



**DEPARTMENT OF
NATURAL RESOURCES**

Forest Practices Division
1111 Washington St SE
Olympia, WA 98504

360-902-1400
FPD@DNR.WA.GOV
WWW.DNR.WA.GOV

MEMORANDUM

DATE: April 16, 2024

TO: Forest Practices Board

FROM: Maggie Franquemont, Forest Regulation Policy Program Manager

SUBJECT: Forestry Riparian Easement Program (FREP) Rulemaking

On May 7, 2024, I will request the Board's approval of the amended Forestry Riparian Easement Program (FREP) Forest Practice Rules; WAC 222-21-005, WAC 222-21-010, WAC 222-21-030, WAC 222-21-045, WAC 222-21-050, and WAC 222-21-080 (attached). I will also ask the Board request staff to file the CR-105 form with the Code Revisor's Office to initiate expedited rulemaking.

This rulemaking encompasses two different criteria for expedited rule adoption.

Content is explicitly and specifically dictated by statute.

In March of 2024 the Washington State Legislature passed Substitute Senate Bill (SSB) 5667 (attached) which amended RCW 76.13.120 and RCW 76.13.140. This bill was signed on March 18th and will become effective on June 6, 2024. The overall purpose of SSB 5667 was to modify FREP to better serve the small forest landowner community. The specific changes are:

- Clarification on the definitions of "qualifying timber" and "completion of harvest",
- Shorting the easement term from 50 years to 40 years,
- Changing the date used for easement valuation from the date the small forest landowner office receives the forest riparian easement application to the date of completion of harvest,
- Increasing compensation from 50% of the value of the trees left in the buffer to 90% of the value,
- Eliminate the high impact regulatory threshold determination, and
- Increase the funding available for landowners with qualifying timber on unstable slopes from \$50,000 to \$150,000 per biennium.

With these changes several rules within chapter 222-21 WAC need to be amended to implement the new RCW language. The attached draft language has been modified as follows:

- WAC 222-21-005

- Addresses the new requirements for DNR to consult with the Small Forest Landowner Advisory Committee on a semiannual basis.
- WAC 222-21-010
 - Addresses the modified definitions.
- WAC 222-21-030
 - Adds date of completed harvest to the list of information that landowners will provide in their forestry riparian easement application.
 - Updates RCW numbers to match
 - Changes the easement term to 40 years.
- WAC 222-21-045
 - Changes what date the small forest landowner office will use for valuation purposes from the date the office receives the forest riparian application to the date of complete harvest.
 - Eliminates reference to a time adjustment index for adjusting valuation differences between when the forest riparian application is received and the completed harvest date.
 - Eliminates the references to high impact regulatory threshold and the accompanying process for determining that threshold.
 - Eliminates the formula for determining compensation value.
 - Sets the compensation value at 90%.
- WAC 222-21-050
 - Adds language requiring the small forest landowner office to process easement applications in the order received.
 - Changes the compensation amount for easements on unstable slopes or landforms to \$150,000 per biennium.

Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its meaning.

Several rules within chapter 222-21 WAC had sections that could be fixed with expedited rulemaking outside of the explicit direction of SSB 5667. DNR staff chose to take advantage of the work being done above to also fix these sections.

- WAC 222-21-010
 - Changes out of date RCW numbers to the RCW numbers where they have been recodified.
- WAC 222-21-045
 - Clarifies language on when the stumpage valuation determination method or the small harvester tax return method without changing the rules meaning.
- WAC 222-21-080
 - Corrects a typographical error in the formula for determining the state's compensation if a forestry riparian easement is taken by eminent domain.

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DNR staff drafted all the amended rule language and stakeholders were consulted to ensure that everything within SSB 5667 was sufficiently addressed. Stakeholders also looked at the changes being made for clarification and typographical errors to ensure that the changes made did not change the rule's meaning.

If you have any questions feel free to contact me at maggie.franquemont@dnr.wa.gov.

MF/

Attachment:

Draft FREP Rulemaking Language

SSB 5667 Session Law

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WAC 222-21-005 Policy.

The legislature has found that further reduction in harvestable timber owned by small forest landowners as a result of the rules adopted under RCW 76.09.055 or 76.09.370 will further erode small landowners' economic viability and willingness or ability to keep the lands in forestry use and, therefore, reduce the amount of habitat available for salmon recovery and conservation of other aquatic resources. The legislature addressed these concerns by establishing a forestry riparian easement program to acquire easements from qualifying small forest landowners along riparian and other areas of value to the state for protection of aquatic resources. At least semiannually, the department shall consult with the small forest landowner advisory committee established in RCW 76.13.110(4) to review landowner complaints, administrative processes, rule recommendations, and related issues where the department is actively seeking the small forest landowner advisory committee's advice on potential improved efficiencies and effectiveness.

