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HOUSE BILL 1482

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State of Washington

53rd Legislature

1993 Regular Session

By Representatives Pruitt and R. Johnson; by request of Office of Financial Management

Read first time 01/29/93. Referred to Committee on Natural Resources & Parks.

1 AN ACT Relating to imposing fees for certain forest practices;  
2 amending RCW 76.09.010, 76.09.040, 76.09.050, and 76.09.060; adding a  
3 new section to chapter 76.09 RCW; and declaring an emergency.

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

5 **Sec. 1.** RCW 76.09.010 and 1987 c 95 s 1 are each amended to read  
6 as follows:

7 (1) The legislature hereby finds and declares that the forest land  
8 resources are among the most valuable of all resources in the state;  
9 that a viable forest products industry is of prime importance to the  
10 state's economy; that it is in the public interest for public and  
11 private commercial forest lands to be managed consistent with sound  
12 policies of natural resource protection; that coincident with  
13 maintenance of a viable forest products industry, it is important to  
14 afford protection to forest soils, fisheries, wildlife, water quantity  
15 and quality, air quality, recreation, and scenic beauty.

16 (2) The legislature further finds and declares it to be in the  
17 public interest of this state to create and maintain through the  
18 adoption of this chapter a comprehensive state-wide system of laws and

1 forest practices regulations which will achieve the following purposes  
2 and policies:

3 (a) Afford protection to, promote, foster and encourage timber  
4 growth, and require such minimum reforestation of commercial tree  
5 species on forest lands as will reasonably utilize the timber growing  
6 capacity of the soil following current timber harvest;

7 (b) Afford protection to forest soils and public resources by  
8 utilizing all reasonable methods of technology in conducting forest  
9 practices;

10 (c) Recognize both the public and private interest in the  
11 profitable growing and harvesting of timber;

12 (d) Promote efficiency by permitting maximum operating freedom  
13 consistent with the other purposes and policies stated herein;

14 (e) Provide for regulation of forest practices so as to avoid  
15 unnecessary duplication in such regulation;

16 (f) Provide for interagency input and intergovernmental and tribal  
17 coordination and cooperation;

18 (g) Achieve compliance with all applicable requirements of federal  
19 and state law with respect to nonpoint sources of water pollution from  
20 forest practices;

21 (h) To consider reasonable land use planning goals and concepts  
22 contained in local comprehensive plans and zoning regulations; and

23 (i) Foster cooperation among managers of public resources, forest  
24 landowners, Indian tribes and the citizens of the state.

25 (3) The legislature further finds and declares that it is also in  
26 the public interest of the state to encourage forest landowners to  
27 undertake corrective and remedial action to reduce the impact of mass  
28 earth movements and fluvial processes.

29 (4) The legislature further finds and declares that it is in the  
30 public interest that the applicants for state forest practice permits  
31 should assist in paying for the cost of review and permitting necessary  
32 for the environmental protection of these resources.

33 **Sec. 2.** RCW 76.09.040 and 1988 c 36 s 46 are each amended to read  
34 as follows:

35 (1) Where necessary to accomplish the purposes and policies stated  
36 in RCW 76.09.010, and to implement the provisions of this chapter, the  
37 board shall promulgate forest practices regulations pursuant to chapter

1 34.05 RCW and in accordance with the procedures enumerated in this  
2 section that:

3 (a) Establish minimum standards for forest practices;

4 (b) Provide procedures for the voluntary development of resource  
5 management plans which may be adopted as an alternative to the minimum  
6 standards in (a) of this subsection if the plan is consistent with the  
7 purposes and policies stated in RCW 76.09.010 and the plan meets or  
8 exceeds the objectives of the minimum standards; (~~and~~)

9 (c) Set forth necessary administrative provisions; and

10 (d) Establish procedures for the collection and administration of  
11 forest practice fees as set forth by this chapter.

12 Forest practices regulations pertaining to water quality protection  
13 shall be promulgated individually by the board and by the department of  
14 ecology after they have reached agreement with respect thereto. All  
15 other forest practices regulations shall be promulgated by the board.

16 Forest practices regulations shall be administered and enforced by  
17 the department except as otherwise provided in this chapter. Such  
18 regulations shall be promulgated and administered so as to give  
19 consideration to all purposes and policies set forth in RCW 76.09.010.

