

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE SENATE BILL 5883

Chapter 106, Laws of 2007

60th Legislature
2007 Regular Session

FOREST LAND--NONFORESTRY USES

EFFECTIVE DATE: 07/22/07

Passed by the Senate March 12, 2007
YEAS 46 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House April 3, 2007
YEAS 97 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved April 18, 2007, 11:05 a.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE SENATE BILL 5883** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

April 18, 2007

**Secretary of State
State of Washington**

SECOND SUBSTITUTE SENATE BILL 5883

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Fraser, Swecker, Hargrove, Stevens, Morton, Jacobsen, Rockefeller, Rasmussen and Franklin)

READ FIRST TIME 03/05/07.

1 AN ACT Relating to the conversion of forest land to nonforestry
2 uses; amending RCW 76.09.060, 76.09.070, 76.09.067, and 76.09.240; and
3 adding new sections to chapter 76.09 RCW.

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

5 **Sec. 1.** RCW 76.09.060 and 2005 c 274 s 357 are each amended to
6 read as follows:

7 The following shall apply to those forest practices administered
8 and enforced by the department and for which the board shall promulgate
9 regulations as provided in this chapter:

10 (1) The department shall prescribe the form and contents of the
11 notification and application. The forest practices rules shall specify
12 by whom and under what conditions the notification and application
13 shall be signed or otherwise certified as acceptable. The application
14 or notification shall be delivered in person to the department, sent by
15 first class mail to the department or electronically filed in a form
16 defined by the department. The form for electronic filing shall be
17 readily convertible to a paper copy, which shall be available to the
18 public pursuant to chapter 42.56 RCW. The information required may
19 include, but is not limited to:

- 1 (a) Name and address of the forest landowner, timber owner, and
2 operator;
- 3 (b) Description of the proposed forest practice or practices to be
4 conducted;
- 5 (c) Legal description and tax parcel identification numbers of the
6 land on which the forest practices are to be conducted;
- 7 (d) Planimetric and topographic maps showing location and size of
8 all lakes and streams and other public waters in and immediately
9 adjacent to the operating area and showing all existing and proposed
10 roads and major tractor roads;
- 11 (e) Description of the silvicultural, harvesting, or other forest
12 practice methods to be used, including the type of equipment to be used
13 and materials to be applied;
- 14 (f) Proposed plan for reforestation and for any revegetation
15 necessary to reduce erosion potential from roadsides and yarding roads,
16 as required by the forest practices rules;
- 17 (g) Soil, geological, and hydrological data with respect to forest
18 practices;
- 19 (h) The expected dates of commencement and completion of all forest
20 practices specified in the application;
- 21 (i) Provisions for continuing maintenance of roads and other
22 construction or other measures necessary to afford protection to public
23 resources;
- 24 (j) An affirmation that the statements contained in the
25 notification or application are true; and
- 26 (k) All necessary application or notification fees.
- 27 (2) Long range plans may be submitted to the department for review
28 and consultation.
- 29 (3) The application for a forest practice or the notification of a
30 (~~Class II~~) forest practice is subject to the (~~three-year~~)
31 reforestation requirement of RCW 76.09.070.
- 32 (a) If the application states that any (~~such~~) land will be or is
33 intended to be (~~so~~) converted:
- 34 (i) The reforestation requirements of this chapter and of the
35 forest practices rules shall not apply if the land is in fact (~~so~~)
36 converted unless applicable alternatives or limitations are provided in
37 forest practices rules issued under RCW 76.09.070 (~~as now or hereafter~~
38 ~~amended~~);

1 (ii) Completion of such forest practice operations shall be deemed
2 conversion of the lands to another use for purposes of chapters 84.33
3 and 84.34 RCW unless the conversion is to a use permitted under a
4 current use tax agreement permitted under chapter 84.34 RCW;

5 (iii) The forest practices described in the application are subject
6 to applicable county, city, town, and regional governmental authority
7 permitted under RCW 76.09.240 (~~as now or hereafter amended~~) as well
8 as the forest practices rules.

