
SENATE BILL 6829

State of Washington

61st Legislature

2010 Regular Session

By Senators Fraser, Tom, and Rockefeller

Read first time 02/02/10. Referred to Committee on Natural Resources,
Ocean & Recreation.

1 AN ACT Relating to the forestry riparian easement program; amending
2 RCW 76.13.120 and 76.13.140; creating a new section; and prescribing
3 penalties.

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

5 NEW SECTION. **Sec. 1.** The legislature recognizes that well managed
6 forest lands are an important part of the ecosystem that help to
7 provide fish and wildlife habitat, clean water, and other environmental
8 amenities. Therefore, it is the intent of the legislature that the
9 forestry riparian easement program be utilized to assist small forest
10 landowners who have been financially impacted as a direct result of
11 adoption of forest practices rules consistent with the forests and fish
12 report, as defined in RCW 76.09.020, in order to facilitate ongoing
13 forest land ownership.

14 **Sec. 2.** RCW 76.13.120 and 2004 c 102 s 1 are each amended to read
15 as follows:

16 (1) The legislature finds that the state should acquire easements
17 along riparian and other sensitive aquatic areas from small forest
18 landowners willing to sell or donate such easements to the state

1 provided that the state will not be required to acquire such easements
2 if they are subject to unacceptable liabilities and that the state may
3 not acquire such easements if:

4 (a) The harvest limitations are or would be a result of the
5 requirements of the federal clean water act or the requirements of the
6 shoreline management act established in chapter 90.58 RCW;

7 (b) Such easement is eligible for compensation under the riparian
8 open space program established in RCW 76.09.040 or the Washington
9 wildlife and recreation program whose primary purpose is to acquire
10 habitat conservation and outdoor recreation land as specified in
11 chapter 79A.15 RCW;

12 (c) Any parcel subject to the easement has not received a current
13 use classification as specified under chapter 84.34 RCW; and

14 (d) Any parcel subject to the easement qualifies for alternative
15 management plans as specified under RCW 76.13.130. The legislature
16 therefore establishes a forestry riparian easement program.

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

20 (a) "Forestry riparian easement" means an easement covering
21 qualifying timber granted voluntarily to the state by a small forest
22 landowner.

23 (b) "Qualifying timber" means those trees along riparian and other
24 sensitive aquatic areas covered by a forest practices application that
25 the small forest landowner is required to leave unharvested under the
26 rules adopted under RCW 76.09.055 and 76.09.370 or that is made
27 uneconomic to harvest by those rules, and for which the small landowner
28 is willing to grant the state a forestry riparian easement.
29 "Qualifying timber" is timber within or bordering a commercially
30 reasonable harvest unit as determined under rules adopted by the forest
31 practices board, or timber for which an approved forest practices
32 application for timber harvest cannot be obtained because of
33 restrictions under the forest practices rules.

34 (c) "Forest land" has the same meaning as the term "timber land" as
35 defined in RCW 84.34.020 and shall not qualify for alternative
36 management plans as specified under RCW 76.13.130.

37 (d) "Small forest landowner" means: (i) A landowner (~~meeting all~~
38 ~~of the following characteristics:~~ ~~(i) A forest landowner as defined in~~

1 ~~RCW 76.09.020 whose interest in the land and timber is in fee or)) who~~
2 owns no more than one thousand acres of forest land in the state and
3 who has rights to the timber to be included in the forestry riparian
4 easement that extend at least fifty years from the date the forest
5 practices application associated with the easement is submitted; and
6 (ii) an entity that has harvested from its own lands in this state
7 during the three years prior to the year of application an average
8 timber volume that would qualify the owner as a small harvester under
9 RCW 84.33.035(~~;~~ and (iii) ~~an entity that certifies at the time of~~
10 ~~application that it does not expect to harvest from its own lands more~~
11 ~~than the volume allowed by RCW 84.33.035 during the ten years following~~
12 ~~application. If a landowner's prior three year average harvest exceeds~~
13 ~~the limit of RCW 84.33.035, or the landowner expects to exceed this~~
14 ~~limit during the ten years following application, and that landowner~~
15 ~~establishes to the department of natural resources' reasonable~~
16 ~~satisfaction that the harvest limits were or will be exceeded to raise~~
17 ~~funds to pay estate taxes or equally compelling and unexpected~~
18 ~~obligations such as court ordered judgments or extraordinary medical~~
19 ~~expenses, the landowner shall be deemed to be a small forest~~
20 ~~landowner)).~~