WAC 222-21-010 Definitions.

The following definitions apply to this chapter:

- (1) "Completion of harvest" means that the trees within the from an area under an approved forest practices application have been commercially harvested and further entry into that area by any type of logging or slash treating equipment or method is not expected.
- (2) "Easement premises" means the geographic area designated in a forestry riparian easement including areas in which qualifying timber is located.
- (3) "Forestry riparian easement" means a conservation easement covering qualifying timber granted voluntarily to the state by a qualifying small forest landowner.
- (4) "Forests and fish rules" means the rules adopted by the board in accordance with RCW 76.09.055, 76.09.370, and the amendments to those rules.
- (5) "Hazardous substances" includes, but is not limited to, hazardous substances as defined in RCW ~~70.102.010~~ 10A.415.101 and ~~70.105D.02070A.305.010~~, and solid waste as defined in RCW ~~70.95.03070A.205.015~~.
- (6) "Qualifying small forest landowner" means an owner of forest land with qualifying timber meeting all of the criteria in (a)(i) through (iv) of this subsection as of the date the department receives a forest practices application associated with a proposed forestry riparian easement, and the date the department offers compensation for the easement.
 - (a) A qualifying small forest landowner:
 - (i) Is an individual, partnership, corporation, or other nongovernmental for-profit legal entity. If a landowner grants timber rights to another entity for less than five years, the landowner may still be a qualifying small forest landowner under this chapter;
 - (ii) Has a fee interest in the land and timber or has rights to harvest the timber to be included in the forestry riparian easement that extend at least fifty-fourty years from the date the completed forestry riparian easement application is submitted to and received by the small forest landowner office;
 - (iii) Has no outstanding violations of chapters 76.09 or 76.13 RCW or any associated forest practices rules;

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1 (iv) Has harvested or expects to harvest from his or her forest lands in this state as
2 follows:

3 (A) No more than the average volume that would qualify the landowner as a
4 "small harvester" under RCW 84.33.035 during the three years prior to
5 the year the department receives a complete forest practices application
6 associated with the easement, and certifies that he or she does not expect
7 to exceed that average timber volume during the ten years following the
8 date of the offer of compensation for the easement; or

9 (B) If the landowner can establish to the satisfaction of the small forest
10 landowner office that those harvest limits were or will be exceeded to
11 raise funds to pay estate taxes or other equally compelling and
12 unexpected obligations such as court-ordered judgments or extraordinary
13 expenses, the landowner may still be a qualifying small forest
14 landowner.

15 (b) To be eligible for a forestry riparian easement, a qualifying small forest landowner must
16 have submitted a forest practices application covering qualifying timber to the
17 appropriate region office, and the department must have approved the application or
18 disapproved it because of forests and fish rule restrictions. See WAC 222-21-032 for
19 more information about easement eligibility.

20 (7) "Qualifying timber" means forest trees on land owned by a qualifying small forestland owner
21 for which the small forestland owner is willing to grant the state a forestry riparian easement and that
22 meet criteria (a) through (c) of this subsection:

23 (a) Are covered by a forest practices application.

24 (b) Fit one of the following situations:

25 (i) The timber is required to be left unharvested because of forests and fish rule
26 restrictions and is within, immediately adjacent to, or physically connected to a
27 commercially reasonable harvest unit under an approved forest practices
28 application; or

29 (ii) The timber cannot be approved for harvest under a forest practices application
30 because of forests and fish rule restrictions.

31 (c) Are located within one or more of the following areas:

32 (i) Riparian or other sensitive aquatic areas;

33 (ii) Channel migration zones; or

34 (iii) Areas of potentially unstable slopes or landforms, verified by the department,
35 that have the potential to deliver sediment or debris to a public resource or
36 threaten public safety and are immediately adjacent to or physically connected
37 to other qualifying timber that is located within riparian or other sensitive
38 aquatic areas.

39 Qualifying timber may also mean forest trees that do not meet criteria (b) or (c) of this
40 subsection if they are uneconomic to harvest as determined under WAC 222-21-032(6).

41 (8) "Small forest landowner office" means an office within the department of natural resources.
42 The office is a resource and focal point for small forest landowner concerns and policies, and
43 has expertise regarding the management of small forest holdings and government programs
44 applicable to such holdings. The office manages the forestry riparian easement program.

