
SUBSTITUTE HOUSE BILL 1286

State of Washington

54th Legislature

1995 Regular Session

By House Committee on Natural Resources (originally sponsored by Representatives Buck, Pennington, Fuhrman, Pelesky, Johnson, McMorris, Sheldon, Cairnes, B. Thomas, Kessler, Stevens and Talcott)

Read first time 02/09/95.

1 AN ACT Relating to the regulation of forest practices; amending RCW
2 76.09.010, 76.09.020, 76.09.050, 76.09.080, and 76.09.090; adding new
3 sections to chapter 76.09 RCW; creating a new section; and declaring an
4 emergency.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 76.09 RCW
7 to read as follows:

8 The legislature finds and declares that:

9 (1) Failing to allow private forest landowners and state trust
10 lands to achieve an acceptable rate of return on their investments in
11 forest lands will result in the loss of revenues to schools and the
12 beneficiaries of other state trust lands and in the loss of working
13 forest lands throughout the state, and this loss will be harmful to the
14 general welfare of the people and the environment of the state. In
15 light of the long-term nature of forest investments, much greater
16 regulatory certainty than currently exists is required for private
17 forest landowners to remain viable in this state.

18 (2) Some of the current rules that restrict forest practices are
19 not compatible with the economic needs of private landowners and the

1 beneficiaries of state trust lands. Moreover, the process by which
2 these rules have been adopted and administered creates an unacceptable
3 level of regulatory uncertainty.

4 (3) It is in the best interest of the state that rules restricting
5 forest activities on private and state trust lands for endangered or
6 threatened species be adopted under the normal rule-making procedures
7 of the board, be directed toward ensuring the survival of the affected
8 species as a whole, and impose the burden for the recovery of the
9 species on public lands other than state trust lands.

10 **Sec. 2.** RCW 76.09.010 and 1993 c 443 s 1 are each amended to read
11 as follows:

12 (1) The legislature hereby finds and declares that the forest land
13 resources are among the most valuable of all resources in the state;
14 that a viable forest products industry is of prime importance to the
15 state's economy; that it is in the public interest for public and
16 private commercial forest lands to be managed consistent with sound
17 policies of natural resource protection; that ~~((coincident with
18 maintenance of a viable forest products industry))~~ it is important to
19 encourage economic and efficient forest practices to assure the
20 continuous growing and harvesting of timber as the primary use of
21 private forest lands and state trust lands and the maintenance of
22 forest lands for these purposes; and that, consistent with the policy
23 of assuring continuous growing and harvesting of timber, it is
24 important to afford protection to forest soils, fisheries, wildlife,
25 water quantity and quality, air quality, recreation, and scenic beauty.

26 (2) The legislature further finds and declares it to be in the
27 public interest of this state to create and maintain through the
28 adoption of this chapter a comprehensive state-wide system of laws and
29 forest practices regulations which will achieve the following purposes
30 and policies:

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

35 (b) Afford protection to forest soils and public resources by
36 utilizing all reasonable methods of technology in conducting forest
37 practices;

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

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

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

7 (f) Provide for interagency input and intergovernmental and tribal
8 coordination and cooperation;

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

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

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

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

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

24 (5) The legislature further finds and declares that it is in the
25 public interest that the state implement the purposes and policies set
26 forth in subsection (2) of this section in a manner that is compatible
27 with the primary use of the forest lands of the state and the
28 maintenance of a viable forest products industry.

29 **Sec. 3.** RCW 76.09.020 and 1974 ex.s. c 137 s 2 are each amended to
30 read as follows:

31 For purposes of this chapter:

32 (1) "Appeals board" (~~shall~~) means the forest practices appeals
33 board created by RCW 76.09.210.

34 (2) "Commissioner" (~~shall~~) means the commissioner of public
35 lands.

36 (3) "Contiguous" (~~shall~~) means land adjoining or touching by
37 common corner or otherwise. Land having common ownership divided by a
38 road or other right of way shall be considered contiguous.

1 (4) "Conversion to a use other than commercial timber operation"
2 (~~shall~~) means a bona fide conversion to an active use which is
3 incompatible with timber growing and as may be defined by forest
4 practices regulations.

5 (5) "Department" (~~shall~~) means the department of natural
6 resources.

7 (6) "Forest land" (~~shall~~) means all land which is capable of
8 supporting a merchantable stand of timber and is not being actively
9 used for a use which is incompatible with timber growing.

