

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2105

57th Legislature
2001 Regular Legislative Session

Passed by the House April 16, 2001
Yeas 94 Nays 0

Speaker of the House of Representatives

Speaker of the House of Representatives

Passed by the Senate April 11, 2001
Yeas 47 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

We, Timothy A. Martin and Cynthia Zehnder, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2105** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2105

AS AMENDED BY THE SENATE

Passed Legislature - 2001 Regular Session

State of Washington 57th Legislature 2001 Regular Session

By House Committee on Natural Resources (originally sponsored by Representatives Sump, Doumit, Pearson, Rockefeller and Woods)

Read first time 02/26/2001. Referred to Committee on .

1 AN ACT Relating to small forest landowners; amending RCW 76.13.110
2 and 76.13.120; and adding a new section to chapter 76.13 RCW.

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

4 **Sec. 1.** RCW 76.13.110 and 2000 c 11 s 12 are each amended to read
5 as follows:

6 (1) The department of natural resources shall establish and
7 maintain a small forest landowner office. The small forest landowner
8 office shall be a resource and focal point for small forest landowner
9 concerns and policies, and shall have significant expertise regarding
10 the management of small forest holdings, governmental programs
11 applicable to such holdings, and the forestry riparian easement
12 program.

13 (2) The small forest landowner office shall administer the
14 provisions of the forestry riparian easement program created under RCW
15 76.13.120. With respect to that program, the office shall have the
16 authority to contract with private consultants that the office finds
17 qualified to perform timber cruises of forestry riparian easements or
18 to lay out streamside buffers and comply with other forest and fish

1 regulatory requirements related to the forest riparian easement
2 program.

3 (3) The small forest landowner office shall assist in the
4 development of small landowner options through alternate management
5 plans or alternate harvest restrictions appropriate to small
6 landowners. The small forest landowner office shall develop criteria
7 to be adopted by the forest practices board in rules and a manual for
8 alternate management plans or alternate harvest restrictions. These
9 alternate plans or alternate harvest restrictions shall meet riparian
10 functions while requiring less costly regulatory prescriptions. At the
11 landowner's option, alternate plans or alternate harvest restrictions
12 may be used to further meet riparian functions.

13 The small forest landowner office shall evaluate the cumulative
14 impact of such alternate management plans or alternate harvest
15 restrictions on essential riparian functions at the subbasin or
16 watershed level. The small forest landowner office shall adjust future
17 alternate management plans or alternate harvest restrictions in a
18 manner that will minimize the negative impacts on essential riparian
19 functions within a subbasin or watershed.

20 (4) An advisory committee is established to assist the small forest
21 landowner office in developing policy and recommending rules to the
22 forest practices board. The advisory committee shall consist of seven
23 members, including a representative from the department of ecology, the
24 department of fish and wildlife, and a tribal representative. Four
25 additional committee members shall be small forest landowners who shall
26 be appointed by the commissioner of public lands from a list of
27 candidates submitted by the board of directors of the Washington farm
28 forestry association or its successor organization. The association
29 shall submit more than one candidate for each position. Appointees
30 shall serve for a term of four years. The small forest landowner
31 office shall review draft rules or rule concepts with the committee
32 prior to recommending such rules to the forest practices board. The
33 office shall reimburse nongovernmental committee members for reasonable
34 expenses associated with attending committee meetings as provided in
35 RCW 43.03.050 and 43.03.060.

36 (5) By December 1, (~~2000~~) 2002, the small forest landowner office
37 shall provide a report to the board and the legislature containing:

38 (a) Estimates of the amounts of nonindustrial forests and woodlands
39 in holdings of twenty acres or less, twenty-one to one hundred acres,

1 one hundred to one thousand acres, and one thousand to five thousand
2 acres, in western Washington and eastern Washington, and the number of
3 persons having total nonindustrial forest and woodland holdings in
4 those size ranges;

5 (b) Estimates of the number of parcels of nonindustrial forests and
6 woodlands held in contiguous ownerships of twenty acres or less, and
7 the percentages of those parcels containing improvements used: (i) As
8 primary residences for half or more of most years; (ii) as vacation
9 homes or other temporary residences for less than half of most years;
10 and (iii) for other uses;