9 (b) Except as provided elsewhere in this section, if the landowner
10 harvests without an approved application or notification or the
11 landowner does not state that any land covered by the application or
12 notification will be or is intended to be (~~se~~) converted(~~+~~

13 ~~(i) For six years after the date of the application the county,~~
14 ~~city, town, and regional governmental entities shall deny any or all~~
15 ~~applications for permits or approvals, including building permits and~~
16 ~~subdivision approvals, relating to nonforestry uses of land subject to~~
17 ~~the application;~~

18 ~~(A) The department shall submit to the local governmental entity a~~
19 ~~copy of the statement of a forest landowner's intention not to convert~~
20 ~~which shall represent a recognition by the landowner that the six year~~
21 ~~moratorium shall be imposed and shall preclude the landowner's ability~~
22 ~~to obtain development permits while the moratorium is in place. This~~
23 ~~statement shall be filed by the local governmental entity with the~~
24 ~~county recording officer, who shall record the documents as provided in~~
25 ~~chapter 65.04 RCW, except that lands designated as forest lands of~~
26 ~~long term commercial significance under chapter 36.70A RCW shall not be~~
27 ~~recorded due to the low likelihood of conversion. Not recording the~~
28 ~~statement of a forest landowner's conversion intention shall not be~~
29 ~~construed to mean the moratorium is not in effect.~~

30 ~~(B) The department shall collect the recording fee and reimburse~~
31 ~~the local governmental entity for the cost of recording the~~
32 ~~application.~~

33 ~~(C) When harvesting takes place without an application, the local~~
34 ~~governmental entity shall impose the six year moratorium provided in~~
35 ~~(b)(i) of this subsection from the date the unpermitted harvesting was~~
36 ~~discovered by the department or the local governmental entity.~~

37 ~~(D) The local governmental entity shall develop a process for~~

1 ~~lifting the six year moratorium, which shall include public~~
2 ~~notification, and procedures for appeals and public hearings.~~

3 ~~(E) The local governmental entity may develop an administrative~~
4 ~~process for lifting or waiving the six year moratorium for the purposes~~
5 ~~of constructing a single family residence or outbuildings, or both, on~~
6 ~~a legal lot and building site. Lifting or waiving of the six year~~
7 ~~moratorium is subject to compliance with all local ordinances.~~

8 ~~(F) The six year moratorium shall not be imposed on a forest~~
9 ~~practices application that contains a conversion option harvest plan~~
10 ~~approved by the local governmental entity unless the forest practice~~
11 ~~was not in compliance with the approved forest practice permit. Where~~
12 ~~not in compliance with the conversion option harvest plan, the six year~~
13 ~~moratorium shall be imposed from the date the application was approved~~
14 ~~by the department or the local governmental entity;~~

15 ~~(ii)), and the department or the county, city, town, or regional~~
16 ~~governmental entity becomes aware of conversion activities to a use~~
17 ~~other than commercial timber operations, as that term is defined in RCW~~
18 ~~76.09.020, then the department shall send to the department of ecology~~
19 ~~and the appropriate county, city, town, and regional governmental~~
20 ~~entities the following documents:~~

21 ~~(i) A notice of a conversion to nonforestry use;~~

22 ~~(ii) A copy of the applicable forest practices application or~~
23 ~~notification, if any; and~~

24 ~~(iii) Copies of any applicable outstanding final orders or~~
25 ~~decisions issued by the department related to the forest practices~~
26 ~~application or notification.~~

27 ~~(c) Failure to comply with the reforestation requirements contained~~
28 ~~in any final order or decision shall constitute a removal of~~
29 ~~designation under the provisions of RCW 84.33.140, and a change of use~~
30 ~~under the provisions of RCW 84.34.080, and, if applicable, shall~~
31 ~~subject such lands to the payments and/or penalties resulting from such~~
32 ~~removals or changes(~~and~~)).~~

33 ~~((~~iii~~)) (d) Conversion to a use other than commercial forest~~
34 ~~product operations within six years after approval of the forest~~
35 ~~practices application or notification without the consent of the~~
36 ~~county, city, or town shall constitute a violation of each of the~~
37 ~~county, municipal city, town, and regional authorities to which the~~

1 forest practice operations would have been subject if the application
2 had ~~((se))~~ stated an intent to convert.

3 ~~((e))~~ (e) Land that is the subject of a notice of conversion to
4 a nonforestry use produced by the department and sent to the department
5 of ecology and a local government under this subsection is subject to
6 the development prohibition and conditions provided in section 2 of
7 this act.

8 (f) Landowners who have not stated an intent to convert the land
9 covered by an application or notification and who decide to convert the
10 land to a nonforestry use within six years of receiving an approved
11 application or notification must do so in a manner consistent with
12 section 3 of this act.

13 (g) The application or notification ~~((shall be signed))~~ must
14 include a statement requiring an acknowledgment by the forest landowner
15 ~~((and accompanied by a statement signed by the forest landowner~~
16 ~~indicating))~~ of his or her intent with respect to conversion and
17 acknowledging that he or she is familiar with the effects of this
18 subsection.

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

25 (5) Before the operator commences any forest practice in a manner
26 or to an extent significantly different from that described in a
27 previously approved application or notification, there shall be
28 submitted to the department a new application or notification form in
29 the manner set forth in this section.