21 For purposes of determining whether a person qualifies as a small
22 forest landowner, the small forest landowner office, created in RCW
23 76.13.110, shall evaluate the landowner under this definition, pursuant
24 to RCW 76.13.160(~~(, as of the date that the forest practices~~
25 ~~application is submitted or the date the landowner notifies the~~
26 ~~department that the harvest is to begin with which the forestry~~
27 ~~riparian easement is associated)). A small forest landowner must have
28 had legal ownership of the parcel subject to the easement prior to
29 adoption of forest practices rules consistent with the forests and fish
30 report as defined in RCW 76.09.020 and can include an individual,
31 partnership, corporate, or other nongovernmental legal entity(~~(. If a~~
32 ~~landowner grants timber rights to another entity for less than five~~
33 ~~years, the landowner may still qualify as a small forest landowner~~
34 ~~under this section)), provided that the partnership, corporate, or~~
35 other nongovernmental legal entity was established for the purposes of
36 long-term commercial timber production. A small forest landowner shall
37 not have any outstanding violations of the forest practices act as
38 specified in chapter 76.09 RCW, shall not be in default on a financial~~

1 obligation to an agency of the state including noncompliance with a
2 child support order under RCW 74.20A.320, and shall not have received
3 compensation under the forestry riparian easement program in the
4 previous three biennia. If a landowner is unable to obtain an approved
5 forest practices application for timber harvest for any of his or her
6 land because of restrictions under the forest practices rules, the
7 landowner may still qualify as a small forest landowner under this
8 section.

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

12 (3) The department of natural resources is authorized and directed
13 to accept and hold in the name of the state of Washington forestry
14 riparian easements granted by small forest landowners covering
15 qualifying timber and to pay compensation to such landowners in
16 accordance with subsections (6) (~~(and (7))~~) through (9) of this
17 section. The department of natural resources may not transfer the
18 easements to any entity other than another state agency.

19 (4) Forestry riparian easements shall be effective for fifty years
20 from the date the forest practices application associated with the
21 qualifying timber is submitted to the department of natural resources,
22 unless the easement is terminated earlier by the department of natural
23 resources voluntarily, based on a determination that termination is in
24 the best interest of the state, or under the terms of a termination
25 clause in the easement. For parcels subject to the easement, if at any
26 time during the term of the easement a small forest landowner changes
27 the current use classification as specified in chapter 84.34 RCW or any
28 information contained in the application is determined by the small
29 forest landowner office to be false, the small forest landowner shall,
30 in addition to penalties incurred in RCW 84.34.070, refund the total
31 compensation received for the easement plus, a twenty percent penalty.
32 This refund and penalty shall be considered a lien upon the land as
33 specified in RCW 84.34.090.

34 (5) Forestry riparian easements shall be restrictive only, and
35 shall preserve all lawful uses of the easement premises by the
36 landowner that are consistent with the terms of the easement and the
37 requirement to protect riparian functions during the term of the
38 easement, subject to the restriction that the leave trees required by

1 the rules to be left on the easement premises may not be cut during the
2 term of the easement. No right of public access to or across, or any
3 public use of the easement premises is created by this statute or by
4 the easement. Forestry riparian easements shall not be deemed to
5 trigger the compensating tax of or otherwise disqualify land from being
6 taxed under chapter 84.33 or 84.34 RCW.