11 (c) The watershed administrative units in which significant
12 portions of the riparian areas or total land area are nonindustrial
13 forests and woodlands;

14 (d) Estimates of the number of forest practices applications and
15 notifications filed per year for forest road construction,
16 silvicultural activities to enhance timber growth, timber harvest not
17 associated with conversion to nonforest land uses, with estimates of
18 the number of acres of nonindustrial forests and woodlands on which
19 forest practices are conducted under those applications and
20 notifications; and

21 (e) Recommendations on ways the board and the legislature could
22 provide more effective incentives to encourage continued management of
23 nonindustrial forests and woodlands for forestry uses in ways that
24 better protect salmon, other fish and wildlife, water quality, and
25 other environmental values.

26 (6) By December 1, (~~(2002)~~) 2004, and every four years thereafter,
27 the small forest landowner office shall provide to the board and the
28 legislature an update of the report described in subsection (5) of this
29 section, containing more recent information and describing:

30 (a) Trends in the items estimated under subsection (5)(a) through
31 (d) of this section;

32 (b) Whether, how, and to what extent the forest practices act and
33 rules contributed to those trends; and

34 (c) Whether, how, and to what extent: (i) The board and
35 legislature implemented recommendations made in the previous report;
36 and (ii) implementation of or failure to implement those
37 recommendations affected those trends.

1 **Sec. 2.** RCW 76.13.120 and 2000 c 11 s 13 are each amended to read
2 as follows:

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

9 (2) The definitions in this subsection apply throughout this
10 section and RCW 76.13.100 and 76.13.110 unless the context clearly
11 requires otherwise.

12 (a) "Forestry riparian easement" means an easement covering
13 qualifying timber granted voluntarily to the state by a small forest
14 landowner.

15 (b) "Qualifying timber" means those trees covered by a forest
16 practices application that the small forest landowner is required to
17 leave unharvested under the rules adopted under RCW 76.09.055 and
18 76.09.370 or that is made uneconomic to harvest by those rules, and for
19 which the small landowner is willing to grant the state a forestry
20 riparian easement. "Qualifying timber" is timber within or bordering
21 a commercially reasonable harvest unit as determined under rules
22 adopted by the forest practices board, or timber for which an approved
23 forest practices application for timber harvest cannot be obtained
24 because of restrictions under the forest practices rules.

25 (c) "Small forest landowner" means a landowner meeting all of the
26 following characteristics: (i) A forest landowner as defined in RCW
27 76.09.020 whose interest in the land and timber is in fee or who has
28 rights to the timber to be included in the forestry riparian easement
29 that extend at least fifty years from the date the forest practices
30 application associated with the easement is submitted; (ii) an entity
31 that has harvested from its own lands in this state during the three
32 years prior to the year of application an average timber volume that
33 would qualify the owner as a small timber harvester under RCW
34 84.33.073(1); and (iii) an entity that certifies at the time of
35 application that it does not expect to harvest from its own lands more
36 than the volume allowed by RCW 84.33.073(1) during the ten years
37 following application. If a landowner's prior three-year average
38 harvest exceeds the limit of RCW 84.33.073(1), or the landowner expects
39 to exceed this limit during the ten years following application, and

1 that landowner establishes to the department of natural resources'
2 reasonable satisfaction that the harvest limits were or will be
3 exceeded to raise funds to pay estate taxes or equally compelling and
4 unexpected obligations such as court-ordered judgments or extraordinary
5 medical expenses, the landowner shall be deemed to be a small forest
6 landowner.

7 For purposes of determining whether a person qualifies as a small
8 forest landowner, the small forest landowner office, created in RCW
9 76.13.110, shall evaluate the landowner under this definition as of the
10 date that the forest practices application is submitted or the date the
11 landowner notifies the department that the harvest is to begin with
12 which the forestry riparian easement is associated. A small forest
13 landowner can include an individual, partnership, corporate, or other
14 nongovernmental legal entity. If a landowner grants timber rights to
15 another entity for less than five years, the landowner may still
16 qualify as a small forest landowner under this section. If a landowner
17 is unable to obtain an approved forest practices application for timber
18 harvest for any of his or her land because of restrictions under the
19 forest practices rules, the landowner may still qualify as a small
20 forest landowner under this section.

