
SENATE BILL 5667

State of Washington

68th Legislature

2023 Regular Session

By Senators Muzzall, Van De Wege, Short, Wagoner, and Wellman

Read first time 02/01/23. Referred to Committee on Agriculture, Water, Natural Resources & Parks.

1 AN ACT Relating to eligibility, enrollment, and compensation of
2 small forestland owners volunteering for participation in the
3 forestry riparian easement program; and amending RCW 76.13.120,
4 76.13.130, and 76.13.140.

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

6 **Sec. 1.** RCW 76.13.120 and 2017 c 140 s 1 are each amended to
7 read 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 forestland owners willing to sell or donate
11 easements to the state provided that the state will not be required
12 to acquire the easements if they are subject to unacceptable
13 liabilities. Therefore the legislature establishes a forestry
14 riparian easement program.

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

18 (a) "Forestry riparian easement" means an easement covering
19 qualifying timber granted voluntarily to the state by a qualifying
20 small forestland owner.

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

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

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

8 (c) "Qualifying timber" means those forest trees on land owned by
9 a qualifying small forestland owner for which the small forestland
10 owner is willing to grant the state a forestry riparian easement and
11 meets all of the following:

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

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

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

23 (A) Riparian or other sensitive aquatic areas;

24 (B) Channel migration zones; or

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

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

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

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

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

33 (i) A forestland owner as defined in RCW 76.09.020 whose interest
34 in the land and timber is in fee or who has rights to the timber to
35 be included in the forestry riparian easement that extend at least
36 (~~fifty~~) 40 years from the date the completed forestry riparian
37 easement application associated with the easement is submitted;

38 (ii) An entity that has harvested from its own lands in this
39 state during the three years prior to the year of application an

1 average timber volume that would qualify the owner as a small
2 harvester under RCW 84.33.035; and

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

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

32 (3) Nothing in the eligibility limit identified in subsection
33 (2)(c)(i) through (iii) of this section precludes inclusion of land
34 in future mitigation programs.

35 (4) The department is authorized and directed to accept and hold
36 in the name of the state of Washington forestry riparian easements
37 granted by qualifying small forestland owners covering qualifying
38 timber and to pay compensation to the landowners in accordance with
39 this section. The department may not transfer the easements to any
40 entity other than another state agency.

1 (~~(4)~~) (5) Forestry riparian easements shall be effective for
2 (~~(fifty)~~) 40 years from the date of the completed forestry riparian
3 easement application, unless the easement is voluntarily terminated
4 earlier by the department, based on a determination that termination
5 is in the best interest of the state, or under the terms of a
6 termination clause in the easement.

7 (~~(5)~~) (6) Forestry riparian easements shall be restrictive of
8 the timber only, and shall preserve all lawful uses of the easement
9 premises by the landowner that are consistent with the terms of the
10 easement and the requirement to protect riparian functions during the
11 term of the easement, subject to the restriction that the leave trees
12 required by the rules to be left on the easement premises may not be
13 cut during the term of the easement. No right of public access to or
14 across, or any public use of the easement premises is created by this
15 statute or by the easement. Forestry riparian easements shall not be
16 deemed to trigger the compensating tax of or otherwise disqualify
17 land from being taxed under chapter 84.33 or 84.34 RCW.

18 (~~(6)~~) (7) The small forestland owner office shall determine
19 what constitutes a completed application for a forestry riparian
20 easement. An application shall, at a minimum, include documentation
21 of the owner's status as a qualifying small forestland owner,
22 identification of location and the types of qualifying timber, and
23 notification of completion of harvest, if applicable.

24 (~~(7)~~) (8) Upon receipt of the qualifying small forestland
25 owner's forestry riparian easement application, and subject to the
26 availability of amounts appropriated for this specific purpose, the
27 following must occur:

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

39 (b) The small forestland owner office, subject to the
40 availability of amounts appropriated for this specific purpose, is

1 responsible for assessing the volume of qualifying timber. However,
2 no more than (~~fifty~~) 50 percent of the total amounts appropriated
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. Based on the volume established by
6 the small forestland owner office and using data obtained or
7 maintained by the department of revenue under RCW 84.33.074 and
8 84.33.091, the small forestland owner office shall attempt to
9 determine the fair market value of the qualifying timber as of the
10 date of the complete forestry riparian easement application (~~is~~).
11 To the extent reasonably possible, the forestry riparian easement
12 applications should be processed in the order received. Removal of
13 any qualifying timber before the expiration of the easement must be
14 in accordance with the forest practices rules and the terms of the
15 easement. There shall be no reduction in compensation for reentry.