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WAC 222-21-030 Documentation and standards. *[Effective 3/24/21]*

- (1) Forest practices application. Prior to submitting a forestry riparian easement application, the landowner must have an approved forest practices application or an application that was disapproved because of forests and fish rule restrictions.
- (2) Forestry riparian easement application. The landowner will provide the following information in a forestry riparian easement application:
 - (a) County tax parcel numbers of the property in the proposed easement premises;
 - (b) A list of all forest practices application numbers of approved and/or disapproved forest practices applications;
 - (c) Date of completed harvest;
 - (~~ed~~) The landowner's signature certifying that the landowner meets the criteria of a qualifying small forest landowner and documenting that the landowner is willing to sell or donate such easements to the state; and
 - (~~de~~) Documentation that qualifying timber within or immediately adjacent to, or physically connected to a commercially reasonable harvest area, cannot be harvested because of forests and fish rule restrictions, or is uneconomic to harvest because of forests and fish rule restrictions. See WAC 222-21-032 for additional information about these eligibility criteria.

The small forest landowner office may require additional information from the applicant to process the application and evaluate the eligibility of the proposed easement premises and the landowner.

- (3) Baseline documentation. The small forest landowner office will gather baseline documentation that will describe the features and current uses on the proposed forestry riparian easement premises and the qualifying timber. The documentation will include but not be limited to:
 - (a) A summary of cruise information consistent with the standards and methods in WAC 222-21-040; and
 - (b) An assessment to determine site condition and potential liabilities associated with the proposed riparian easement premises.
- (4) Forestry riparian easement contract. The forestry riparian easement contract will identify the parties, describe the land, locate the easement, state the terms and conditions, and provide a statement of consideration. The contract will include language consistent with RCW 76.13.120(~~56~~) concerning the preservation of all lawful uses of the easement premises by the landowner. The easement will be for a term of fiftyforty years from the date the completed forestry riparian easement application is submitted to and received by the small forest landowner office.
- (5) Land description standards.
 - (a) The forestry riparian easement contract will include a description of the easement premises using a land survey provided by the department unless the cost of securing the survey would be unreasonable in relation to the value of the easement conveyed.
 - (b) When the small forest landowner office determines a land survey is not required, the department will prepare a written description that suitably and accurately depicts the

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1 location of the easement conveyed, or the department may consider other methods, such
2 as producing a map, to accurately describe the easement premises.
3
4

5 **WAC 222-21-045 Valuation.** *[Effective 3/24/21]*

6 (1) The small forest landowner office will calculate the compensation amount for forestry riparian
7 easements by determining a stumpage value for the qualifying timber. The office will use data
8 gathered from ~~or adjusted to the date the office received the complete forestry riparian~~
9 ~~easement application of the completed harvest. For applications that are eligible under WAC~~
10 ~~222-21-032 without an associated harvest completion date, the office will use the date the~~
11 ~~completed forest riparian easement application is received.~~ The office will use the stumpage
12 value determination method described in (a) of this subsection ~~for to calculate the stumpage~~
13 ~~value of the~~ qualifying timber, ~~that cannot be harvested because of forests and fish rule~~
14 ~~restrictions. For qualifying timber approved for harvest, the office will use both the stumpage~~
15 ~~value determination method and the small harvester tax return method to determine the highest~~
16 ~~compensation amount for the landowner. The office will also calculate the stumpage value of~~
17 ~~the qualifying timber as described in (b) of this subsection if the landowner voluntarily~~
18 ~~provides harvest records. The office will determine the highest compensation amount for the~~
19 ~~landowner.~~

20 (a) Stumpage value determination method. The small forest landowner office will create
21 and maintain value tables to determine stumpage value of the qualifying timber. These
22 tables will be created using a method coordinated with the department of revenue. The
23 values will closely approximate the stumpage value for logs on the date ~~the office~~
24 ~~received a complete forestry riparian easement application of the completed harvest.~~ The
25 landowner will provide:

- 26 (i) The reference for the stumpage value table and any other needed information for
27 use of the table; and
28 (ii) Any information the landowner would like the office to consider in its cruise
29 and valuation of the qualifying timber.

30 (b) Small harvester tax return method.

31 (i) The landowner must provide comprehensive mill or buyer information for each
32 harvest unit associated with the forestry riparian easement including:

- 33 (A) The delivered value by species;
34 (B) The total volume by species; and
35 (C) The actual harvesting and marketing costs as defined in the department
36 of revenue small harvester instructions.