30 (6) Except as provided in RCW 76.09.350(4), the notification to or
31 the approval given by the department to an application to conduct a
32 forest practice shall be effective for a term of two years from the
33 date of approval or notification and shall not be renewed unless a new
34 application is filed and approved or a new notification has been filed.
35 At the option of the applicant, an application or notification may be
36 submitted to cover a single forest practice or a number of forest
37 practices within reasonable geographic or political boundaries as
38 specified by the department. An application or notification that

1 covers more than one forest practice may have an effective term of more
2 than two years. The board shall adopt rules that establish standards
3 and procedures for approving an application or notification that has an
4 effective term of more than two years. Such rules shall include
5 extended time periods for application or notification approval or
6 disapproval. On an approved application with a term of more than two
7 years, the applicant shall inform the department before commencing
8 operations.

9 (7) Notwithstanding any other provision of this section, no prior
10 application or notification shall be required for any emergency forest
11 practice necessitated by fire, flood, windstorm, earthquake, or other
12 emergency as defined by the board, but the operator shall submit an
13 application or notification, whichever is applicable, to the department
14 within forty-eight hours after commencement of such practice or as
15 required by local regulations.

16 (8) Forest practices applications or notifications are not required
17 for forest practices conducted to control exotic forest insect or
18 disease outbreaks, when conducted by or under the direction of the
19 department of agriculture in carrying out an order of the governor or
20 director of the department of agriculture to implement pest control
21 measures as authorized under chapter 17.24 RCW, and are not required
22 when conducted by or under the direction of the department in carrying
23 out emergency measures under a forest health emergency declaration by
24 the commissioner of public lands as provided in RCW 76.06.130.

25 (a) For the purposes of this subsection, exotic forest insect or
26 disease has the same meaning as defined in RCW 76.06.020.

27 (b) In order to minimize adverse impacts to public resources,
28 control measures must be based on integrated pest management, as
29 defined in RCW 17.15.010, and must follow forest practices rules
30 relating to road construction and maintenance, timber harvest, and
31 forest chemicals, to the extent possible without compromising control
32 objectives.

33 (c) Agencies conducting or directing control efforts must provide
34 advance notice to the appropriate regulatory staff of the department of
35 the operations that would be subject to exemption from forest practices
36 application or notification requirements.

37 (d) When the appropriate regulatory staff of the department are
38 notified under (c) of this subsection, they must consult with the

1 landowner, interested agencies, and affected tribes, and assist the
2 notifying agencies in the development of integrated pest management
3 plans that comply with forest practices rules as required under (b) of
4 this subsection.

5 (e) Nothing under this subsection relieves agencies conducting or
6 directing control efforts from requirements of the federal clean water
7 act as administered by the department of ecology under RCW 90.48.260.

8 (f) Forest lands where trees have been cut as part of an exotic
9 forest insect or disease control effort under this subsection are
10 subject to reforestation requirements under RCW 76.09.070.

11 (g) The exemption from obtaining approved forest practices
12 applications or notifications does not apply to forest practices
13 conducted after the governor, the director of the department of
14 agriculture, or the commissioner of public lands have declared that an
15 emergency no longer exists because control objectives have been met,
16 that there is no longer an imminent threat, or that there is no longer
17 a good likelihood of control.

18 NEW SECTION. **Sec. 2.** A new section is added to chapter 76.09 RCW
19 to read as follows:

20 If a county, city, town, or regional governmental entity receives
21 a notice of conversion to nonforestry use by the department under RCW
22 76.09.060, then the county, city, town, or regional governmental entity
23 must deny all applications for permits or approvals, including building
24 permits and subdivision approvals, relating to nonforestry uses of the
25 land that is the subject of the notification. The prohibition created
26 by this section must be enforced by the county, city, town, or regional
27 governmental entity:

28 (1) For a period of six years from the approval date of the
29 applicable forest practices application or notification or the date
30 that the department was made aware of the harvest activities; or

31 (2) Until the following activities are completed for the land that
32 is the subject of the notice of conversion to a nonforestry use:

33 (a) Full compliance with chapter 43.21C RCW, if applicable;

34 (b) The department has notified the county, city, town, or regional
35 governmental entity that the landowner has resolved any outstanding
36 final orders or decisions issued by the department; and

1 (c) A determination is made by the county, city, town, or regional
2 governmental entity as to whether or not the condition of the land in
3 question is in full compliance with local ordinances and regulations.
4 If full compliance is not found, a mitigation plan to address
5 violations of local ordinances or regulations must be required for the
6 parcel in question by the county, city, town, or regional governmental
7 entity. Required mitigation plans must be prepared by the landowner
8 and approved by the county, city, town, or regional governmental
9 entity. Once approved, the mitigation plan must be implemented by the
10 landowner. Mitigation measures that may be required include, but are
11 not limited to, revegetation requirements to plant and maintain trees
12 of sufficient maturity and appropriate species composition to restore
13 critical area and buffer function or to be in compliance with
14 applicable local government regulations.

