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**SUBSTITUTE HOUSE BILL 2541**

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**State of Washington**

**61st Legislature**

**2010 Regular Session**

**By** House Agriculture & Natural Resources (originally sponsored by Representatives Takko, Orcutt, Kessler, Kretz, and Blake)

READ FIRST TIME 02/03/10.

1       AN ACT Relating to maximizing the ecosystem services provided by  
2 forestry through the promotion of the economic success of the forest  
3 products industry; amending RCW 76.09.040; reenacting and amending RCW  
4 76.09.020; adding new sections to chapter 76.09 RCW; and creating a new  
5 section.

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

7       NEW SECTION.   **Sec. 1.**   (1) The legislature finds that commercial  
8 forestry produces jobs and revenue while also providing clean water,  
9 clean air, renewable energy, wildlife habitat, open space, and carbon  
10 storage. For these reasons, maintaining a base of forest lands that  
11 may be utilized for commercial forestry is of utmost importance to the  
12 state.

13       (2) The legislature finds that the promotion and fostering of the  
14 economic success of the forest products industry with the goal of  
15 keeping forestry as a priority land use, and helping to secure the  
16 timber managing, growing, harvesting, transporting, and manufacturing  
17 jobs is made possible by a vibrant working forest land base.

1           **Sec. 2.** RCW 76.09.040 and 2009 c 246 s 1 are each amended to read  
2 as follows:

3           (1)(a) Where necessary to accomplish the purposes and policies  
4 stated in RCW 76.09.010, and to implement the provisions of this  
5 chapter, the board shall adopt forest practices rules pursuant to  
6 chapter 34.05 RCW and in accordance with the procedures enumerated in  
7 this section that:

8           ~~((a))~~ (i) Establish minimum standards for forest practices;

9           ~~((b))~~ (ii) Provide procedures for the voluntary development of  
10 resource management plans which may be adopted as an alternative to the  
11 minimum standards in (a)(i) of this subsection if the plan is  
12 consistent with the purposes and policies stated in RCW 76.09.010 and  
13 the plan meets or exceeds the objectives of the minimum standards;

14           ~~((c))~~ (iii) Set forth necessary administrative provisions;

15           ~~((d))~~ (iv) Establish procedures for the collection and  
16 administration of forest practice fees as set forth by this chapter;  
17 and

18           ~~((e))~~ (v) Allow for the development of watershed analyses.

19           (b) Forest practices rules pertaining to water quality protection  
20 shall be adopted by the board after reaching agreement with the  
21 director of the department of ecology or the director's designee on the  
22 board with respect thereto. All other forest practices rules shall be  
23 adopted by the board.

24           (c) Forest practices rules shall be administered and enforced by  
25 either the department or the local governmental entity as provided in  
26 this chapter. Such rules shall be adopted and administered so as to  
27 give consideration to all purposes and policies set forth in RCW  
28 76.09.010.

29           (2)(a) The board shall prepare proposed forest practices rules  
30 consistent with this section, section 4 of this act, and chapter 34.05  
31 RCW. In addition to any forest practices rules relating to water  
32 quality protection proposed by the board, the department of ecology may  
33 submit to the board proposed forest practices rules relating to water  
34 quality protection.

35           (b)(i) Prior to initiating the rule-making process, the proposed  
36 rules shall be submitted for review and comments to the department of  
37 fish and wildlife and to the counties of the state. After receipt of  
38 the proposed forest practices rules, the department of fish and

1 wildlife and the counties of the state shall have thirty days in which  
2 to review and submit comments to the board, and to the department of  
3 ecology with respect to its proposed rules relating to water quality  
4 protection.

5 (ii) After the expiration of ~~((such))~~ the thirty day period, the  
6 board and the department of ecology shall jointly hold one or more  
7 hearings on the proposed rules pursuant to chapter 34.05 RCW. ~~((At~~  
8 ~~such hearing(s))~~ Any county representative may propose specific forest  
9 practices rules relating to problems existing within ~~((such))~~ the  
10 county at the hearings.