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

24 (3) The department of natural resources is authorized and directed
25 to accept and hold in the name of the state of Washington forestry
26 riparian easements granted by small forest landowners covering
27 qualifying timber and to pay compensation to such landowners in
28 accordance with subsections (6) and (7) of this section. The
29 department of natural resources may not transfer the easements to any
30 entity other than another state agency.

31 (4) Forestry riparian easements shall be effective for fifty years
32 from the date the forest practices application associated with the
33 qualifying timber is submitted to the department of natural resources,
34 unless the easement is terminated earlier by the department of natural
35 resources voluntarily, based on a determination that termination is in
36 the best interest of the state, or under the terms of a termination
37 clause in the easement.

38 (5) Forestry riparian easements shall be restrictive only, and
39 shall preserve all lawful uses of the easement premises by the

1 landowner that are consistent with the terms of the easement and the
2 requirement to protect riparian functions during the term of the
3 easement, subject to the restriction that the leave trees required by
4 the rules to be left on the easement premises may not be cut during the
5 term of the easement. No right of public access to or across, or any
6 public use of the easement premises is created by this statute or by
7 the easement. Forestry riparian easements shall not be deemed to
8 trigger the compensating tax of or otherwise disqualify land from being
9 taxed under chapter 84.33 or 84.34 RCW.

10 (6) Upon application of a small forest landowner for a riparian
11 easement that is associated with a forest practices application and the
12 landowner's marking of the qualifying timber on the qualifying lands,
13 the small forest landowner office shall determine the compensation to
14 be offered to the small forest landowner as provided for in this
15 section. The small forest landowner office shall also determine the
16 compensation to be offered to a small forest landowner for qualifying
17 timber for which an approved forest practices application for timber
18 harvest cannot be obtained because of restrictions under the forest
19 practices rules. The legislature recognizes that there is not readily
20 available market transaction evidence of value for easements of this
21 nature, and thus establishes the following methodology to ascertain the
22 value for forestry riparian easements. Values so determined shall not
23 be considered competent evidence of value for any other purpose.

24 The small forest landowner office shall establish the volume of the
25 qualifying timber. Based on that volume and using data obtained or
26 maintained by the department of revenue under RCW 84.33.074 and
27 84.33.091, the small forest landowner office shall attempt to determine
28 the fair market value of the qualifying timber as of the date the
29 forest practices application associated with the qualifying timber was
30 submitted or the date the landowner notifies the department that the
31 harvest is to begin. If, under the forest practices rules adopted
32 under chapter 4, Laws of 1999 sp. sess., some qualifying timber may be
33 removed prior to the expiration of the fifty-year term of the easement,
34 the small forest landowner office shall apply a reduced compensation
35 factor to ascertain the value of those trees based on the proportional
36 economic value, considering income and growth, lost to the landowner.

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

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

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

34 (a) A standard version or versions of all documents necessary or
35 advisable to create the forestry riparian easements as provided for in
36 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 of natural resources shall perform the timber cruises of
4 forestry riparian easements required under this chapter and chapter
5 76.09 RCW. Any rules concerning the methods and standards for
6 valuations of forestry riparian easements shall apply only to the
7 department of natural resources, small forest landowners, and the small
8 forest landowner office;

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

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

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

23 (g) High impact regulatory thresholds;

24 (h) A method to determine timber that is qualifying timber because
25 it is rendered uneconomic to harvest by the rules adopted under RCW
26 76.09.055 and 76.09.370; and

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

30 NEW SECTION. Sec. 3. A new section is added to chapter 76.13 RCW
31 to read as follows:

32 In order to assist small forest landowners to remain economically
33 viable, the legislature intends that the small forest landowners be
34 able to net fifty percent of the value of the trees left in the buffer
35 areas. The amount of compensation offered in RCW 76.13.120 shall also
36 include the compliance costs for participation in the riparian easement
37 program. For purposes of this section, "compliance costs" includes the
38 cost of preparing and recording the easement, and any business and

1 occupation tax and real estate excise tax imposed because of entering
2 into the easement.