20 (2) The board shall prepare proposed forest practices regulations.  
21 In addition to any forest practices regulations relating to water  
22 quality protection proposed by the board, the department of ecology  
23 shall prepare proposed forest practices regulations relating to water  
24 quality protection.

25 Prior to initiating the rule making process, the proposed  
26 regulations shall be submitted for review and comments to the  
27 department of fisheries, the department of wildlife, and to the  
28 counties of the state. After receipt of the proposed forest practices  
29 regulations, the departments of fisheries and wildlife and the counties  
30 of the state shall have thirty days in which to review and submit  
31 comments to the board, and to the department of ecology with respect to  
32 its proposed regulations relating to water quality protection. After  
33 the expiration of such thirty day period the board and the department  
34 of ecology shall jointly hold one or more hearings on the proposed  
35 regulations pursuant to chapter 34.05 RCW. At such hearing(s) any  
36 county may propose specific forest practices regulations relating to  
37 problems existing within such county. The board and the department of  
38 ecology may adopt such proposals if they find the proposals are  
39 consistent with the purposes and policies of this chapter.

1       **Sec. 3.** RCW 76.09.050 and 1990 1st ex.s. c 17 s 61 are each  
2 amended to read as follows:

3       (1) The board shall establish by rule which forest practices shall  
4 be included within each of the following classes:

5       Class I: Minimal or specific forest practices that have no direct  
6 potential for damaging a public resource that may be conducted without  
7 submitting an application or a notification;

8       Class II: Forest practices which have a less than ordinary  
9 potential for damaging a public resource that may be conducted without  
10 submitting an application and may begin five calendar days, or such  
11 lesser time as the department may determine, after written notification  
12 by the operator, in the manner, content, and form as prescribed by the  
13 department, is received by the department. However, the work may not  
14 begin until all forest practice fees required under section 5 of this  
15 act have been received by the department. Class II shall not include  
16 forest practices:

17       (a) On lands platted after January 1, 1960, or being converted to  
18 another use;

19       (b) Which require approvals under the provisions of the hydraulics  
20 act, RCW 75.20.100;

21       (c) Within "shorelines of the state" as defined in RCW 90.58.030;  
22 or

23       (d) Excluded from Class II by the board;

24       Class III: Forest practices other than those contained in Class I,  
25 II, or IV. A Class III application must be approved or disapproved by  
26 the department within thirty calendar days from the date the department  
27 receives the application. However, the applicant may not begin work on  
28 that forest practice until all forest practice fees required under  
29 section 5 of this act have been received by the department;

30       Class IV: Forest practices other than those contained in Class I  
31 or II: (a) On lands platted after January 1, 1960, (b) on lands being  
32 converted to another use, (c) on lands which, pursuant to RCW 76.09.070  
33 as now or hereafter amended, are not to be reforested because of the  
34 likelihood of future conversion to urban development, and/or (d) which  
35 have a potential for a substantial impact on the environment and  
36 therefore require an evaluation by the department as to whether or not  
37 a detailed statement must be prepared pursuant to the state  
38 environmental policy act, chapter 43.21C RCW. Such evaluation shall be  
39 made within ten days from the date the department receives the

1 application: PROVIDED, That nothing herein shall be construed to  
2 prevent any local or regional governmental entity from determining that  
3 a detailed statement must be prepared for an action pursuant to a Class  
4 IV forest practice taken by that governmental entity concerning the  
5 land on which forest practices will be conducted. A Class IV  
6 application must be approved or disapproved by the department within  
7 thirty calendar days from the date the department receives the  
8 application, unless the department determines that a detailed statement  
9 must be made, in which case the application must be approved or  
10 disapproved by the department within sixty calendar days from the date  
11 the department receives the application, unless the commissioner of  
12 public lands, through the promulgation of a formal order, determines  
13 that the process cannot be completed within such period. However, the  
14 applicant may not begin work on that forest practice until all forest  
15 practice fees required under section 5 of this act have been received  
16 by the department.

17 Forest practices under Classes I, II, and III are exempt from the  
18 requirements for preparation of a detailed statement under the state  
19 environmental policy act.

