

SSB 5394 - H COMM AMD

By Committee on Agriculture & Natural Resources

NOT CONSIDERED 01/05/2018

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

3 "Sec. 1. RCW 76.13.120 and 2011 c 218 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 forest landowners willing to sell or donate (~~such~~)
8 easements to the state provided that the state will not be required
9 to acquire (~~such~~) the easements if they are subject to unacceptable
10 liabilities. Therefore the legislature (~~therefore~~) establishes a
11 forestry 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 forest landowner.

18 (b) "Qualifying small forest landowner" 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 forest landowner 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 for which the
26 small forest landowner is willing to grant the state a forestry
27 riparian easement and (~~must~~) meets all of the following:

28 (i) The forest trees are covered by a forest practices
29 application that the small forest landowner is required to leave
30 unharvested under the rules adopted under RCW 76.09.040, 76.09.055,
31 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 forest landowner" means a landowner meeting all of the
17 following characteristics:

18 (i) A forest landowner 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 years from the date the completed forestry riparian easement
22 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 years following application.
30 If a landowner's prior three-year average harvest exceeds the limit
31 of RCW 84.33.035, or the landowner expects to exceed this limit
32 during the ten years following application, and that landowner
33 establishes to the department's reasonable satisfaction that the
34 harvest limits were or will be exceeded to raise funds to pay estate
35 taxes or equally compelling and unexpected obligations such as court-
36 ordered judgments or extraordinary medical expenses, the landowner
37 shall be deemed to be a small forest landowner. For purposes of
38 determining whether a person qualifies as a small forest landowner,
39 the small forest landowner office, created in RCW 76.13.110, shall
40 evaluate the landowner under this definition, pursuant to RCW

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

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

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

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

27 (5) Forestry riparian easements shall be restrictive only, and
28 shall preserve all lawful uses of the easement premises by the
29 landowner that are consistent with the terms of the easement and the
30 requirement to protect riparian functions during the term of the
31 easement, subject to the restriction that the leave trees required by
32 the rules to be left on the easement premises may not be cut during
33 the term of the easement. No right of public access to or across, or
34 any public use of the easement premises is created by this statute or
35 by the easement. Forestry riparian easements shall not be deemed to
36 trigger the compensating tax of or otherwise disqualify land from
37 being taxed under chapter 84.33 or 84.34 RCW.

38 (6) The small forest landowner office shall determine what
39 constitutes a completed application for a forestry riparian easement.
40 ~~((Such))~~ An application shall, at a minimum, include documentation of

1 the owner's status as a qualifying small forest landowner,
2 identification of location and the types of qualifying timber, and
3 notification of completion of harvest, if applicable.

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

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

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

34 (8)(a) Except as provided in subsection (9) of this section and
35 subject to the availability of amounts appropriated for this specific
36 purpose, the small forest landowner office shall offer compensation
37 for qualifying timber to the qualifying small forest landowner in the
38 amount of fifty percent of the value determined by the small forest
39 landowner office, plus the compliance and reimbursement costs as
40 determined in accordance with RCW 76.13.140. However, compensation

1 for any qualifying small forest landowner for qualifying timber
2 located on potentially unstable slopes or landforms may not exceed a
3 total of fifty thousand dollars during any biennial funding period.

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

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

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

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

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

16 (9) For approved forest practices applications for which the
17 regulatory impact is greater than the average percentage impact for
18 all small forest landowners as determined by an analysis by the
19 department under the regulatory fairness act, chapter 19.85 RCW, the
20 compensation offered will be increased to one hundred percent for
21 that portion of the regulatory impact that is in excess of the
22 average. Regulatory impact includes all trees identified as
23 qualifying timber. A separate average or high impact regulatory
24 threshold shall be established for western and eastern Washington.
25 Criteria for these measurements and payments shall be established by
26 the small forest landowner office.

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

30 (a) A standard version of a forestry riparian easement
31 application as well as all additional documents necessary or
32 advisable to create the forestry riparian easements as provided for
33 in this section;

34 (b) Standards for descriptions of the easement premises with a
35 degree of precision that is reasonable in relation to the values
36 involved;

37 (c) Methods and standards for cruises and valuation of forestry
38 riparian easements for purposes of establishing the compensation. The
39 department shall perform the timber cruises of forestry riparian
40 easements required under this chapter and chapter 76.09 RCW. Timber

1 cruises are subject to amounts appropriated for this purpose.
2 However, no more than fifty percent of the total appropriated funding
3 for the forestry riparian easement program may be applied to
4 determine the volume of qualifying timber for completed forestry
5 riparian easement applications. Any rules concerning the methods and
6 standards for valuations of forestry riparian easements shall apply
7 only to the department, qualifying small forest landowners, and the
8 small 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 forestry 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
20 with eminent domain authority, based on the present value of the
21 department's and the landowner's relative interests in the qualified
22 timber;

23 (g) High impact regulatory thresholds;

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

27 (i) A method for internal department review of small forest
28 landowner office compensation decisions under this section; and

29 (j) Consistent with RCW 76.13.180, a method to collect
30 reimbursement from landowners who received compensation for a
31 forestry riparian easement and who, within the first ten years after
32 receipt of compensation for a forestry riparian easement, sells the
33 land on which an easement is located to a nonqualifying landowner.

34 (11) The legislature finds that the overall societal benefits of
35 economically viable working forests are multiple, and include the
36 protection of clean, cold water, the provision of wildlife habitat,
37 the sheltering of cultural resources from development, and the
38 natural carbon storage potential of growing trees. As such, working
39 forests and the forest riparian easement program may be part of the
40 state's overall carbon sequestration strategy. If the state creates a

1 climate strategy, the department must share information regarding the
2 carbon sequestration benefits of the forest riparian easement program
3 with other state programs using methods and protocols established in
4 the state climate strategy that attempt to quantify carbon storage or
5 account for carbon emissions. The department must promote the
6 expansion of funding for the forest riparian easement program and the
7 ecosystem services supported by the program based on the findings
8 stated in RCW 76.13.100. Nothing in this subsection allows a
9 landowner to be reimbursed by the state more than once for the same
10 forest riparian easement application."

11 Correct the title.

EFFECT: Directs the department of natural resources (DNR), in the event that the state adopts a climate strategy, to share information regarding the carbon sequestration benefits of the forest riparian easement program using methods and protocols established in the state climate strategy that attempt to quantify carbon storage or account for carbon emissions. Directs the DNR to promote the expansion of funding for the forest riparian easement program and the ecosystem services supported by the program. Prohibits the state from reimbursing a landowner more than once for the same riparian easement application.

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