16 (~~(8)~~) (9) (a) (~~Except as provided in subsection (9) of this~~
17 ~~section and subject~~) Subject to the availability of amounts
18 appropriated for this specific purpose, the small forestland owner
19 office shall offer compensation for qualifying timber to the
20 qualifying small forestland owner in the amount of (~~fifty~~) 90
21 percent of the value determined by the small forestland owner office,
22 plus the compliance and reimbursement costs as determined in
23 accordance with RCW 76.13.140. However, compensation for any
24 qualifying small forestland owner for qualifying timber located on
25 potentially unstable slopes or landforms may not exceed a total of
26 (~~fifty thousand dollars~~) \$150,000 during any biennial funding
27 period.

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

30 (i) Completion of harvest in the area within a commercially
31 reasonable harvest unit with which the forestry riparian easement is
32 associated under an approved forest practices application, unless an
33 approved forest practices application for timber harvest cannot be
34 obtained because of restrictions under the forest practices rules;

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

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

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

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

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

15 ~~((a))~~ (i) A standard version of a forestry riparian easement
16 application as well as all additional documents necessary or
17 advisable to create the forestry riparian easements as provided for
18 in this section;

19 ~~((b))~~ (ii) Standards for descriptions of the easement premises
20 with a degree of precision that is reasonable in relation to the
21 values involved;

22 ~~((c))~~ (iii) Methods and standards for cruises and valuation of
23 forestry riparian easements for purposes of establishing the
24 compensation. The department shall perform the timber cruises of
25 forestry riparian easements required under this chapter and chapter
26 76.09 RCW. Timber cruises are subject to amounts appropriated for
27 this purpose. However, no more than ~~((fifty))~~ 50 percent of the total
28 appropriated funding for the forestry riparian easement program may
29 be applied to determine the volume of qualifying timber for completed
30 forestry riparian easement applications. Any rules concerning the
31 methods and standards for valuations of forestry riparian easements
32 shall apply only to the department, qualifying small forestland
33 owners, and the small forestland owner office;

34 ~~((d))~~ (iv) A method to determine that a forest practices
35 application involves a commercially reasonable harvest, and adopt
36 criteria for entering into a forestry riparian easement where a
37 commercially reasonable harvest is not possible or a forest practices
38 application that has been submitted cannot be approved because of
39 restrictions under the forest practices rules;

1 ~~((e))~~ (v) A method to address blowdown of qualified timber
2 falling outside the easement premises;

3 ~~((f))~~ (vi) A formula for sharing of proceeds in relation to the
4 acquisition of qualified timber covered by an easement through the
5 exercise or threats of eminent domain by a federal or state agency
6 with eminent domain authority, based on the present value of the
7 department's and the landowner's relative interests in the qualified
8 timber;

9 ~~((g))~~ (vii) High impact regulatory thresholds;

10 ~~((h))~~ (viii) A method to determine timber that is qualifying
11 timber because it is rendered uneconomic to harvest by the rules
12 adopted under RCW 76.09.055 and 76.09.370;

13 ~~((i))~~ (ix) A method for internal department review of small
14 forestland owner office compensation decisions under this section;
15 and

16 ~~((j))~~ (x) Consistent with RCW 76.13.180, a method to collect
17 reimbursement from landowners who received compensation for a
18 forestry riparian easement and who, within the first ~~((ten))~~ 10 years
19 after receipt of compensation for a forestry riparian easement, sells
20 the land on which an easement is located to a nonqualifying
21 landowner.

22 (b) At least semiannually, the department shall consult with the
23 small forestland owner advisory committee established in RCW
24 76.13.110(4) to review landowner complaints, administrative
25 processes, rule recommendations, and related issues where the
26 department is actively seeking the small forestland owner advisory
27 committee's advice on potential improved efficiencies and
28 effectiveness.

29 (11) The legislature finds that the overall societal benefits of
30 economically viable working forests are multiple, and include the
31 protection of clean, cold water, the provision of wildlife habitat,
32 the sheltering of cultural resources from development, and the
33 natural carbon storage potential of growing trees. As such, working
34 forests and the ~~((forest—[forestry]))~~ forestry riparian easement
35 program may be part of the state's overall carbon sequestration
36 strategy. If the state creates a climate strategy, the department
37 must share information regarding the carbon sequestration benefits of
38 the ~~((forest—[forestry]))~~ forestry riparian easement program with
39 other state programs using methods and protocols established in the
40 state climate strategy that attempt to quantify carbon storage or

1 account for carbon emissions. The department must promote the
2 expansion of funding for the (~~forest~~ ~~[forestry]~~) forestry riparian
3 easement program and the ecosystem services supported by the program
4 based on the findings stated in RCW 76.13.100. Nothing in this
5 subsection allows a landowner to be reimbursed by the state more than
6 once for the same forest riparian easement application.