20 (2) No Class II, Class III, or Class IV forest practice shall be  
21 commenced or continued after January 1, 1975, unless the department has  
22 received a notification with regard to a Class II forest practice or  
23 approved an application with regard to a Class III or Class IV forest  
24 practice containing all information required by RCW 76.09.060 as now or  
25 hereafter amended: PROVIDED, That any person commencing a forest  
26 practice during 1974 may continue such forest practice until April 1,  
27 1975, if such person has submitted an application to the department  
28 prior to January 1, 1975: PROVIDED, FURTHER, That in the event forest  
29 practices regulations necessary for the scheduled implementation of  
30 this chapter and RCW 90.48.420 have not been adopted in time to meet  
31 such schedules, the department shall have the authority to regulate  
32 forest practices and approve applications on such terms and conditions  
33 consistent with this chapter and RCW 90.48.420 and the purposes and  
34 policies of RCW 76.09.010 until applicable forest practices regulations  
35 are in effect.

36 (3) If a notification or application is delivered in person to the  
37 department by the operator or his agent, the department shall  
38 immediately provide a dated receipt thereof. In all other cases, the  
39 department shall immediately mail a dated receipt to the operator.

1 (4) Forest practices shall be conducted in accordance with the  
2 forest practices regulations, orders and directives as authorized by  
3 this chapter or the forest practices regulations, and the terms and  
4 conditions of any approved applications.

5 (5) The department of natural resources shall notify the applicant  
6 in writing of either its approval of the application or its disapproval  
7 of the application and the specific manner in which the application  
8 fails to comply with the provisions of this section or with the forest  
9 practices regulations. Except as provided otherwise in this section,  
10 if the department fails to either approve or disapprove an application  
11 or any portion thereof within the applicable time limit, the  
12 application shall be deemed approved and the operation may be  
13 commenced: PROVIDED, That this provision shall not apply to  
14 applications which are neither approved nor disapproved pursuant to the  
15 provisions of subsection (7) of this section: PROVIDED, FURTHER, That  
16 if seasonal field conditions prevent the department from being able to  
17 properly evaluate the application, the department may issue an approval  
18 conditional upon further review within sixty days: PROVIDED, FURTHER,  
19 That the department shall have until April 1, 1975, to approve or  
20 disapprove an application involving forest practices allowed to  
21 continue to April 1, 1975, under the provisions of subsection (2) of  
22 this section. Upon receipt of any notification or any satisfactorily  
23 completed application the department shall in any event no later than  
24 two business days after such receipt transmit a copy to the departments  
25 of ecology, wildlife, and fisheries, and to the county, city, or town  
26 in whose jurisdiction the forest practice is to be commenced. Any  
27 comments by such agencies shall be directed to the department of  
28 natural resources.

29 (6) If the county, city, or town believes that an application is  
30 inconsistent with this chapter, the forest practices regulations, or  
31 any local authority consistent with RCW 76.09.240 as now or hereafter  
32 amended, it may so notify the department and the applicant, specifying  
33 its objections.

34 (7) The department shall not approve portions of applications to  
35 which a county, city, or town objects if:

36 (a) The department receives written notice from the county, city,  
37 or town of such objections within fourteen business days from the time  
38 of transmittal of the application to the county, city, or town, or one

1 day before the department acts on the application, whichever is later;  
2 and

3 (b) The objections relate to lands either:

4 (i) Platted after January 1, 1960; or

5 (ii) Being converted to another use.

6 The department shall either disapprove those portions of such  
7 application or appeal the county, city, or town objections to the  
8 appeals board. If the objections related to subparagraphs (b) (i) and  
9 (ii) of this subsection are based on local authority consistent with  
10 RCW 76.09.240 as now or hereafter amended, the department shall  
11 disapprove the application until such time as the county, city, or town  
12 consents to its approval or such disapproval is reversed on appeal.  
13 The applicant shall be a party to all department appeals of county,  
14 city, or town objections. Unless the county, city, or town either  
15 consents or has waived its rights under this subsection, the department  
16 shall not approve portions of an application affecting such lands until  
17 the minimum time for county, city, or town objections has expired.

