

**SHB 2714** - S COMM AMD

By Committee on Agriculture, Water, Natural Resources & Parks

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

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that working  
4 forestland can be part of a climate strategy. The food and  
5 agricultural organization of the United Nations issued a report in  
6 2016 entitled "forestry for a low-carbon future" with specific  
7 recommendations for integrating forests and wood products in climate  
8 change strategies.

9 (2) The intergovernmental panel on climate change, or IPCC,  
10 released a report in 2019 entitled "IPCC special report on climate  
11 change, desertification, land degradation, sustainable land  
12 management, food security, and greenhouse gas fluxes in terrestrial  
13 ecosystems." This report identifies several measures where  
14 sustainable forest management and forest products can be utilized to  
15 maintain and enhance carbon sequestration, including afforestation  
16 and reforestation, to increase the carbon sequestration potential of  
17 trees by maintaining the forestland base.

18 (3) Small forestland owners can enhance the state's ability to  
19 continue to sequester carbon by maintaining healthy forests and  
20 producing forest products. Small forestland owners should be  
21 encouraged to maintain their land as working forests. One way to do  
22 so is to recognize the value of sequestered carbon in forest riparian  
23 easements created in RCW 76.13.120.

24 **Sec. 2.** RCW 76.13.120 and 2017 c 140 s 1 are each amended to  
25 read as follows:

26 (1) The legislature finds that the state should acquire easements  
27 primarily along riparian and other sensitive aquatic areas from  
28 qualifying small forestland owners willing to sell or donate  
29 easements to the state provided that the state will not be required  
30 to acquire the easements if they are subject to unacceptable

1 liabilities. Therefore the legislature establishes a forestry  
2 riparian easement program.

3 (2) The definitions in this subsection apply throughout this  
4 section and RCW 76.13.100, 76.13.110, 76.13.140, and 76.13.160 unless  
5 the context clearly requires otherwise.

6 (a) "Forestry riparian easement" means an easement covering  
7 qualifying timber granted voluntarily to the state by a qualifying  
8 small forestland owner.

9 (b) "Qualifying small forestland owner" means a landowner meeting  
10 all of the following characteristics as of the date the department  
11 offers compensation for a forestry riparian easement:

12 (i) Is a small forestland owner as defined in (d) of this  
13 subsection; and

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

16 (c) "Qualifying timber" means those forest trees for which the  
17 small forestland owner is willing to grant the state a forestry  
18 riparian easement and meets all of the following:

19 (i) The forest trees are covered by a forest practices  
20 application that the small forestland owner is required to leave  
21 unharvested under the rules adopted under RCW 76.09.040, 76.09.055,  
22 and 76.09.370 or that is made uneconomic to harvest by those rules;

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

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

30 (A) Riparian or other sensitive aquatic areas;

31 (B) Channel migration zones; or

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

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

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

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

38 (d) "Small forestland owner" means a landowner meeting all of the  
39 following characteristics:

1 (i) A forestland owner as defined in RCW 76.09.020 whose interest  
2 in the land and timber is in fee or who has rights to the timber to  
3 be included in the forestry riparian easement that extend at least  
4 fifty years from the date the completed forestry riparian easement  
5 application associated with the easement is submitted;

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

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

35 (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.

38 (3) The department is authorized and directed to accept and hold  
39 in the name of the state of Washington forestry riparian easements  
40 granted by qualifying small forestland owners covering qualifying

1 timber and to pay compensation to the landowners in accordance with  
2 this section. The department may not transfer the easements to any  
3 entity other than another state agency.

4 (4) Forestry riparian easements shall be effective for fifty  
5 years from the date of the completed forestry riparian easement  
6 application, unless the easement is voluntarily terminated earlier by  
7 the department, based on a determination that termination is in the  
8 best interest of the state, or under the terms of a termination  
9 clause in the easement.

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

21 (6) The small forestland owner office shall determine what  
22 constitutes a completed application for a forestry riparian easement.  
23 An application shall, at a minimum, include documentation of the  
24 owner's status as a qualifying small forestland owner, identification  
25 of location and the types of qualifying timber, and notification of  
26 completion of harvest, if applicable.

27 (7) Upon receipt of the qualifying small forestland owner's  
28 forestry riparian easement application, and subject to the  
29 availability of amounts appropriated for this specific purpose, the  
30 following must occur:

31 (a) The small forestland owner office must determine the  
32 compensation to be offered to the qualifying small forestland owner  
33 for qualifying timber after the department accepts the completed  
34 forestry riparian easement application and the landowner has  
35 completed marking the boundary of the area containing the qualifying  
36 timber. The legislature recognizes that there is not readily  
37 available market transaction evidence of value for easements of the  
38 nature required by this section, and thus establishes the methodology  
39 provided in this subsection to ascertain the value for forestry

1 riparian easements. Values so determined may not be considered  
2 competent evidence of value for any other purpose.