7 (12) The small forestland owner office must complete forestry
8 riparian easement program application transactions within two years
9 of the application receipt consistent with the goals of RCW
10 70A.65.270(2)(b)(iii).

11 (a) Funding through the natural climate solutions account created
12 in RCW 70A.65.270 for payments to the forestry riparian easement
13 program are provided solely for the easement timber value and are not
14 considered payment for the net carbon value of the timber remaining
15 on-site, nor its potential for sequestering additional carbon during
16 the term of the forestry riparian easement program easement.

17 (b) If the amounts appropriated are insufficient to cover program
18 reimbursement over the upcoming two-year period, the department shall
19 make a declaration that will temporarily allow all small forestland
20 owners to be eligible for small parcel alternative management plans
21 under RCW 76.13.130, provided the parcel's harvests do not exceed 20
22 acres as described in RCW 76.13.130. If a small forestland owner
23 chooses to participate in a small parcel alternative management plan
24 due to their eligibility under this subsection, they are not eligible
25 for forestry riparian easement compensation on that harvest.

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

28 (1) On parcels of (~~twenty~~) 20 contiguous acres or less,
29 landowners with a total parcel ownership of less than (~~eighty~~) 80
30 acres shall not be required to leave riparian buffers adjacent to
31 streams according to forest practices rules adopted under the forests
32 and fish report as defined in RCW 76.09.020. These landowners shall
33 be subject to the permanent forest practices rules in effect as of
34 January 1, 1999, but may additionally be required to leave timber
35 adjacent to streams that is equivalent to no greater than (~~fifteen~~)
36 15 percent of a volume of timber contained in a stand of well managed
37 (~~fifty-year~~) 50-year old commercial timber covering the harvest
38 area. The additional (~~fifteen~~) 15 percent leave tree level shall be
39 computed as a rotating stand volume and shall be regulated through

1 flexible forest practices as the stream buffer is managed over time
2 to meet riparian functions.

3 (2) On parcels of (~~twenty~~) 20 contiguous acres or less the
4 small forestland owner office shall work with landowners with a total
5 parcel ownership of less than (~~eighty~~) 80 acres to develop
6 alternative management plans for riparian buffers. Such alternative
7 plans shall provide for the removal of leave trees as other new trees
8 grow in order to ensure the most effective protection of critical
9 riparian function. The office may recommend reasonable modifications
10 in alternative management plans of such landowners to further reduce
11 risks to public resources and endangered species so long as the
12 anticipated operating costs are not unreasonably increased and the
13 landowner is not required to leave a greater volume than the
14 threshold level. To qualify for the provisions of this section,
15 parcels must be (~~twenty~~) 20 acres or less in contiguous ownership,
16 and owners cannot have ownership interests in a total of more than
17 (~~eighty~~) 80 acres of forestlands within the state.

18 (3) If the department declares that there is insufficient funding
19 for the forestry riparian easement program, the small parcel
20 alternative management plan option under this section is available to
21 all small forestland owners provided their harvest units are no
22 larger than 20 acres. When sufficient funding becomes available, the
23 department may stop accepting small forestland owner forest practice
24 harvest applications that qualify under this section, provided that
25 any forest practice harvest applications already received may be
26 allowed to continue.

27 **Sec. 3.** RCW 76.13.140 and 2011 c 218 s 2 are each amended to
28 read as follows:

29 In order to assist small forestland owners to remain economically
30 viable, the legislature intends that the qualifying small forestland
31 owners be able to net (~~fifty~~) 90 percent of the value of the trees
32 left in the buffer areas. The small forestland owner office may
33 utilize landowners' actual mill receipts to help determine fair
34 market value but may not require these documents in any valuation
35 process. The amount of compensation offered in RCW 76.13.120 shall
36 also include the compliance costs for participation in the forestry
37 riparian easement program, including the cost of preparing and
38 recording the forestry riparian easement, and any business and
39 occupation tax and real estate excise tax imposed because of entering

1 into the forestry riparian easement. The small forestland owner
2 office may contract with private consultants that the office finds
3 qualified to perform timber cruises of forestry riparian easements or
4 to lay out streamside buffers and comply with other forest practices
5 regulatory requirements related to the forestry riparian easement
6 program. The department shall reimburse qualifying small forestland
7 owners for the actual costs incurred for laying out the streamside
8 buffers and marking the qualifying timber once a contract has been
9 executed for the forestry riparian easement program. Reimbursement is
10 subject to the work being acceptable to the department. The small
11 forestland owner office shall determine how the reimbursement costs
12 will be calculated.

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