18 (8) In addition to any rights under the above paragraph, the  
19 county, city, or town may appeal any department approval of an  
20 application with respect to any lands within its jurisdiction. The  
21 appeals board may suspend the department's approval in whole or in part  
22 pending such appeal where there exists potential for immediate and  
23 material damage to a public resource.

24 (9) Appeals under this section shall be made to the appeals board  
25 in the manner and time provided in RCW 76.09.220(8). In such appeals  
26 there shall be no presumption of correctness of either the county,  
27 city, or town or the department position.

28 (10) The department shall, within four business days notify the  
29 county, city, or town of all notifications, approvals, and disapprovals  
30 of an application affecting lands within the county, city, or town,  
31 except to the extent the county, city, or town has waived its right to  
32 such notice.

33 (11) A county, city, or town may waive in whole or in part its  
34 rights under this section, and may withdraw or modify any such waiver,  
35 at any time by written notice to the department.

36 **Sec. 4.** RCW 76.09.060 and 1992 c 52 s 22 are each amended to read  
37 as follows:

1 (1) The department shall prescribe the form and contents of the  
2 notification and application. The forest practices rules shall specify  
3 by whom and under what conditions the notification and application  
4 shall be signed or otherwise certified as acceptable. The application  
5 or notification shall be delivered in person to the department, sent by  
6 first class mail to the department or electronically filed in a form  
7 defined by the department. The form for electronic filing shall be  
8 readily convertible to a paper copy, which shall be available to the  
9 public pursuant to chapter 42.17 RCW. The information required may  
10 include, but is not limited to:

11 (a) Name and address of the forest landowner, timber owner, and  
12 operator;

13 (b) Description of the proposed forest practice or practices to be  
14 conducted;

15 (c) Legal description of the land on which the forest practices are  
16 to be conducted;

17 (d) Planimetric and topographic maps showing location and size of  
18 all lakes and streams and other public waters in and immediately  
19 adjacent to the operating area and showing all existing and proposed  
20 roads and major tractor roads;

21 (e) Description of the silvicultural, harvesting, or other forest  
22 practice methods to be used, including the type of equipment to be used  
23 and materials to be applied;

24 (f) Proposed plan for reforestation and for any revegetation  
25 necessary to reduce erosion potential from roadsides and yarding roads,  
26 as required by the forest practices rules;

27 (g) Soil, geological, and hydrological data with respect to forest  
28 practices;

29 (h) The expected dates of commencement and completion of all forest  
30 practices specified in the application;

31 (i) Provisions for continuing maintenance of roads and other  
32 construction or other measures necessary to afford protection to public  
33 resources; ((and))

34 (j) An affirmation that the statements contained in the  
35 notification or application are true; and

36 (k) All necessary application or notification fees.

37 (2) Long range plans may be submitted to the department for review  
38 and consultation.

1 (3) The application for a forest practice or the notification of a  
2 class II forest practice shall indicate whether any land covered by the  
3 application or notification will be converted or is intended to be  
4 converted to a use other than commercial timber production within three  
5 years after completion of the forest practices described in it.

6 (a) If the application states that any such land will be or is  
7 intended to be so converted:

8 (i) The reforestation requirements of this chapter and of the  
9 forest practices rules shall not apply if the land is in fact so  
10 converted unless applicable alternatives or limitations are provided in  
11 forest practices rules issued under RCW 76.09.070 as now or hereafter  
12 amended;

13 (ii) Completion of such forest practice operations shall be deemed  
14 conversion of the lands to another use for purposes of chapters  
15 ~~((84.287))~~ 84.33~~((7))~~ and 84.34 RCW unless the conversion is to a use  
16 permitted under a current use tax agreement permitted under chapter  
17 84.34 RCW;

18 (iii) The forest practices described in the application are subject  
19 to applicable county, city, town, and regional governmental authority  
20 permitted under RCW 76.09.240 as now or hereafter amended as well as  
21 the forest practices rules.

