

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE HOUSE BILL 1509**

62nd Legislature  
2011 Regular Session

Passed by the House April 13, 2011  
Yeas 96 Nays 0

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**Speaker of the House of Representatives**

Passed by the Senate April 7, 2011  
Yeas 47 Nays 0

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1509** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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ENGROSSED SUBSTITUTE HOUSE BILL 1509

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AS AMENDED BY THE SENATE

Passed Legislature - 2011 Regular Session

State of Washington

62nd Legislature

2011 Regular Session

By House Agriculture & Natural Resources (originally sponsored by Representatives Blake, Dunshee, and Ryu; by request of Commissioner of Public Lands)

READ FIRST TIME 02/16/11.

1 AN ACT Relating to the forestry riparian easement program; amending  
2 RCW 76.13.120, 76.13.140, and 76.13.160; adding new sections to chapter  
3 76.13 RCW; creating a new section; providing an effective date;  
4 providing an expiration date; and declaring an emergency.

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

6 **Sec. 1.** RCW 76.13.120 and 2004 c 102 s 1 are each amended to read  
7 as follows:

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

15 (2) The definitions in this subsection apply throughout this  
16 section and RCW 76.13.100 (~~and~~), 76.13.110, 76.13.140, and 76.13.160  
17 unless the context clearly requires otherwise.

18 (a) "Forestry riparian easement" means an easement covering

1 qualifying timber granted voluntarily to the state by a qualifying  
2 small forest landowner.

3 (b) "Qualifying small forest landowner" means a landowner meeting  
4 all of the following characteristics as of the date the department  
5 offers compensation for a forestry riparian easement:

6 (i) Is a small forest landowner as defined in (d) of this  
7 subsection; and

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

10 (c) "Qualifying timber" means those forest trees for which the  
11 small forest landowner is willing to grant the state a forestry  
12 riparian easement and must meet all of the following:

13 (i) The forest trees are covered by a forest practices application  
14 that the small forest landowner is required to leave unharvested under  
15 the rules adopted under RCW 76.09.055 and 76.09.370 or that is made  
16 uneconomic to harvest by those rules~~((, and for which the small~~  
17 ~~landowner is willing to grant the state a forestry riparian easement.~~  
18 ~~"Qualifying timber" is timber));~~

19 (ii) The forest trees are within or bordering a commercially  
20 reasonable harvest unit as determined under rules adopted by the forest  
21 practices board, or ((timber)) for which an approved forest practices  
22 application for timber harvest cannot be obtained because of  
23 restrictions under the forest practices rules;

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

26 (A) Riparian or other sensitive aquatic areas;

27 (B) Channel migration zones; or

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

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

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

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

34 ((+e)) (d) "Small forest landowner" means a landowner meeting all  
35 of the following characteristics:

36 (i) A forest landowner as defined in RCW 76.09.020 whose interest  
37 in the land and timber is in fee or who has rights to the timber to be  
38 included in the forestry riparian easement that extend at least fifty

1 years from the date the (~~forest practices~~) completed forestry  
2 riparian easement application associated with the easement is  
3 submitted;

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

8 (iii) An entity that certifies at the time of application that it  
9 does not expect to harvest from its own lands more than the volume  
10 allowed by RCW 84.33.035 during the ten years following application.  
11 If a landowner's prior three-year average harvest exceeds the limit of  
12 RCW 84.33.035, or the landowner expects to exceed this limit during the  
13 ten years following application, and that landowner establishes to the  
14 (~~department of natural resources~~) department's reasonable  
15 satisfaction that the harvest limits were or will be exceeded to raise  
16 funds to pay estate taxes or equally compelling and unexpected  
17 obligations such as court-ordered judgments or extraordinary medical  
18 expenses, the landowner shall be deemed to be a small forest landowner.  
19 For purposes of determining whether a person qualifies as a small  
20 forest landowner, the small forest landowner office, created in RCW  
21 76.13.110, shall evaluate the landowner under this definition, pursuant  
22 to RCW 76.13.160, as of the date that the forest practices application  
23 is submitted (~~or the date the landowner notifies the department that~~  
24 ~~the harvest is to begin with which the forestry riparian easement is~~  
25 ~~associated~~) and the date that the department offers compensation for  
26 the forestry riparian easement. A small forest landowner can include  
27 an individual, partnership, (~~corporate~~) corporation, or other  
28 nongovernmental legal entity. If a landowner grants timber rights to  
29 another entity for less than five years, the landowner may still  
30 qualify as a small forest landowner under this section. If a landowner  
31 is unable to obtain an approved forest practices application for timber  
32 harvest for any of his or her land because of restrictions under the  
33 forest practices rules, the landowner may still qualify as a small  
34 forest landowner under this section.

