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HOUSE BILL 1192

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State of Washington

62nd Legislature

2011 Regular Session

By Representative Blake

Read first time 01/14/11. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to helping to ensure the viability of small forest  
2 landowners; amending RCW 76.13.130 and 76.13.120; and creating new  
3 sections.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that the forestry  
6 riparian easement program, as authorized by RCW 76.13.120, has evolved  
7 into such a costly program that the state is unable to fulfill its  
8 financial promise as previously declared in RCW 77.85.180. It is in  
9 the state's best interest to revise RCW 76.13.130 in a way that  
10 encourages more small, low-impact harvests, as a way to reduce the  
11 state's future payments under the forestry riparian easement program.

12 (2) The legislature further finds that the processes established in  
13 RCW 76.13.100 and 76.13.110 and WAC 222-12-040 and 222-12-0403 have  
14 failed to provide efficient, low-cost alternative plans and alternative  
15 restrictions for smaller harvests as envisioned by the 2002  
16 legislation. Further, the legislature reaffirms the findings in RCW  
17 76.13.005 and declares that it is now timely to craft amendments to RCW  
18 76.13.130 and WAC 222-30-023 in order to help maintain and improve the  
19 economic viability of two hundred fifteen thousand family forest owners

1 managing approximately three million two hundred thousand acres of  
2 forest land across the state and provide incentives to keep their land  
3 in long-term forestry.

4 (3) The legislature further finds that the shade rules in WAC 222-  
5 30-023 are overly complex for these small harvests and relatively short  
6 stream reaches, and are beyond comprehension for nearly all small  
7 forest owners who wish to use this rule.

8 (4) The legislature further finds that rules to protect stream  
9 water from summer heat do not need to apply to stream segments that  
10 typically do not have surface water in the summer months. The changes  
11 to RCW 76.13.130 in this act will create a regulatory incentive that,  
12 in the long term, will benefit all the resources inherent to a forested  
13 landscape, including riparian function.

14 **Sec. 2.** RCW 76.13.130 and 1999 sp.s. c 4 s 505 are each amended to  
15 read as follows:

16 (1) On (~~parcels~~) harvest units of twenty contiguous acres or  
17 less, small forest landowners (~~with a total parcel ownership of less~~  
18 ~~than eighty acres~~), as that term is defined in RCW 76.13.120, shall  
19 not be required to leave riparian buffers adjacent to streams according  
20 to forest practices rules adopted under the forests and fish report as  
21 defined in RCW 76.09.020. These landowners shall be subject to the  
22 permanent forest practices rules in effect as of January 1, 1999, but  
23 may additionally be required to leave timber adjacent to streams that  
24 is equivalent to no greater than fifteen percent of a volume of timber  
25 contained in a stand of well managed fifty-year old commercial timber  
26 covering the harvest area. The additional fifteen percent maximum  
27 leave tree level shall be computed as a rotating stand volume and shall  
28 be regulated through flexible forest practices as the stream buffer is  
29 managed over time to meet optimal combinations of economics, forest  
30 health, and riparian functions.

31 (2) On (~~parcels~~) harvest units of twenty contiguous acres or less  
32 the small forest landowner office shall work with landowners (~~with a~~  
33 ~~total parcel ownership of less than eighty acres~~) to develop  
34 alternative management plans for riparian buffers. Such alternative  
35 plans shall provide for the removal of leave trees as other new trees  
36 grow in order to ensure the most effective protection of critical  
37 riparian function. The office may recommend reasonable modifications

1 in alternative management plans of such landowners to further reduce  
2 risks to public resources and endangered species so long as the  
3 anticipated operating costs are not unreasonably increased and the  
4 landowner is not required to leave a greater volume than the threshold  
5 level. To qualify for the provisions of this section, (~~parcels~~)  
6 harvest units must be twenty acres or less in contiguous ownership, and  
7 owners (~~cannot have ownership interests in a total of more than eighty~~  
8 ~~acres of forest lands within the state~~) must qualify as a small forest  
9 landowner as that term is defined in RCW 76.13.120.

