((fifty thousand dollars))~~ \$100,000 during any biennial funding
14 period.

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

17 (i) Completion of harvest in the area within a commercially
18 reasonable harvest unit with which the forestry riparian easement is
19 associated under an approved forest practices application, unless an
20 approved forest practices application for timber harvest cannot be
21 obtained because of restrictions under the forest practices rules;

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

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

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

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

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

1 ~~((a))~~ (i) A standard version of a forestry riparian easement
2 application as well as all additional documents necessary or
3 advisable to create the forestry riparian easements as provided for
4 in this section;

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

8 ~~((c))~~ (iii) Methods and standards for cruises and valuation of
9 forestry riparian easements for purposes of establishing the
10 compensation. The department shall perform the timber cruises of
11 forestry riparian easements required under this chapter and chapter
12 76.09 RCW. Timber cruises are subject to amounts appropriated for
13 this purpose. However, no more than ~~((fifty))~~ 50 percent of the total
14 appropriated funding for the forestry riparian easement program may
15 be applied to determine the volume of qualifying timber for completed
16 forestry riparian easement applications. Any rules concerning the
17 methods and standards for valuations of forestry riparian easements
18 shall apply only to the department, qualifying small forestland
19 owners, and the small forestland owner office;

20 ~~((d))~~ (iv) A method to determine that a forest practices
21 application involves a commercially reasonable harvest, and adopt
22 criteria for entering into a forestry riparian easement where a
23 commercially reasonable harvest is not possible or a forest practices
24 application that has been submitted cannot be approved because of
25 restrictions under the forest practices rules;

26 ~~((e))~~ (v) A method to address blowdown of qualified timber
27 falling outside the easement premises;

28 ~~((f))~~ (vi) A formula for sharing of proceeds in relation to the
29 acquisition of qualified timber covered by an easement through the
30 exercise or threats of eminent domain by a federal or state agency
31 with eminent domain authority, based on the present value of the
32 department's and the landowner's relative interests in the qualified
33 timber;

34 ~~((g) High impact regulatory thresholds;~~

35 ~~((h))~~ (vii) A method to determine timber that is qualifying
36 timber because it is rendered uneconomic to harvest by the rules
37 adopted under RCW 76.09.055 and 76.09.370;

38 ~~((i))~~ (viii) A method for internal department review of small
39 forestland owner office compensation decisions under this section;
40 and

1 (~~(j)~~) (ix) Consistent with RCW 76.13.180, a method to collect
2 reimbursement from landowners who received compensation for a
3 forestry riparian easement and who, within the first (~~ten~~) 10 years
4 after receipt of compensation for a forestry riparian easement, sells
5 the land on which an easement is located to a nonqualifying
6 landowner.

7 (b) At least semiannually, the department shall consult with the
8 small forestland owner advisory committee established in RCW
9 76.13.110(4) to review landowner complaints, administrative
10 processes, rule recommendations, and related issues where the
11 department is actively seeking the small forestland owner advisory
12 committee's advice on potential improved efficiencies and
13 effectiveness.

14 (11) The legislature finds that the overall societal benefits of
15 economically viable working forests are multiple, and include the
16 protection of clean, cold water, the provision of wildlife habitat,
17 the sheltering of cultural resources from development, and the
18 natural carbon storage potential of growing trees. As such, working
19 forests and the (~~forest—[forestry]~~) forestry riparian easement
20 program may be part of the state's overall carbon sequestration
21 strategy. If the state creates a climate strategy, the department
22 must share information regarding the carbon sequestration benefits of
23 the (~~forest—[forestry]~~) forestry riparian easement program with
24 other state programs using methods and protocols established in the
25 state climate strategy that attempt to quantify carbon storage or
26 account for carbon emissions. The department must promote the
27 expansion of funding for the (~~forest—[forestry]~~) forestry riparian
28 easement program and the ecosystem services supported by the program
29 based on the findings stated in RCW 76.13.100. Nothing in this
30 subsection allows a landowner to be reimbursed by the state more than
31 once for the same forest riparian easement application.

32 (12) It is the intent of the legislature that the small
33 forestland owner office complete forestry riparian easement program
34 application transactions within two years of the application receipt
35 consistent with the goals of RCW 70A.65.270(2)(b)(iii).

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

38 In order to assist small forestland owners to remain economically
39 viable, the legislature intends that the qualifying small forestland

1 owners be able to net (~~fifty~~) 70 percent of the value of the trees
2 left in the buffer areas. The small forestland owner office may
3 utilize landowners' actual mill receipts to help determine fair
4 market value but may not require these documents in any valuation
5 process. The amount of compensation offered in RCW 76.13.120 shall
6 also include the compliance costs for participation in the forestry
7 riparian easement program, including the cost of preparing and
8 recording the forestry riparian easement, and any business and
9 occupation tax and real estate excise tax imposed because of entering
10 into the forestry riparian easement. The small forestland owner
11 office may contract with private consultants that the office finds
12 qualified to perform timber cruises of forestry riparian easements or
13 to lay out streamside buffers and comply with other forest practices
14 regulatory requirements related to the forestry riparian easement
15 program. The department shall reimburse qualifying small forestland
16 owners for the actual costs incurred for laying out the streamside
17 buffers and marking the qualifying timber once a contract has been
18 executed for the forestry riparian easement program. Reimbursement is
19 subject to the work being acceptable to the department. The small
20 forestland owner office shall determine how the reimbursement costs
21 will be calculated."

22 Correct the title.

EFFECT: Makes the following changes: (1) Compensation for
qualifying timber in the forestry riparian easement program goes from
90 percent to 70 percent of the value (current law is 50 percent);
and (2) maximum compensation for qualifying timber on unstable slopes
or landforms goes from \$150,000 to \$100,000 (current law is \$50,000).

--- END ---