22 (b) If the application or notification does not state that any land  
23 covered by the application or notification will be or is intended to be  
24 so converted:

25 (i) For six years after the date of the application the county,  
26 city, town, and regional governmental entities may deny any or all  
27 applications for permits or approvals, including building permits and  
28 subdivision approvals, relating to nonforestry uses of land subject to  
29 the application;

30 (ii) Failure to comply with the reforestation requirements  
31 contained in any final order or decision shall constitute a removal  
32 ~~((from classification under the provisions of RCW 84.28.065, a  
33 removal))~~ of designation under the provisions of RCW 84.33.140, and a  
34 change of use under the provisions of RCW 84.34.080, and, if  
35 applicable, shall subject such lands to the payments and/or penalties  
36 resulting from such removals or changes; and

37 (iii) Conversion to a use other than commercial timber operations  
38 within three years after completion of the forest practices without the  
39 consent of the county, city, or town shall constitute a violation of

1 each of the county, municipal city, town, and regional authorities to  
2 which the forest practice operations would have been subject if the  
3 application had so stated.

4 (c) The application or notification shall be either signed by the  
5 landowner or accompanied by a statement signed by the landowner  
6 indicating his or her intent with respect to conversion and  
7 acknowledging that he or she is familiar with the effects of this  
8 subsection.

9 (4) Whenever an approved application authorizes a forest practice  
10 which, because of soil condition, proximity to a water course or other  
11 unusual factor, has a potential for causing material damage to a public  
12 resource, as determined by the department, the applicant shall, when  
13 requested on the approved application, notify the department two days  
14 before the commencement of actual operations.

15 (5) Before the operator commences any forest practice in a manner  
16 or to an extent significantly different from that described in a  
17 previously approved application or notification, there shall be  
18 submitted to the department a new application or notification form in  
19 the manner set forth in this section.

20 (6) The notification to or the approval given by the department to  
21 an application to conduct a forest practice shall be effective for a  
22 term of two years from the date of approval or notification and shall  
23 not be renewed unless a new application is filed and approved or a new  
24 notification has been filed. At the option of the applicant, an  
25 application or notification may be submitted to cover a single forest  
26 practice or a number of forest practices within reasonable geographic  
27 or political boundaries as specified by the department. An application  
28 or notification that covers more than one forest practice may have an  
29 effective term of more than two years. The board shall adopt rules  
30 that establish standards and procedures for approving an application or  
31 notification that has an effective term of more than two years. Such  
32 rules shall include extended time periods for application or  
33 notification approval or disapproval. On an approved application with  
34 a term of more than two years, the applicant shall inform the  
35 department before commencing operations.

36 (7) Notwithstanding any other provision of this section, no prior  
37 application or notification shall be required for any emergency forest  
38 practice necessitated by fire, flood, windstorm, earthquake, or other  
39 emergency as defined by the board, but the operator shall submit an

1 application or notification, whichever is applicable, to the department  
2 within forty-eight hours after commencement of such practice.

3 NEW SECTION. **Sec. 5.** A new section is added to chapter 76.09 RCW  
4 to read as follows:

5 (1) An applicant shall pay a fee at the time an application or  
6 notification is submitted pursuant to RCW 76.09.060, or at another time  
7 as the board determines, to cover the costs of the department in  
8 processing and reviewing the application or notification. All money  
9 collected from this fee shall be deposited in the state general fund.

10 (2) The board shall establish a schedule for fees in an amount  
11 sufficient to generate three million five hundred thousand dollars  
12 annually. In establishing these fees the board shall consider the  
13 amount of field review and compliance time required for each type of  
14 application. The board shall enact these fees no later than July 1,  
15 1993. Each biennium the board shall adjust the total annual revenue  
16 target and all fees in accordance with the implicit deflator for  
17 personal consumption expenditures published by the United States  
18 department of commerce.

19 (3) The initial fees shall be no more than fifty dollars for class  
20 II forest practices, no more than seven hundred fifty dollars for class  
21 III forest practices, and no more than one thousand dollars for class  
22 IV forest practices.

23 (4) The board shall establish a schedule for fees for an  
24 application or notification that has an effective term of more than two  
25 years pursuant to RCW 76.09.060(6), that represents the cumulative  
26 costs to the department associated with processing a multiple practice  
27 application or notification.

28 NEW SECTION. **Sec. 6.** This act is necessary for the immediate  
29 preservation of the public peace, health, or safety, or support of the  
30 state government and its existing public institutions, and shall take  
31 effect immediately.

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