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

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

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

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

27 (~~(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. The small forest landowner office shall also determine the~~  
33 ~~compensation to be offered to a small forest landowner for qualifying~~  
34 ~~timber for which an approved forest practices application for timber~~  
35 ~~harvest cannot be obtained because of restrictions under the forest~~  
36 ~~practices rules. The legislature recognizes that there is not readily~~  
37 ~~available market transaction evidence of value for easements of this~~

1 nature, and thus establishes the following methodology to ascertain the  
2 value for forestry riparian easements. Values so determined shall not  
3 be considered competent evidence of value for any other purpose.

4 The small forest landowner office shall establish the volume of the  
5 qualifying timber. Based on that volume and using data obtained or  
6 maintained by the department of revenue under RCW 84.33.074 and  
7 84.33.091, the small forest landowner office shall attempt to determine  
8 the fair market value of the qualifying timber as of the date the  
9 forest practices application associated with the qualifying timber was  
10 submitted or the date the landowner notifies the department that the  
11 harvest is to begin. Removal of any qualifying timber before the  
12 expiration of the easement must be in accordance with the forest  
13 practices rules and the terms of the easement. There shall be no  
14 reduction in compensation for reentry)) The small forest landowner  
15 office shall determine what constitutes a completed application for a  
16 forestry riparian easement. Such an application shall, at a minimum,  
17 include documentation of the owner's status as a qualifying small  
18 forest landowner, identification of location and the types of  
19 qualifying timber, and notification of completion of harvest, if  
20 applicable.

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

1 ~~leave trees in the easement area; and (ii) execution and delivery of~~  
2 ~~the easement to the department of natural resources. Upon donation or~~  
3 ~~payment of compensation, the department of natural resources may record~~  
4 ~~the easement.~~

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

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

20 (b) The small forest landowner office, subject to the availability  
21 of amounts appropriated for this specific purpose, is responsible for  
22 assessing the volume of qualifying timber. However, no more than fifty  
23 percent of the total amounts appropriated for the forestry riparian  
24 easement program may be applied to determine the volume of qualifying  
25 timber for completed forestry riparian easement applications. Based on  
26 the volume established by the small forest landowner office and using  
27 data obtained or maintained by the department of revenue under RCW  
28 84.33.074 and 84.33.091, the small forest landowner office shall  
29 attempt to determine the fair market value of the qualifying timber as  
30 of the date the complete forestry riparian easement application is  
31 received. Removal of any qualifying timber before the expiration of  
32 the easement must be in accordance with the forest practices rules and  
33 the terms of the easement. There shall be no reduction in compensation  
34 for reentry.

35 (8)(a) Except as provided in subsection (9) of this section and  
36 subject to the availability of amounts appropriated for this specific  
37 purpose, the small forest landowner office shall offer compensation for  
38 qualifying timber to the qualifying small forest landowner in the

1 amount of fifty percent of the value determined by the small forest  
2 landowner office, plus the compliance and reimbursement costs as  
3 determined in accordance with RCW 76.13.140. However, compensation for  
4 any qualifying small forest landowner for qualifying timber located on  
5 potentially unstable slopes or landforms may not exceed a total of  
6 fifty thousand dollars during any biennial funding period.

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

9 (i) Completion of harvest in the area within a commercially  
10 reasonable harvest unit with which the forestry riparian easement is  
11 associated under an approved forest practices application, unless an  
12 approved forest practices application for timber harvest cannot be  
13 obtained because of restrictions under the forest practices rules;

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

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

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

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

32 (~~(+9)~~) (10) The forest practices board shall adopt rules under the  
33 administrative procedure act, chapter 34.05 RCW, to implement the  
34 forestry riparian easement program, including the following:

35 (a) A standard version (~~or versions of all~~) of a forestry  
36 riparian easement application as well as all additional documents  
37 necessary or advisable to create the forestry riparian easements as  
38 provided for in this section;

1 (b) Standards for descriptions of the easement premises with a  
2 degree of precision that is reasonable in relation to the values  
3 involved;

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

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

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

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

30 (g) High impact regulatory thresholds;

31 (h) A method to determine timber that is qualifying timber because  
32 it is rendered uneconomic to harvest by the rules adopted under RCW  
33 76.09.055 and 76.09.370; (~~(and)~~)

34 (i) A method for internal department (~~(of natural resources)~~)  
35 review of small forest landowner office compensation decisions under  
36 (~~(subsection (7) of)~~) this section; and

37 (j) Consistent with section 5 of this act, a method to collect  
38 reimbursement from landowners who received compensation for a forestry

1 riparian easement and who, within the first ten years after receipt of  
2 compensation for a forestry riparian easement, sells the land on which  
3 an easement is located to a nonqualifying landowner.