37 This information must be verifiable as proceeds from the timber harvests from
38 documents such as mill receipts and/or forest excise tax returns. If the small
39 forest landowner office does not receive a comprehensive packet of mill or
40 buyer information or is not satisfied with the source of the documentation, the
41 office will determine the qualifying timber value using the stumpage value
42 determination method.

43 (ii) ~~The office will use a time adjustment index to determine the qualifying timber~~
44 ~~value based on the date the office received the complete forestry riparian~~

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~~easement application. The office will generate a time adjustment index for each harvest associated with the easement based on log price changes.~~

(iii) The office will determine the ~~adjusted~~ stumpage value by subtracting the average logging and hauling cost per thousand board feet (MBF) from the value of the ~~time adjusted~~ mill or buyer information. The office will then determine the value of the qualifying timber by multiplying the ~~time adjusted~~ stumpage value of each species in the harvest unit by the net volume for each corresponding species in the inventory of qualifying timber.

(iv)iii) The ~~department office~~ determines the values of the timber species that exist in the easement premises, not the species in the harvest area. The department determines the ~~easement qualifying timber~~ value by multiplying the determined cruise volume of qualified timber in the easement premises by the appropriate stumpage value of those species shown on the appropriate table used for timber harvest excise tax purposes per RCW 84.33.091 or the appropriate stumpage values of those species calculated by the office using the landowner's comprehensive mill or buyer information.

(2) Determining the forestry riparian easement compensation. ~~The small forest landowner office uses a "high impact regulatory threshold" to calculate the compensation offered for a forestry riparian easement. This threshold is determined by multiplying the value of all timber covered under a forest practices application by 19.1 percent for timber in western Washington and 12.2 percent for timber in eastern Washington.~~

(a) ~~When the percentage of the qualifying timber value to the total value of all timber covered under a forest practices application is equal to or less than the applicable high impact regulatory threshold (19.1 percent or 12.2 percent), the compensation offered for an easement will be fifty percent of the qualifying timber value.~~

(b) ~~When the percentage of the qualifying timber value to the total value of all timber covered under a forest practices application exceeds the applicable high impact regulatory threshold (19.1 percent or 12.2 percent), the compensation offered for an easement will be more than fifty percent of the qualifying timber value up to the applicable high impact regulatory threshold, plus full compensation (one hundred percent) for the qualifying timber value that exceeds the high impact regulatory threshold. This is mathematically represented as follows:~~

~~Where:~~

~~V_q = the value of qualifying timber;~~

~~V_h = the value of harvested timber; and~~

~~t = the high impact of regulatory threshold 19.1 percent for western Washington, 12.2 percent for eastern Washington);~~

~~The compensation for easement = ((V_q/(V_q + V_h)) - t) * (V_q + V_h) + (t * (V_q + V_h)/2). The easement compensation will equal 90 percent of the ~~qualifying timber~~ value determined in subsections 1(a) or (b) of this rule.~~

WAC 222-21-050 Payment of compensation and reimbursement to the small forest landowner.

(1) All compensation and reimbursement to the small forest landowner is subject to available funding and to the extent reasonable possible the small forest landowner office will process forestry riparian easement applications in the order received.

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- 1 (2) If funding is not available, the small forest landowner office will maintain a priority list for
2 compensation and reimbursement to the landowner. Priority will be based on the date the small
3 forest landowner office received the complete forestry riparian easement application. In
4 instances where two easement applications are received on the same date, priority will be based
5 on the date the department received a complete forest practices application associated with the
6 easement.
- 7 (3) The small forest landowner office will offer compensation for the easement in a purchase and
8 sale agreement. The small forest landowner will accept or reject the conditions of the purchase
9 and sale agreement in writing and submit the written acceptance or rejection to the small forest
10 landowner office.
- 11 (4) Compensation for the forestry riparian easement and reimbursement of landowner costs will be
12 paid after:
- 13 (a) The department has verified that the landowner has no outstanding violations under
14 chapters 76.09 or 76.13 RCW or any associated forest practices rules
- 15 (b) Any dispute over the amount of compensation or eligibility or other matter involving
16 the easement has been resolved; and
- 17 (c) The small forest landowner office has sent a forestry riparian easement contract to the
18 landowner, the landowner has signed the contract, and the landowner has delivered it to
19 the department.
- 20 (5) Compensation for any qualifying timber located on potentially unstable slopes or landforms
21 will not exceed a total of one hundred fifty thousand dollars during any biennial funding period.
22