11 (iii) The board may adopt and the department of ecology may approve  
12 such proposals if they find the proposals are consistent with the  
13 purposes and policies of this chapter.

14 (3)(a) The board shall establish by rule a program for the  
15 acquisition of riparian open space and critical habitat for threatened  
16 or endangered species as designated by the board. Acquisition must be  
17 a conservation easement. Lands eligible for acquisition are forest  
18 lands within unconfined channel migration zones or forest lands  
19 containing critical habitat for threatened or endangered species as  
20 designated by the board. Once acquired, these lands may be held and  
21 managed by the department, transferred to another state agency,  
22 transferred to an appropriate local government agency, or transferred  
23 to a private nonprofit nature conservancy corporation, as defined in  
24 RCW 64.04.130, in fee or transfer of management obligation. The board  
25 shall adopt rules governing the acquisition by the state or donation to  
26 the state of such interest in lands including the right of refusal if  
27 the lands are subject to unacceptable liabilities. The rules shall  
28 include definitions of qualifying lands, priorities for acquisition,  
29 and provide for the opportunity to transfer such lands with limited  
30 warranties and with a description of boundaries that does not require  
31 full surveys where the cost of securing the surveys would be  
32 unreasonable in relation to the value of the lands conveyed. The rules  
33 shall provide for the management of the lands for ecological protection  
34 or fisheries enhancement. For the purposes of conservation easements  
35 entered into under this section, the following apply: ~~((a))~~ (i) For  
36 conveyances of a conservation easement in which the landowner conveys  
37 an interest in the trees only, the compensation must include the timber  
38 value component, as determined by the cruised volume of any timber

1 located within the channel migration zone or critical habitat for  
2 threatened or endangered species as designated by the board, multiplied  
3 by the appropriate quality code stumpage value for timber of the same  
4 species shown on the appropriate table used for timber harvest excise  
5 tax purposes under RCW 84.33.091; ~~((b))~~ (ii) for conveyances of a  
6 conservation easement in which the landowner conveys interests in both  
7 land and trees, the compensation must include the timber value  
8 component in (a)(i) of this subsection plus such portion of the land  
9 value component as determined just and equitable by the department.  
10 The land value component must be the acreage of qualifying channel  
11 migration zone or critical habitat for threatened or endangered species  
12 as determined by the board, to be conveyed, multiplied by the average  
13 per acre value of all commercial forest land in western Washington or  
14 the average for eastern Washington, whichever average is applicable to  
15 the qualifying lands. The department must determine the western and  
16 eastern Washington averages based on the land value tables established  
17 by RCW 84.33.140 and revised annually by the department of revenue.

18 ~~((4))~~ (b) Subject to appropriations sufficient to cover the cost  
19 of such an acquisition program and the related costs of administering  
20 the program, the department must establish a conservation easement in  
21 land that an owner tenders for purchase; provided that such lands have  
22 been taxed as forest lands and are located within an unconfined channel  
23 migration zone or contain critical habitat for threatened or endangered  
24 species as designated by the board. Lands acquired under this section  
25 shall become riparian or habitat open space. These acquisitions shall  
26 not be deemed to trigger the compensating tax of chapters 84.33 and  
27 84.34 RCW.

28 ~~((5))~~ (c) Instead of offering to sell interests in qualifying  
29 lands, owners may elect to donate the interests to the state.

30 ~~((6))~~ (d) Any acquired interest in qualifying lands by the state  
31 under this section shall be managed as riparian open space or critical  
32 habitat.

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

35 (1) The board shall execute a memorandum of understanding with the  
36 northwest environmental forum at the University of Washington's school

1 of forest resources, or its successor institute, to serve as the  
2 forestry incentives panel.

3 (2) The board shall submit to the panel by October 31st of every  
4 even-numbered year a report that outlines a work plan and identifies  
5 anticipated conservation topics that the board may address in the  
6 subsequent four-year period that may have economic consequences for  
7 landowners or the forest products industry. The biennial submission  
8 must represent the subject areas that the board expects to consider,  
9 and in no way creates a binding expectation that the topics identified  
10 will be addressed.