10 (7) "Forest land owner" (~~shall~~) means any person in actual
11 control of forest land, whether such control is based either on legal
12 or equitable title, or on any other interest entitling the holder to
13 sell or otherwise dispose of any or all of the timber on such land in
14 any manner: PROVIDED, That any lessee or other person in possession of
15 forest land without legal or equitable title to such land shall be
16 excluded from the definition of "forest land owner" unless such lessee
17 or other person has the right to sell or otherwise dispose of any or
18 all of the timber located on such forest land.

19 (8) "Forest practice" (~~shall~~) means any activity conducted on or
20 directly pertaining to forest land and relating to growing, harvesting,
21 or processing timber, including but not limited to:

- 22 (a) Road and trail construction;
- 23 (b) Harvesting, final and intermediate;
- 24 (c) Precommercial thinning;
- 25 (d) Reforestation;
- 26 (e) Fertilization;
- 27 (f) Prevention and suppression of diseases and insects;
- 28 (g) Salvage of trees; and
- 29 (h) Brush control.

30 "Forest practice" (~~shall~~) does not include preparatory work such as
31 tree marking, surveying and road flagging, and removal or harvesting of
32 incidental vegetation from forest lands such as berries, ferns,
33 greenery, mistletoe, herbs, mushrooms, and other products which cannot
34 normally be expected to result in damage to forest soils, timber, or
35 public resources.

36 (9) "Forest practices regulations" (~~shall~~) means any rules
37 promulgated pursuant to RCW 76.09.040.

38 (10) "Application" (~~shall~~) means the application required
39 pursuant to RCW 76.09.050.

1 (11) "Operator" (~~shall~~) means any person engaging in forest
2 practices except an employee with wages as his sole compensation.

3 (12) "Person" (~~shall~~) means any individual, partnership, private,
4 public, or municipal corporation, county, the department or other state
5 or local governmental entity, or association of individuals of whatever
6 nature.

7 (13) "Public lands" means lands administered by the federal
8 government, including, but not limited to, national parks, national
9 forests, national monuments, and lands administered by the bureau of
10 land management; and lands administered by the state or its political
11 subdivisions, including, but not limited to, state parks, state
12 wildlife refuges, and county parks, but does not include state trust
13 lands.

14 (14) "Public resources" (~~shall~~) means water, species of fish and
15 wildlife as distinct from individual members of species, and in
16 addition shall mean capital improvements of the state or its political
17 subdivisions.

18 (~~(14)~~) (15) "Timber" (~~shall~~) means forest trees, standing or
19 down, of a commercial species, including Christmas trees.

20 (~~(15)~~) (16) "Timber owner" (~~shall~~) means any person having all
21 or any part of the legal interest in timber. Where such timber is
22 subject to a contract of sale, "timber owner" (~~shall~~) means the
23 contract purchaser.

24 (~~(16)~~) (17) "Board" (~~shall~~) means the forest practices board
25 created in RCW 76.09.030.

26 (18) "Endangered species" means: (a) Any wildlife species native
27 to the state of Washington that is seriously threatened with extinction
28 and is lawfully designated as endangered by an authorized agency of the
29 state of Washington; or (b) any wildlife species designated as
30 endangered under the endangered species act.

31 (19) "Material damage" means actual damage that significantly
32 exceeds the ordinary impact of comparable forest practices and is long
33 term and of more than localized effect.

34 (20) "Recovery plan" means either: (a) A final federal recovery
35 plan issued under the endangered species act; or (b) a final state
36 recovery plan validly issued by an authorized state agency.

37 (21) "State trust lands" means lands held in trust by the state of
38 Washington for the common schools, the University of Washington, and
39 others pursuant to the Washington enabling act (25 Stat. 676) and lands

1 held in trust by the state of Washington for various counties pursuant
2 to RCW 76.12.030.

3 (22) "Threatened species" means: (a) Any wildlife species native
4 to the state of Washington that is likely to become an endangered
5 species within the foreseeable future without cooperative management or
6 removal of threats and is lawfully designated as threatened by an
7 authorized agency of the state of Washington; or (b) any wildlife
8 species designated as threatened under the endangered species act.

9 (23) "Watershed analysis" means that process and report described
10 in chapter 222-22 WAC.

11 (24) "Endangered species act" means the federal endangered species
12 act, 87 Stat. 884, 16 U.S.C. 1531 et seq.