10 **Sec. 3.** RCW 76.13.120 and 2004 c 102 s 1 are each amended to read  
11 as follows:

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

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

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

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

34 (c) "Small forest landowner" means a landowner meeting all of the  
35 following characteristics: (i) A forest landowner as defined in RCW  
36 76.09.020 whose interest in the land and timber is in fee or who has  
37 rights to the timber to be included in the forestry riparian easement

1 that extend at least fifty years from the date the forest practices  
2 application associated with the easement is submitted; (ii) an entity  
3 that has harvested from its own lands in this state during the three  
4 years prior to the year of application an average timber volume that  
5 would qualify the owner as a small harvester under RCW 84.33.035; and  
6 (iii) an entity that certifies at the time of application that it does  
7 not expect to harvest from its own lands more than the volume allowed  
8 by RCW 84.33.035 during the ten years following application. If a  
9 landowner's prior three-year average harvest exceeds the limit of RCW  
10 84.33.035, or the landowner expects to exceed this limit during the ten  
11 years following application, and that landowner establishes to the  
12 department of natural resources' reasonable satisfaction that the  
13 harvest limits were or will be exceeded to raise funds to pay estate  
14 taxes or equally compelling and unexpected obligations such as court-  
15 ordered judgments or extraordinary medical expenses, the landowner  
16 shall be deemed to be a small forest landowner.

17 For purposes of determining whether a person qualifies as a small  
18 forest landowner, the small forest landowner office, created in RCW  
19 76.13.110, shall evaluate the landowner under this definition, pursuant  
20 to RCW 76.13.160, as of the date that the forest practices application  
21 is submitted or the date the landowner notifies the department that the  
22 harvest is to begin with which the forestry riparian easement is  
23 associated. A small forest landowner can include an individual,  
24 partnership, corporate, or other nongovernmental legal entity. If a  
25 landowner grants timber rights to another entity for less than five  
26 years, the landowner may still qualify as a small forest landowner  
27 under this section. If a landowner is unable to obtain an approved  
28 forest practices application for timber harvest for any of his or her  
29 land because of restrictions under the forest practices rules, the  
30 landowner may still qualify as a small forest landowner under this  
31 section.

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

35 (3) The department of natural resources is authorized and directed  
36 to accept and hold in the name of the state of Washington forestry  
37 riparian easements granted by small forest landowners covering  
38 qualifying timber and to pay compensation to such landowners in

1 accordance with subsections (6) and (7) of this section. The  
2 department of natural resources may not transfer the easements to any  
3 entity other than another state agency.

4 (4) Forestry riparian easements shall be effective for fifty years  
5 from the date the forest practices application associated with the  
6 qualifying timber is submitted to the department of natural resources,  
7 unless the easement is terminated earlier by the department of natural  
8 resources voluntarily, based on a determination that termination is in  
9 the best interest of the state, or under the terms of a termination  
10 clause in the easement.

11 (5) Forestry riparian easements shall be restrictive only, and  
12 shall preserve all lawful uses of the easement premises by the  
13 landowner that are consistent with the terms of the easement and the  
14 requirement to protect riparian functions during the term of the  
15 easement, subject to the restriction that the leave trees required by  
16 the rules to be left on the easement premises may not be cut during the  
17 term of the easement. No right of public access to or across, or any  
18 public use of the easement premises is created by this statute or by  
19 the easement. Forestry riparian easements shall not be deemed to  
20 trigger the compensating tax of or otherwise disqualify land from being  
21 taxed under chapter 84.33 or 84.34 RCW.

22 (6) Upon application of a small forest landowner for a riparian  
23 easement that is associated with a forest practices application and the  
24 landowner's marking of the qualifying timber on the qualifying lands,  
25 the small forest landowner office shall determine the compensation to  
26 be offered to the small forest landowner as provided for in this  
27 section. The small forest landowner office shall also determine the  
28 compensation to be offered to a small forest landowner for qualifying  
29 timber for which an approved forest practices application for timber  
30 harvest cannot be obtained because of restrictions under the forest  
31 practices rules. The legislature recognizes that there is not readily  
32 available market transaction evidence of value for easements of this  
33 nature, and thus establishes the following methodology to ascertain the  
34 value for forestry riparian easements. Values so determined shall not  
35 be considered competent evidence of value for any other purpose.

36 The small forest landowner office shall establish the volume of the  
37 qualifying timber. Based on that volume and using data obtained or  
38 maintained by the department of revenue under RCW 84.33.074 and

1 84.33.091, the small forest landowner office shall attempt to determine  
2 the fair market value of the qualifying timber as of the date the  
3 forest practices application associated with the qualifying timber was  
4 submitted or the date the landowner notifies the department that the  
5 harvest is to begin. Removal of any qualifying timber before the  
6 expiration of the easement must be in accordance with the forest  
7 practices rules and the terms of the easement. There shall be no  
8 reduction in compensation for reentry.