3 (b) The small forestland owner office, subject to the  
4 availability of amounts appropriated for this specific purpose, is  
5 responsible for assessing the volume of qualifying timber. However,  
6 no more than fifty percent of the total amounts appropriated for the  
7 forestry riparian easement program may be applied to determine the  
8 volume of qualifying timber for completed forestry riparian easement  
9 applications. Based on the volume established by the small forestland  
10 owner office and using data obtained or maintained by the department  
11 of revenue under RCW 84.33.074 and 84.33.091, the small forestland  
12 owner office shall attempt to determine the fair market value of the  
13 qualifying timber as of the date the complete forestry riparian  
14 easement application is received. Removal of any qualifying timber  
15 before the expiration of the easement must be in accordance with the  
16 forest practices rules and the terms of the easement. There shall be  
17 no reduction in compensation for reentry.

18 (8)(a) Any state program that places a value on carbon may  
19 recognize and include the value of the carbon stored in forest  
20 riparian easements.

21 (b) For all riparian easements, if the landowner has not been  
22 compensated for the value of the carbon under this section, the  
23 landowner may market the carbon stored in the easement.

24 (9)(a) Except as provided in subsection ((+9+)) (10) of this  
25 section and subject to the availability of amounts appropriated for  
26 this specific purpose, the small forestland owner office shall offer  
27 compensation for qualifying timber to the qualifying small forestland  
28 owner in the amount of fifty percent of the value of the timber  
29 determined by the small forestland owner office, plus the compliance  
30 and reimbursement costs as determined in accordance with RCW  
31 76.13.140. However, compensation for any qualifying small forestland  
32 owner for qualifying timber located on potentially unstable slopes or  
33 landforms may not exceed a total of fifty thousand dollars during any  
34 biennial funding period.

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

37 (i) Completion of harvest in the area within a commercially  
38 reasonable harvest unit with which the forestry riparian easement is  
39 associated under an approved forest practices application, unless an

1 approved forest practices application for timber harvest cannot be  
2 obtained because of restrictions under the forest practices rules;

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

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

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

8 (~~(9)~~) (10) For approved forest practices applications for which  
9 the regulatory impact is greater than the average percentage impact  
10 for all small forestland owners as determined by an analysis by the  
11 department under the regulatory fairness act, chapter 19.85 RCW, the  
12 compensation offered will be increased to one hundred percent for  
13 that portion of the regulatory impact that is in excess of the  
14 average. Regulatory impact includes all trees identified as  
15 qualifying timber. A separate average or high impact regulatory  
16 threshold shall be established for western and eastern Washington.  
17 Criteria for these measurements and payments shall be established by  
18 the small forestland owner office.

19 (~~(10)~~) (11) The forest practices board shall adopt rules under  
20 the administrative procedure act, chapter 34.05 RCW, to implement the  
21 forestry riparian easement program, including the following:

22 (a) A standard version of a forestry riparian easement  
23 application as well as all additional documents necessary or  
24 advisable to create the forestry riparian easements as provided for  
25 in this section;

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

29 (c) Methods and standards for cruises and valuation of forestry  
30 riparian easements for purposes of establishing the compensation. The  
31 department shall perform the timber cruises of forestry riparian  
32 easements required under this chapter and chapter 76.09 RCW. Timber  
33 cruises are subject to amounts appropriated for this purpose.  
34 However, no more than fifty percent of the total appropriated funding  
35 for the forestry riparian easement program may be applied to  
36 determine the volume of qualifying timber for completed forestry  
37 riparian easement applications. Any rules concerning the methods and  
38 standards for valuations of forestry riparian easements shall apply  
39 only to the department, qualifying small forestland owners, and the  
40 small forestland owner 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 forestry 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  
12 with eminent domain authority, based on the present value of the  
13 department's and the landowner's relative interests in the qualified  
14 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  
18 under RCW 76.09.055 and 76.09.370;

19 (i) A method for internal department review of small forestland  
20 owner office compensation decisions under this section; and

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

26 ~~((11))~~ (12) The legislature finds that the overall societal  
27 benefits of economically viable working forests are multiple, and  
28 include the protection of clean, cold water, the provision of  
29 wildlife habitat, the sheltering of cultural resources from  
30 development, and the natural carbon storage potential of growing  
31 trees. As such, working forests and the forest riparian easement  
32 program may be part of the state's overall carbon sequestration  
33 strategy. If the state creates a climate strategy, the department  
34 must share information regarding the carbon sequestration benefits of  
35 the forest riparian easement program with other state programs using  
36 methods and protocols established in the state climate strategy that  
37 attempt to quantify carbon storage or account for carbon emissions.  
38 The department must promote the expansion of funding for the forest  
39 riparian easement program and the ecosystem services supported by the  
40 program based on the findings stated in RCW 76.13.100. Nothing in

1 this subsection allows a landowner to be reimbursed by the state more  
2 than once for the same forest riparian easement application for  
3 timber or carbon, but reimbursement for timber and carbon on  
4 qualifying timber is permissible."

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5 On page 1, line 2 of the title, after "easements;" strike the  
6 remainder of the title and insert "amending RCW 76.13.120; and  
7 creating a new section."

EFFECT: Clarifies that a small forest landowner may market carbon stored in an easement if they have not been compensated for the value of the carbon under the easement program. Removes the requirement for the Department of Natural Resources to calculate the amount of carbon stored in qualifying timber using established formulas. Removes the requirement for future riparian easements to include the full value of carbon stored in all qualifying timber if the state develops markets for valuing carbon.

Provides that any state program that places a value on carbon may, rather than must, recognize and include the value of the carbon stored in forest riparian easements.

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