13 NEW SECTION. Sec. 4. A new section is added to chapter 76.09 RCW
14 to read as follows:

15 (1) The board may adopt regulations establishing planning processes
16 to address potential cumulative effects of forest practices likely to
17 be conducted by one or more forest landowners within a watershed or
18 other landscape planning area. Forest practices to be conducted in
19 accordance with such plans shall be excluded from the list of practices
20 adopted by the board under (d) of the Class IV forest practice
21 provisions of RCW 76.09.050(1), to the extent they would have been
22 included on such list by reason of environmental issues addressed in
23 plans approved by the department under those rules. To further
24 encourage landowners to participate in these planning processes, the
25 rules may provide other preferential treatment for forest practices
26 conducted in accordance with such plans. Adoption of such regulations
27 by the board may require preparation of a detailed statement under
28 chapter 43.21C RCW, but approval by the department of landowner plans
29 under such regulations does not.

30 (2) Except as may be provided by the board by rule, an incidental
31 take permit, incidental take statement, unlisted species agreement,
32 special rule relating to threatened species, or other written approval
33 by the United States fish and wildlife service or the national marine
34 fisheries service shall be considered equivalent to a plan approved by
35 the department pursuant to rules adopted under subsection (1) of this
36 section, with respect to the species of fish and wildlife covered by
37 such federal permit or approval.

1 **Sec. 5.** RCW 76.09.050 and 1994 c 264 s 49 are each amended to read
2 as follows:

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

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

8 (b) 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 RCW 76.09.065 have
15 been received by the department. Class II shall not include forest
16 practices:

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

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

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

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

24 (c) Class III: Forest practices other than those contained in Class
25 I, II, or IV. A Class III application must be approved or disapproved
26 by the department within thirty calendar days from the date the
27 department receives the application. However, the applicant may not
28 begin work on that forest practice until all forest practice fees
29 required under RCW 76.09.065 have been received by the department;

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

1 the date the department receives the application: PROVIDED, That
2 nothing herein shall be construed to prevent any local or regional
3 governmental entity from determining that a detailed statement must be
4 prepared for an action pursuant to a Class IV forest practice taken by
5 that governmental entity concerning the land on which forest practices
6 will be conducted. A Class IV application must be approved or
7 disapproved by the department within thirty calendar days from the date
8 the department receives the application, unless the department
9 determines that a detailed statement must be made, in which case the
10 application must be approved or disapproved by the department within
11 sixty calendar days from the date the department receives the
12 application, unless the commissioner of public lands, through the
13 promulgation of a formal order, determines that the process cannot be
14 completed within such period. However, the applicant may not begin
15 work on that forest practice until all forest practice fees required
16 under RCW 76.09.065 have been received 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 the operator's agent, the department
38 shall immediately provide a dated receipt thereof. In all other cases,
39 the 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. The department may impose a
5 condition on an application only after it has concluded that the
6 condition is necessary to prevent material damage to a public resource.
7 The department must also determine that there is no less restrictive or
8 less costly measure reasonably likely to prevent the material damage.
9 Before imposing the condition, the department must prepare a written
10 decision document, which it shall attach to the approved application.
11 The decision document shall:

12 (a) Set forth in reasonable detail the basis for the department's
13 conclusion that material damage will occur unless the condition is
14 imposed;

15 (b) Identify all evidence relied upon by the department. Where
16 evidence includes observations of department personnel or others, the
17 observers shall be identified. Copies of any research results or other
18 written authorities relied upon shall be included, or cited if commonly
19 available; and

20 (c) Identify the alternative conditions, if any, which were
21 considered and rejected and the reasons such alternatives were not
22 accepted.

23 In an appeal of a condition imposed by the department, the
24 department shall bear the burden of proving that the condition is
25 necessary to prevent material damage to public resources, and that no
26 less restrictive or costly condition is reasonably likely to prevent
27 the material damage. Unless the applicant should otherwise agree, the
28 department shall be limited in the appeal to presenting the evidence
29 identified in the decision document.

30 (5) The department of natural resources shall notify the applicant
31 in writing of either its approval of the application or its disapproval
32 of the application and the specific manner in which the application
33 fails to comply with the provisions of this section or with the forest
34 practices regulations. Except as provided otherwise in this section,
35 if the department fails to either approve or disapprove an application
36 or any portion thereof within the applicable time limit, the
37 application shall be deemed approved and the operation may be
38 commenced: PROVIDED, That this provision shall not apply to
39 applications which are neither approved nor disapproved pursuant to the

1 provisions of subsection (7) of this section: PROVIDED, FURTHER, That
2 if seasonal field conditions prevent the department from being able to
3 properly evaluate the application, the department may issue an approval
4 conditional upon further review within sixty days: PROVIDED, FURTHER,
5 That the department shall have until April 1, 1975, to approve or
6 disapprove an application involving forest practices allowed to
7 continue to April 1, 1975, under the provisions of subsection (2) of
8 this section. Upon receipt of any notification or any satisfactorily
9 completed application the department shall in any event no later than
10 two business days after such receipt transmit a copy to the departments
11 of ecology and fish and wildlife, and to the county, city, or town in
12 whose jurisdiction the forest practice is to be commenced. Any
13 comments by such agencies shall be directed to the department of
14 natural resources.

