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**HOUSE BILL 1740**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Representatives Orcutt, Chapman, Dent, Reeves, Morgan, Chandler, and Kretz

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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