11 (3)(a) For each biennial submission by the board, the panel shall  
12 evaluate the topics identified by the board and attempt to develop  
13 nonregulatory incentives that encourage landowners to undertake efforts  
14 designed to address the environmental objectives of the topics.

15 (b) If the panel develops appropriate incentives, it shall provide  
16 recommendations for implementation of the incentives to the appropriate  
17 governmental entity, including the board, the commissioner, other  
18 relevant state agencies, local governments, the governor, the state  
19 legislature, and the state's congressional delegation.

20 (4) The panel, in conjunction with the board, and any other  
21 appropriate implementing agency or entity, shall measure and monitor  
22 the resource protection outcomes of any implemented incentive developed  
23 and recommended by the panel.

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

26 (1) Prior to adopting new forest practices rules under RCW  
27 76.09.040, the board is required to consider the outcomes from any  
28 existing program that provides incentives for landowners to invest in  
29 voluntary conservation measures, including the outcomes monitored by  
30 the panel under section 3 of this act, and determine the consistency of  
31 the measures' outcomes with the desired outcomes of the proposed rules.  
32 The board must, when deemed appropriate by the board, include in its  
33 consideration an evaluation of existing voluntary conservation measures  
34 to determine whether or not, or to what degree, the intended outcomes  
35 are being achieved through voluntary measures.

36 (2) When considering voluntary conservation measures that require

1 public funding, the board shall include in its consideration whether  
2 adequate funding for the initiative has been concurrently secured.

3 (3) This section is intended only to inform future rule making of  
4 the board. Nothing in this section creates a requirement on the board  
5 beyond the consideration of existing incentives and how they may or may  
6 not be relevant in the rule development process. The final  
7 determination regarding adequate compliance with this section shall  
8 belong to the board, and nothing in this section may be used to compel  
9 delayed or discontinued rule making.

10 **Sec. 5.** RCW 76.09.020 and 2009 c 354 s 5 and 2009 c 246 s 4 are  
11 each reenacted and amended to read as follows:

12 The definitions in this section apply throughout this chapter  
13 unless the context clearly requires otherwise.

14 (1) "Adaptive management" means reliance on scientific methods to  
15 test the results of actions taken so that the management and related  
16 policy can be changed promptly and appropriately.

17 (2) "Appeals board" means the forest practices appeals board  
18 created by RCW 76.09.210.

19 (3) "Application" means the application required pursuant to RCW  
20 76.09.050.

21 (4) "Aquatic resources" includes water quality, salmon, other  
22 species of the vertebrate classes Cephalaspidomorphi and Osteichthyes  
23 identified in the forests and fish report, the Columbia torrent  
24 salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander  
25 (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton*  
26 *olympian*), the Dunn's salamander (*Plethodon dunnii*), the Van Dyke's  
27 salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and  
28 their respective habitats.

29 (5) "Board" means the forest practices board created in RCW  
30 76.09.030.

31 (6) "Commissioner" means the commissioner of public lands.

32 (7) "Contiguous" means land adjoining or touching by common corner  
33 or otherwise. Land having common ownership divided by a road or other  
34 right-of-way shall be considered contiguous.

35 (8) "Conversion to a use other than commercial timber operation"  
36 means a bona fide conversion to an active use which is incompatible  
37 with timber growing and as may be defined by forest practices rules.

1 (9) "Department" means the department of natural resources.

2 (10) "Fish passage barrier" means any artificial instream structure  
3 that impedes the free passage of fish.

4 (11) "Forest land" means all land which is capable of supporting a  
5 merchantable stand of timber and is not being actively used for a use  
6 which is incompatible with timber growing. Forest land does not  
7 include agricultural land that is or was enrolled in the conservation  
8 reserve enhancement program by contract if such agricultural land was  
9 historically used for agricultural purposes and the landowner intends  
10 to continue to use the land for agricultural purposes in the future.  
11 As it applies to the operation of the road maintenance and abandonment  
12 plan element of the forest practices rules on small forest landowners,  
13 the term "forest land" excludes:

14 (a) Residential home sites, which may include up to five acres; and

15 (b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens,  
16 and the land on which appurtenances necessary to the production,  
17 preparation, or sale of crops, fruit, dairy products, fish, and  
18 livestock exist.