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

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

22 (a) The department receives written notice from the county, city,
23 or town of such objections within fourteen business days from the time
24 of transmittal of the application to the county, city, or town, or one
25 day before the department acts on the application, whichever is later;
26 and

27 (b) The objections relate to lands either:

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

29 (ii) Being converted to another use.

30 The department shall either disapprove those portions of such
31 application or appeal the county, city, or town objections to the
32 appeals board. If the objections related to subparagraphs (b) (i) and
33 (ii) of this subsection are based on local authority consistent with
34 RCW 76.09.240 as now or hereafter amended, the department shall
35 disapprove the application until such time as the county, city, or town
36 consents to its approval or such disapproval is reversed on appeal.
37 The applicant shall be a party to all department appeals of county,
38 city, or town objections. Unless the county, city, or town either
39 consents or has waived its rights under this subsection, the department

1 shall not approve portions of an application affecting such lands until
2 the minimum time for county, city, or town objections has expired.

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

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

13 (10) The department shall, within four business days notify the
14 county, city, or town of all notifications, approvals, and disapprovals
15 of an application affecting lands within the county, city, or town,
16 except to the extent the county, city, or town has waived its right to
17 such notice.

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

21 **Sec. 6.** RCW 76.09.080 and 1989 c 175 s 163 are each amended to
22 read as follows:

23 (1) The department shall have the authority to serve upon an
24 operator a stop work order which shall be a final order of the
25 department if:

26 (a) There is any violation of the provisions of this chapter or the
27 forest practices regulations; or

28 (b) There is a deviation from the approved application; or

29 (c) Immediate action is necessary to prevent continuation of or to
30 avoid material damage to a public resource.

31 In cases where the department issues a stop work order under (c) of
32 this subsection, the department shall, within two business days
33 following the service of the stop work order on the operator, prepare
34 and mail to the operator and landowner a written decision document
35 which shall:

36 (i) Set forth in reasonable detail the basis for the department's
37 conclusion that material damage will occur unless the stop work order
38 is issued;

1 (ii) Identify all evidence relied upon by the department. Where
2 evidence includes observations of department personnel or others, the
3 observers shall be identified. Copies of any research results or other
4 written authorities relied upon shall be included, or cited if commonly
5 available; and

6 (iii) Identify the reasonable alternative actions, if any, which
7 were considered and rejected, and discuss the reasons why the
8 alternatives were not accepted.

9 (2) The stop work order shall set forth:

10 (a) The specific nature, extent, and time of the violation,
11 deviation, damage, or potential damage;

12 (b) An order to stop all work connected with the violation,
13 deviation, damage, or potential damage;

14 (c) The specific course of action needed to correct such violation
15 or deviation or to prevent damage and to correct and/or compensate for
16 damage to public resources which has resulted from any violation,
17 unauthorized deviation, or willful or negligent disregard for potential
18 damage to a public resource; and/or those courses of action necessary
19 to prevent continuing damage to public resources where the damage is
20 resulting from the forest practice activities but has not resulted from
21 any violation, unauthorized deviation, or negligence; ((and))

22 (d) The right of the operator to a hearing before the appeals
23 board; and

24 (e) Whether a written decision document is required under this
25 section.

26 (3) The department shall immediately file a copy of ((such)) the
27 stop work order with the appeals board and mail a copy thereof to the
28 timber owner and forest land owner at the addresses shown on the
29 application. The operator, timber owner, or forest land owner may
30 commence an appeal to the appeals board within fifteen days after
31 service upon the operator. If such appeal is commenced, a hearing
32 shall be held not more than twenty days after copies of the notice of
33 appeal were filed with the appeals board. Such proceeding shall be an
34 adjudicative proceeding within the meaning of chapter 34.05 RCW, the
35 Administrative Procedure Act, except that in cases where a written
36 decision document is required under subsection (1)(c) of this section
37 the department shall bear the burden of proving that the stop work
38 order is necessary to prevent the continuation of or to avoid material
39 damage to public resources and that no less restrictive or less costly

1 measures are reasonably likely to accomplish the same. Unless the
2 operator and landowner should otherwise agree, the department shall be
3 limited in the appeal to presenting and supporting the evidence
4 identified in the decision document. The operator shall comply with
5 the order of the department immediately upon being served, but the
6 appeals board if requested shall have authority to continue or
7 discontinue in whole or in part the order of the department under such
8 conditions as it may impose pending the outcome of the proceeding.