7 (6) Beginning in calendar year 2010, the small forest landowner
8 office as created in RCW 76.13.110 shall solicit applications for the
9 forestry riparian easement program. For applications that have been
10 previously submitted to the small forest landowner office but have not
11 received funding, the small forest landowner office shall obtain from
12 the landowner any supplemental information necessary to verify the
13 landowners' qualifications to participate in the program. The date
14 upon which the supplemental information is received shall constitute
15 the date of application. The small forest landowner office, along with
16 the small forest landowner advisory committee, shall prioritize
17 submitted applications: (a) First in descending order based on the
18 ratio of qualifying timber impacted as a direct result of adoption of
19 forest practices rules consistent with the forest and fish report, as
20 defined in RCW 76.09.020, to the total merchantable stand of timber on
21 the parcels subject to the easement; and (b) second in descending order
22 according to development potential. In October of every even-numbered
23 year, the small forest landowner office shall submit the prioritized
24 list of applications to the governor, the office of financial
25 management, and the legislature for funding consideration in the
26 biennial budget.

27 (7) Upon application of a small forest landowner for a riparian
28 easement that is associated with a forest practices application and the
29 landowner's marking of the qualifying timber on the qualifying lands,
30 the small forest landowner office shall determine the compensation to
31 be offered to the small forest landowner as provided for in this
32 section and final compensation must be based on the market value of
33 timber at the time of harvest. The small forest landowner office shall
34 also determine the compensation to be offered to a small forest
35 landowner for qualifying timber for which an approved forest practices
36 application for timber harvest cannot be obtained because of
37 restrictions under the forest practices rules and final compensation
38 must be based on the market value of timber at the time the application

1 receives funding. The legislature recognizes that there is not readily
2 available market transaction evidence of value for easements of this
3 nature, and thus establishes the following methodology to ascertain the
4 value for forestry riparian easements. Values so determined shall not
5 be considered competent evidence of value for any other purpose.

6 The small forest landowner office shall establish the volume of the
7 qualifying timber. Based on that volume and using data obtained or
8 maintained by the department of revenue under RCW 84.33.074 and
9 84.33.091, the small forest landowner office shall attempt to determine
10 the fair market value of the qualifying timber as of the ~~((date the~~
11 ~~forest practices application associated with the qualifying timber was~~
12 ~~submitted or the date the landowner notifies the department that the~~
13 ~~harvest is to begin)) dates specified in this section. Removal of any
14 qualifying timber before the expiration of the easement must be in
15 accordance with the forest practices rules and the terms of the
16 easement. There shall be no reduction in compensation for reentry.~~

17 ~~((+7))~~ (8) Except as provided in subsection ~~((+8))~~ (9) of this
18 section, the small forest landowner office shall, subject to available
19 funding, offer compensation to the small forest landowner in the amount
20 of fifty percent of the value determined in subsection ~~((+6))~~ (7) of
21 this section ~~(, plus the compliance and reimbursement costs as~~
22 ~~determined in accordance with RCW 76.13.140))~~. If the landowner
23 accepts the offer for qualifying timber that will be harvested pursuant
24 to an approved forest practices application, the department of natural
25 resources shall pay the compensation promptly upon (a) completion of
26 harvest in the area covered by the forestry riparian easement; (b)
27 verification that there has been compliance with the rules requiring
28 leave trees in the easement area; and (c) execution and delivery of the
29 easement to the department of natural resources. If the landowner
30 accepts the offer for qualifying timber for which an approved forest
31 practices application for timber harvest cannot be obtained because of
32 restrictions under the forest practices rules, the department of
33 natural resources shall pay the compensation promptly upon (i)
34 verification that there has been compliance with the rules requiring
35 leave trees in the easement area; and (ii) execution and delivery of
36 the easement to the department of natural resources. Upon donation or
37 payment of compensation, the department of natural resources may record
38 the easement.