4 **Sec. 2.** RCW 76.13.140 and 2002 c 120 s 3 are each amended to read  
5 as follows:

6 In order to assist small forest landowners to remain economically  
7 viable, the legislature intends that the qualifying small forest  
8 landowners be able to net fifty percent of the value of the trees left  
9 in the buffer areas. The amount of compensation offered in RCW  
10 76.13.120 shall also include the compliance costs for participation in  
11 the forestry riparian easement program(~~(. For purposes of this~~  
12 ~~section, "compliance costs" includes)), including the cost of preparing  
13 and recording the forestry riparian easement, and any business and  
14 occupation tax and real estate excise tax imposed because of entering  
15 into the forestry riparian easement. The small forest landowner office  
16 may contract with private consultants that the office finds qualified  
17 to perform timber cruises of forestry riparian easements or to lay out  
18 streamside buffers and comply with other forest ~~((and fish))~~ practices  
19 regulatory requirements related to the ~~((forest))~~ forestry riparian  
20 easement program. The department shall reimburse qualifying small  
21 forest landowners for the actual costs incurred for laying out the  
22 streamside buffers and marking the qualifying timber once a contract  
23 has been executed for the forestry riparian easement program.  
24 Reimbursement is subject to the work being acceptable to the  
25 department. The small forest landowner office shall determine how the  
26 reimbursement costs will be calculated.~~

27 **Sec. 3.** RCW 76.13.160 and 2004 c 102 s 2 are each amended to read  
28 as follows:

29 When establishing a ~~((forest))~~ forestry riparian easement program  
30 applicant's status as a qualifying small forest landowner pursuant to  
31 RCW 76.13.120, the department shall not review the applicant's timber  
32 harvest records, or any other tax-related documents, on file with the  
33 department of revenue. The department of revenue may confirm or deny  
34 an applicant's status as a small forest landowner at the request of the  
35 department~~((+))~~. However, for the purposes of this section, the  
36 department of revenue may not disclose more information than whether or

1 not the applicant has reported a harvest or harvests totaling greater  
2 than or less than the qualifying thresholds established in RCW  
3 76.13.120. Nothing in this section, or RCW 84.33.280, prohibits the  
4 department from reviewing aggregate or general information provided by  
5 the department of revenue.

6 NEW SECTION. **Sec. 4.** A new section is added to chapter 76.13 RCW  
7 to read as follows:

8 (1) Before November 1st of each even-numbered year, the department  
9 must recommend to the governor a list of all forest riparian easement  
10 applications to be funded under RCW 76.13.120. The governor must  
11 determine the number of applications to receive funding and then submit  
12 the list in the capital budget request to the legislature. The list  
13 must include, but not be limited to, the date of the forestry riparian  
14 easement application, the type of qualifying timber, estimates of the  
15 value of the easement, aerial photograph maps of the application area,  
16 and an estimate of administrative costs for purchase of easements.

17 (2) The governor or the legislature may remove an application from  
18 the list if there is evidence that the applicant is a nonqualifying  
19 landowner for a forestry riparian easement.

20 NEW SECTION. **Sec. 5.** A new section is added to chapter 76.13 RCW  
21 to read as follows:

22 If, within the first ten years after receipt of compensation for a  
23 forestry riparian easement, a landowner sells the land on which an  
24 easement is located to a nonqualifying landowner, then the selling  
25 landowner must reimburse the state for the full compensation received  
26 for the forestry riparian easement. The department continues to hold,  
27 in the name of the state, the forestry riparian easement for the full  
28 term of the easement. The department may not transfer the easement to  
29 any entity other than another state agency.

30 NEW SECTION. **Sec. 6.** (1) The chair of the forest practices board  
31 shall invite relevant stakeholders to participate in a process that  
32 investigates, and ultimately recommends, a potential long-term funding  
33 source for the forestry riparian easement program established in  
34 chapter 76.13 RCW.

1           (2) The findings of, and recommendations from, the process required  
2 by this section must be reported to the appropriate committees of the  
3 legislature in the manner prescribed in RCW 43.01.036 by May 31, 2012.

4           (3) This section expires July 31, 2012.

5           NEW SECTION.   **Sec. 7.** This act is necessary for the immediate  
6 preservation of the public peace, health, or safety, or support of the  
7 state government and its existing public institutions, and takes effect  
8 July 1, 2011.

--- END ---