9 **Sec. 7.** RCW 76.09.090 and 1975 1st ex.s. c 200 s 6 are each
10 amended to read as follows:

11 If a violation, a deviation, material damage or potential for
12 material damage to a public resource has occurred and the department
13 determines that a stop work order is unnecessary, then the department
14 shall issue and serve upon the operator or land owner a notice(~~(, which~~
15 ~~shall clearly set forth)) to comply.~~

16 (1) A notice to comply shall clearly set forth:

17 ~~((+1))~~(a) The specific nature, extent, and time of failure to
18 comply with the approved application; or identifying the damage or
19 potential damage; and/or ~~((+b))~~ the relevant provisions of this
20 chapter or of the forest practice regulations relating thereto;

21 ~~((+2))~~ (b) The right of the operator or land owner to a hearing
22 before the department; and

23 ~~((+3))~~ (c) The specific course of action ordered by the department
24 to be followed by the operator to correct such failure to comply and to
25 prevent, correct and/or compensate for material damage to public
26 resources which resulted from any violation, unauthorized deviation, or
27 wilful or negligent disregard for potential damage to a public
28 resource; and/or those courses of action necessary to prevent
29 continuing damage to public resources where the damage is resulting
30 from the forest practice activities but has not resulted from any
31 violation, unauthorized deviation, or negligence.

32 (2) Prior to issuing a notice to comply other than one solely
33 involving claimed violations or deviations from the forest practices
34 act, forest practices regulations, or the terms and conditions of an
35 approved application, the department shall prepare a written decision
36 document and attach it to the notice. The decision document shall:

1 (a) Set forth in reasonable detail the basis for the department's
2 conclusion that material damage will occur unless the notice to comply
3 is issued;

4 (b) Identify all evidence relied upon by the department. Where
5 evidence includes observations of department personnel or others, the
6 observers shall be identified. Copies of any research results or other
7 written authorities relied upon shall be included, or cited if commonly
8 available; and

9 (c) Identify any alternative conditions which were considered and
10 rejected and the reasons such alternatives were not accepted.

11 (3) In an appeal of a notice to comply, the department shall bear
12 the burden of proving that the notice to comply was necessary, and in
13 cases covered by subsection (2) of this section, the department shall
14 be limited in the appeal to the evidence identified in the decision
15 document unless the operator and landowner agree otherwise.

16 (4) The department shall mail a copy (~~thereof~~) of the notice, and
17 decision document, if applicable, to the forest land owner and the
18 timber owner at the addresses shown on the application, showing the
19 date of service upon the operator. Such notice to comply shall become
20 a final order of the department(~~(: PROVIDED, That no direct appeal to~~
21 ~~the appeals board will be allowed from such final order)~~). Such
22 operator shall undertake the course of action so ordered by the
23 department unless, within fifteen days after the date of service of
24 such notice to comply, the operator, forest land owner, or timber
25 owner, (~~shall~~) requests the department in writing to schedule a
26 hearing or files an appeal to the appeals board. If (~~so requested,~~)
27 a hearing before the department is requested, the department shall
28 schedule a hearing on a date not more than twenty days after receiving
29 such request. Within ten days after such hearing, the department shall
30 issue a final order either withdrawing its notice to comply or clearly
31 setting forth the specific course of action to be followed by such
32 operator. Such operator shall undertake the course of action so
33 ordered by the department unless within thirty days after the date of
34 such final order, the operator, forest land owner, or timber owner
35 appeals such final order to the appeals board.

36 No person shall be under any obligation under this section to
37 prevent, correct, or compensate for any damage to public resources
38 which occurs more than one year after the date of completion of the
39 forest practices operations involved exclusive of reforestation, unless

1 such forest practices were not conducted in accordance with forest
2 practices rules and regulations: PROVIDED, That this provision shall
3 not relieve the forest land owner from any obligation to comply with
4 forest practices rules and regulations pertaining to providing
5 continuing road maintenance. No action to recover damages shall be
6 taken under this section more than two years after the date the damage
7 involved occurs.