1 ~~((8) For approved forest practices applications where the~~
2 ~~regulatory impact is greater than the average percentage impact for all~~
3 ~~small landowners as determined by the department of natural resources~~
4 ~~analysis under the regulatory fairness act, chapter 19.85 RCW, the~~
5 ~~compensation offered will be increased to one hundred percent for that~~
6 ~~portion of the regulatory impact that is in excess of the average.~~
7 ~~Regulatory impact includes trees left in buffers, special management~~
8 ~~zones, and those rendered uneconomic to harvest by these rules. A~~
9 ~~separate average or high impact regulatory threshold shall be~~
10 ~~established for western and eastern Washington. Criteria for these~~
11 ~~measurements and payments shall be established by the small forest~~
12 ~~landowner office.))~~

13 (9) Applications that are not funded in the biennial budget shall
14 be reconsidered and reprioritized by the small forest landowner office
15 and the small forest landowner advisory committee for the following
16 biennium.

17 (10) An application for inclusion in the forestry riparian easement
18 program shall include an affidavit signed by the small forest landowner
19 that includes a list of all parcels in the state owned by the landowner
20 that have received a current use classification as specified in chapter
21 84.34 RCW and the total acres within each parcel.

22 (11) The forest practices board shall adopt rules under the
23 administrative procedure act, chapter 34.05 RCW, to implement the
24 forestry riparian easement program, including the following:

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

28 (b) Standards for descriptions of the easement premises with a
29 degree of precision that is reasonable in relation to the values
30 involved;

31 (c) Methods and standards for cruises and valuation of forestry
32 riparian easements for purposes of establishing the compensation. The
33 department of natural resources shall perform the timber cruises of
34 forestry riparian easements required under this chapter and chapter
35 76.09 RCW. Any rules concerning the methods and standards for
36 valuations of forestry riparian easements shall apply only to the
37 department of natural resources, small forest landowners, and the small
38 forest landowner office;

1 (d) A method to determine that a forest practices application
2 involves a commercially reasonable harvest, and adopt criteria for
3 entering into a forest riparian easement where a commercially
4 reasonable harvest is not possible or a forest practices application
5 that has been submitted cannot be approved because of restrictions
6 under the forest practices rules;

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

9 (f) A formula for sharing of proceeds in relation to the
10 acquisition of qualified timber covered by an easement through the
11 exercise or threats of eminent domain by a federal or state agency with
12 eminent domain authority, based on the present value of the department
13 of natural resources' and the landowner's relative interests in the
14 qualified timber;

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

16 ~~(h))~~ A method to determine timber that is qualifying timber
17 because it is rendered uneconomic to harvest by the rules adopted under
18 RCW 76.09.055 and 76.09.370; and

19 ~~((i))~~ (h) A method for internal department of natural resources
20 review of small forest landowner office compensation decisions under
21 subsection ~~((7))~~ (8) of this section.

22 **Sec. 3.** RCW 76.13.140 and 2002 c 120 s 3 are each amended to read
23 as follows:

24 In order to assist small forest landowners to remain economically
25 viable, the legislature intends that the small forest landowners be
26 able to net fifty percent of the value of the trees left in the buffer
27 areas. ~~((The amount of compensation offered in RCW 76.13.120 shall
28 also include the compliance costs for participation in the riparian
29 easement program. For purposes of this section, "compliance costs"
30 includes the cost of preparing and recording the easement, and any
31 business and occupation tax and real estate excise tax imposed because
32 of entering into the easement.))~~ The office may contract with private
33 consultants that the office finds qualified to perform timber cruises
34 of forestry riparian easements or to lay out streamside buffers and
35 comply with other forest and fish regulatory requirements related to
36 the forest riparian easement program. ~~((The department shall reimburse
37 small forest landowners for the actual costs incurred for laying out~~

1 ~~the streamside buffers and marking the qualifying timber once a~~
2 ~~contract has been executed for the forestry riparian easement program.~~
3 ~~Reimbursement is subject to the work being acceptable to the~~
4 ~~department. The small forest landowner office shall determine how the~~
5 ~~reimbursement costs will be calculated.)~~)

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