23 **WAC 222-21-080 Eminent domain.**

24 If a forestry riparian easement is taken, in whole or in part, by exercise of the power of eminent
25 domain, or acquired by purchase in lieu of condemnation, the state will receive compensation for its
26 remaining interest in the easement based upon the following formula:

27 Where:

28 C = the compensation to the department for the state's remaining interest in the easement;

29 O = the original compensation for the easement paid to the small forest landowner by the state;

30 P = the proportion of the forestry riparian easement extinguished or terminated;

31 CPI_o = the Consumer Price Index for all Urban Consumers as published by the Bureau of Labor
32 Statistics for the month in which the original compensation was determined;

33 CPI_c = the U.S. Consumer Price Index for all Urban Consumers as published by the Bureau of Labor
34 Statistics for the most recent month available at the time the easement is terminated or extinguished;

35 I = the rate of return on 30 year treasury bonds, as reported by the Federal Reserve Statistical Release
36 H15 less the rate of increase in the Consumer Price Index for all Urban Consumers as published by the
37 U.S. Department of Labor Bureau of Labor Statistics for the previous 12 months;

38 R = the number of years remaining on the easement at the time of extinguishment or termination;

39 $C = \underline{O} * P * (CPI_c / CPI_o) * (1 - (1 / (1 + I)^R)) / (1 - 1 / (1 + I)^{50})$.

40

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5667

Chapter 158, Laws of 2024

68th Legislature
2024 Regular Session

FORESTRY RIPARIAN EASEMENT PROGRAM—SMALL FORESTLAND OWNERS

EFFECTIVE DATE: June 6, 2024

Passed by the Senate February 12,
2024

Yeas 49 Nays 0

DENNY HECK

President of the Senate

Passed by the House March 1, 2024

Yeas 96 Nays 0

LURIE JINKINS

**Speaker of the House of
Representatives**

Approved March 18, 2024 3:26 PM

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5667** as passed by the Senate and the House of Representatives on the dates hereon set forth.

SARAH BANNISTER

Secretary

FILED

March 19, 2024

JAY INSLEE

Governor of the State of Washington

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5667

Passed Legislature - 2024 Regular Session

State of Washington

68th Legislature

2024 Regular Session

By Senate Agriculture, Water, Natural Resources & Parks (originally sponsored by Senators Muzzall, Van De Wege, Short, Wagoner, and Wellman)

READ FIRST TIME 01/12/24.

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 and
4 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 completed harvest. To the extent reasonably possible, the forestry
12 riparian easement applications should be processed in the order
13 received. Removal of any qualifying timber before the expiration of
14 the easement must be in accordance with the forest practices rules
15 and the terms of the easement. There shall be no reduction in
16 compensation for reentry.

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

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

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

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

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

39 (c) Upon donation or payment of compensation, the department may
40 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) High impact regulatory thresholds;~~

10 ~~(h))~~ (vii) 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))~~ (viii) A method for internal department review of small
14 forestland owner office compensation decisions under this section;
15 and

16 ~~((j))~~ (ix) 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) It is the intent of the legislature that the small
8 forestland owner office complete forestry riparian easement program
9 application transactions within two years of the application receipt
10 consistent with the goals of RCW 70A.65.270(2)(b)(iii).

11 **Sec. 2.** RCW 76.13.140 and 2011 c 218 s 2 are each amended to
12 read as follows:

13 In order to assist small forestland owners to remain economically
14 viable, the legislature intends that the qualifying small forestland
15 owners be able to net (~~fifty~~) 90 percent of the value of the trees
16 left in the buffer areas. The small forestland owner office may
17 utilize landowners' actual mill receipts to help determine fair
18 market value but may not require these documents in any valuation
19 process. The amount of compensation offered in RCW 76.13.120 shall
20 also include the compliance costs for participation in the forestry
21 riparian easement program, including the cost of preparing and
22 recording the forestry riparian easement, and any business and
23 occupation tax and real estate excise tax imposed because of entering
24 into the forestry riparian easement. The small forestland owner
25 office may contract with private consultants that the office finds
26 qualified to perform timber cruises of forestry riparian easements or
27 to lay out streamside buffers and comply with other forest practices
28 regulatory requirements related to the forestry riparian easement
29 program. The department shall reimburse qualifying small forestland
30 owners for the actual costs incurred for laying out the streamside
31 buffers and marking the qualifying timber once a contract has been
32 executed for the forestry riparian easement program. Reimbursement is
33 subject to the work being acceptable to the department. The small
34 forestland owner office shall determine how the reimbursement costs
35 will be calculated.

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