8 NEW SECTION. **Sec. 8.** A new section is added to chapter 76.09 RCW
9 to read as follows:

10 (1) The board shall not adopt permanent rules for the protection of
11 endangered or threatened species of fish or wildlife, under RCW
12 76.09.040 or 76.09.050 or other authority, until a final recovery plan
13 has been issued for the species.

14 (2) The board shall not adopt an emergency rule, under RCW
15 76.09.040 or 76.09.050 or other authority, to protect fish and wildlife
16 unless:

17 (a) The species is an endangered species; and

18 (b) The board finds that in the absence of such an emergency rule,
19 forest practices on nonpublic lands that are to be regulated by the
20 proposed emergency rule would cause a material further decline in the
21 species as a whole.

22 NEW SECTION. **Sec. 9.** A new section is added to chapter 76.09 RCW
23 to read as follows:

24 (1) The board shall not adopt any rule that would materially limit
25 commercial forest management of forest lands unless the board expressly
26 finds that:

27 (a) The proposed rule fully assesses the feasibility of available
28 alternatives to direct regulation, including providing economic
29 incentives to encourage the desired behavior;

30 (b) The proposed rule is based on the best reasonably obtainable
31 scientific, technical, economic, and other information concerning the
32 need for and consequences of adopting such a rule;

33 (c) The restrictions on forest practices on nonpublic forest lands
34 set forth in the proposed rule are reasonable and capable of being
35 accomplished on nonpublic lands and comply with the regulatory fairness
36 act, chapter 19.85 RCW;

1 (d) The restrictions on forest practices on nonpublic forest lands
2 set forth in the proposed rule are not likely significantly to reduce
3 private investments in the acquisition and retention of forest lands in
4 the state or in silvicultural activities in the state, or to cause
5 conversion of significant amounts of forest lands to nonforest uses;

6 (e) Based on its review of applicable law, including, but not
7 limited to, the most recent advisory memorandum of the state attorney
8 general issued under RCW 36.70A.370, the restrictions on forest
9 practices on nonpublic forest lands set forth in the proposed rule will
10 not result in a taking of private property without compensation; and

11 (f) The proposed rule includes a variance procedure for use by
12 owners of parcels of land which are disproportionately affected by the
13 rule as applied.

14 (2) In addition to the limitations set forth in subsection (1) of
15 this section, the board shall not adopt any rule to protect fish and
16 wildlife that would materially limit commercial forest management of
17 forest lands unless the board expressly finds that:

18 (a) Protection of the species on public lands is inadequate;

19 (b) The proposed rule takes fully into account the protection of
20 the species provided by:

21 (i) The other rules adopted by the board;

22 (ii) Cooperative plans protecting wildlife including, but not
23 limited to, resource management plans and habitat conservation plans;
24 and

25 (iii) Predictable forest land management practices that the board
26 can reasonably anticipate will be carried out on the land involved
27 based on historic practices, published resource management plans, and
28 credible studies of expected future practices;

29 (c) The proposed rule has clearly identified specific life
30 requisites of the affected species which cannot reasonably be met
31 without regulation of forest practices on nonpublic lands; and

32 (d) The restrictions on forest practices on nonpublic forest lands
33 set forth in the proposed rule are the least costly means of meeting
34 the life requisites of the species.

35 (3) The board shall not adopt any rule requiring surveys of habitat
36 to determine occupancy or nonoccupancy, or permitting or authorizing
37 the department to reject applications or notifications as incomplete if
38 they do not include survey information of fish and wildlife to
39 determine occupancy or nonoccupancy. Any rules adopted by the board to

1 protect fish or wildlife shall protect only known sites, as documented
2 by the department of fish and wildlife in accordance with published
3 protocols.

4 NEW SECTION. **Sec. 10.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

8 NEW SECTION. **Sec. 11.** Any rule adopted by the forest practices
9 board after January 1, 1995, will be invalid unless readopted within
10 ninety days by the board in accordance with the terms of this act. Any
11 rule adopted by the board before January 1, 1995, which classifies one
12 or more forest practices as Class IV - Special due to federal
13 designation of critical habitat shall be invalid to the extent that
14 such federal designation occurs after January 1, 1995, unless readopted
15 within ninety days by the board in accordance with the terms of this
16 act.

17 NEW SECTION. **Sec. 12.** This act is necessary for the immediate
18 preservation of the public peace, health, or safety, or support of the
19 state government and its existing public institutions, and shall take
20 effect immediately.

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