19 (12) "Forest landowner" means any person in actual control of  
20 forest land, whether such control is based either on legal or equitable  
21 title, or on any other interest entitling the holder to sell or  
22 otherwise dispose of any or all of the timber on such land in any  
23 manner. However, any lessee or other person in possession of forest  
24 land without legal or equitable title to such land shall be excluded  
25 from the definition of "forest landowner" unless such lessee or other  
26 person has the right to sell or otherwise dispose of any or all of the  
27 timber located on such forest land.

28 (13) "Forest practice" means any activity conducted on or directly  
29 pertaining to forest land and relating to growing, harvesting, or  
30 processing timber, including but not limited to:

31 (a) Road and trail construction;

32 (b) Harvesting, final and intermediate;

33 (c) Precommercial thinning;

34 (d) Reforestation;

35 (e) Fertilization;

36 (f) Prevention and suppression of diseases and insects;

37 (g) Salvage of trees; and

38 (h) Brush control.

1 "Forest practice" shall not include preparatory work such as tree  
2 marking, surveying and road flagging, and removal or harvesting of  
3 incidental vegetation from forest lands such as berries, ferns,  
4 greenery, mistletoe, herbs, mushrooms, and other products which cannot  
5 normally be expected to result in damage to forest soils, timber, or  
6 public resources.

7 (14) "Forest practices rules" means any rules adopted pursuant to  
8 RCW 76.09.040.

9 (15) "Forest road," as it applies to the operation of the road  
10 maintenance and abandonment plan element of the forest practices rules  
11 on small forest landowners, means a road or road segment that crosses  
12 land that meets the definition of forest land, but excludes residential  
13 access roads.

14 (16) "Forest trees" does not include hardwood trees cultivated by  
15 agricultural methods in growing cycles shorter than fifteen years if  
16 the trees were planted on land that was not in forest use immediately  
17 before the trees were planted and before the land was prepared for  
18 planting the trees. "Forest trees" includes Christmas trees, but does  
19 not include Christmas trees that are cultivated by agricultural  
20 methods, as that term is defined in RCW 84.33.035.

21 (17) "Forests and fish report" means the forests and fish report to  
22 the board dated April 29, 1999.

23 (18) "Operator" means any person engaging in forest practices  
24 except an employee with wages as his or her sole compensation.

25 (19) "Person" means any individual, partnership, private, public,  
26 or municipal corporation, county, the department or other state or  
27 local governmental entity, or association of individuals of whatever  
28 nature.

29 (20) "Public resources" means water, fish and wildlife, and in  
30 addition shall mean capital improvements of the state or its political  
31 subdivisions.

32 (21) "Small forest landowner" has the same meaning as defined in  
33 RCW 76.09.450.

34 (22) "Timber" means forest trees, standing or down, of a commercial  
35 species, including Christmas trees. However, "timber" does not include  
36 Christmas trees that are cultivated by agricultural methods, as that  
37 term is defined in RCW 84.33.035.



1 (23) "Timber owner" means any person having all or any part of the  
2 legal interest in timber. Where such timber is subject to a contract  
3 of sale, "timber owner" shall mean the contract purchaser.

4 (24) "Unconfined channel migration zone" means the area within  
5 which the active channel of an unconfined stream is prone to move and  
6 where the movement would result in a potential near-term loss of  
7 riparian forest adjacent to the stream. Sizeable islands with  
8 productive timber may exist within the zone.

9 (25) "Unconfined stream" means generally fifth order or larger  
10 waters that experience abrupt shifts in channel location, creating a  
11 complex floodplain characterized by extensive gravel bars, disturbance  
12 species of vegetation of variable age, numerous side channels, wall-  
13 based channels, oxbow lakes, and wetland complexes. Many of these  
14 streams have dikes and levees that may temporarily or permanently  
15 restrict channel movement.

16 (26) "Panel" means the forestry incentives panel formed in section  
17 3 of this act.

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