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

31 (8) For approved forest practices applications where the regulatory  
32 impact is greater than the average percentage impact for all small  
33 landowners as determined by the department of natural resources  
34 analysis under the regulatory fairness act, chapter 19.85 RCW, the  
35 compensation offered will be increased to one hundred percent for that  
36 portion of the regulatory impact that is in excess of the average.  
37 Regulatory impact includes trees left in buffers, special management  
38 zones, and those rendered uneconomic to harvest by these rules. A

1 separate average or high impact regulatory threshold shall be  
2 established for western and eastern Washington. Criteria for these  
3 measurements and payments shall be established by the small forest  
4 landowner office.

5 (9) Small forest landowners choosing to conduct a harvest under the  
6 authority provided in RCW 76.13.130 and the associated rules may not  
7 participate in the forestry riparian easement program for the affected  
8 harvest units.

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

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

15 (b) Standards for descriptions of the easement premises with a  
16 degree of precision that is reasonable in relation to the values  
17 involved;

18 (c) Methods and standards for cruises and valuation of forestry  
19 riparian easements for purposes of establishing the compensation. The  
20 department of natural resources shall perform the timber cruises of  
21 forestry riparian easements required under this chapter and chapter  
22 76.09 RCW. Any rules concerning the methods and standards for  
23 valuations of forestry riparian easements shall apply only to the  
24 department of natural resources, small forest landowners, and the small  
25 forest landowner office;

26 (d) A method to determine that a forest practices application  
27 involves a commercially reasonable harvest, and adopt criteria for  
28 entering into a forest riparian easement where a commercially  
29 reasonable harvest is not possible or a forest practices application  
30 that has been submitted cannot be approved because of restrictions  
31 under the forest practices rules;

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

34 (f) A formula for sharing of proceeds in relation to the  
35 acquisition of qualified timber covered by an easement through the  
36 exercise or threats of eminent domain by a federal or state agency with  
37 eminent domain authority, based on the present value of the department

1 of natural resources' and the landowner's relative interests in the  
2 qualified timber;

3 (g) High impact regulatory thresholds;

4 (h) A method to determine timber that is qualifying timber because  
5 it is rendered uneconomic to harvest by the rules adopted under RCW  
6 76.09.055 and 76.09.370; and

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

10 NEW SECTION. **Sec. 4.** (1) By July 1, 2012, the forest practices  
11 board shall initiate and complete a process to revise the forest  
12 practices rule currently codified as WAC 222-30-023 to reflect the  
13 following changes:

14 (a) Properties affected by WAC 222-30-023 must be excluded from the  
15 shade requirements of WAC 222-30-040;

16 (b) Except as otherwise provided in this section, all streams must  
17 be required to be buffered if the stream flows year round as surface  
18 water. Buffer sizes for type F and type Np streams, as those stream  
19 types are classified in WAC 222-16-030, must be limited as follows:

20 (i) Buffers for type F seasonal stream segments that are dry during  
21 parts of the year, and type Np stream segments with year round flowing  
22 water, may not be required to exceed thirty feet; and

23 (ii) Subterranean stream segments in both type F and type Np  
24 streams and all intermittent dry portions of the perennial channel  
25 below the uppermost point of perennial flow on type Np streams may not  
26 be required to have a buffer, except for areas within fifty feet of a  
27 type Np stream's perennial initiation point and areas where type F and  
28 type Np streams connect, in which case the buffer may not be required  
29 to exceed thirty feet;

30 (c) Rewriting of any forest practices rules necessary for the  
31 implementation of RCW 76.13.120, 70.13.130, and this section must be  
32 done in language that makes the requirements more understandable to a  
33 person who is not a forestry professional. In rewriting the language,  
34 the forest practices board shall make efforts to create buffer  
35 requirements that are able to be identified on the landscape without  
36 the assistance of forestry professionals.



1           (2) The forest practices board shall, in the execution of this  
2 section, give significant consideration to any pertinent  
3 recommendations from the small forest landowner advisory committee  
4 created in RCW 76.13.110 and any private organizations that represent  
5 the interests of small forest landowners.

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