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

17 (1) If a landowner who did not state an intent to convert his or
18 her land to a nonforestry use decides to convert his or her land to a
19 nonforestry use within six years of receiving an approved forest
20 practices application or notification under this chapter, the landowner
21 must:

22 (a) Stop all forest practices activities on the parcels subject to
23 the proposed land use conversion to a nonforestry use;

24 (b) Contact the department of ecology and the applicable county,
25 city, town, or regional governmental entity to begin the permitting
26 process; and

27 (c) Notify the department and withdraw any applicable applications
28 or notifications or request a new application for conversion.

29 (2) Upon being contacted by a landowner under this section, the
30 county, city, town, or regional governmental entity must:

31 (a) Notify the department and request from the department the
32 status of any applicable forest practices applications, notifications,
33 or final orders or decisions; and

34 (b) Complete the following activities:

35 (i) Require that the landowner be in full compliance with chapter
36 43.21C RCW, if applicable;

1 (ii) Receive notification from the department that the landowner
2 has resolved any outstanding final orders or decisions issued by the
3 department; and

4 (iii) Make a determination as to whether or not the condition of
5 the land in question is in full compliance with local ordinances and
6 regulations. If full compliance is not found, a mitigation plan to
7 address violations of local ordinances or regulations must be required
8 for the parcel in question by the county, city, town, or regional
9 governmental entity. Required mitigation plans must be prepared by the
10 landowner and approved by the county, city, town, or regional
11 governmental entity. Once approved, the mitigation plan must be
12 implemented by the landowner. Mitigation measures that may be required
13 include, but are not limited to, revegetation requirements to plant and
14 maintain trees of sufficient maturity and appropriate species
15 composition to restore critical area and buffer function or to be in
16 compliance with applicable local government regulations.

17 **Sec. 4.** RCW 76.09.070 and 1987 c 95 s 10 are each amended to read
18 as follows:

19 (1) After the completion of a logging operation, satisfactory
20 reforestation, as defined by the rules and regulations promulgated by
21 the board, shall be completed within three years(~~(+PROVIDED, That+~~
22 ~~+1+)~~). However:

23 (a) A longer period may be authorized if seed or seedlings are not
24 available; (~~+2+)~~)

25 (b) A period of up to five years may be allowed where a natural
26 regeneration plan is approved by the department; and (~~+3+)~~)

27 (c) The department may identify low-productivity lands on which it
28 may allow for a period of up to ten years for natural regeneration.

29 (2)(a) Upon the completion of a reforestation operation a report on
30 such operation shall be filed with the department of natural resources.

31 (b) Within twelve months of receipt of such a report the department
32 shall inspect the reforestation operation, and shall determine either
33 that the reforestation operation has been properly completed or that
34 further reforestation and inspection is necessary.

35 (3) Satisfactory reforestation is the obligation of the owner of
36 the land as defined by forest practices regulations, except the owner

1 of perpetual rights to cut timber owned separately from the land is
2 responsible for satisfactory reforestation. The reforestation
3 obligation shall become the obligation of a new owner if the land or
4 perpetual timber rights are sold or otherwise transferred.

5 (4)(a) Prior to the sale or transfer of land or perpetual timber
6 rights subject to a reforestation obligation or to a notice of
7 conversion to a nonforestry use issued under RCW 76.09.060, the seller
8 shall notify the buyer of the existence and nature of the obligation
9 and the buyer shall sign a notice (~~(of reforestation obligation)~~)
10 indicating the buyer's knowledge (~~(thereof)~~) of all obligations.

11 (b) The notice shall be on a form prepared by the department and
12 shall be sent to the department by the seller at the time of sale or
13 transfer of the land or perpetual timber rights.

14 (c) If the seller fails to notify the buyer about the reforestation
15 obligation or the notice of conversion to a nonforestry use, the seller
16 shall pay the buyer's costs related to reforestation or mitigation
17 under section 3 of this act, including all legal costs which include
18 reasonable attorneys' fees, incurred by the buyer in enforcing the
19 reforestation obligation or mitigation requirements against the seller.

20 (d) Failure by the seller to send the required notice to the
21 department at the time of sale shall be prima facie evidence, in an
22 action by the buyer against the seller for costs related to
23 reforestation or mitigation, that the seller did not notify the buyer
24 of the reforestation obligation or potential mitigation requirements
25 prior to sale.

26 (5) The forest practices regulations may provide alternatives to or
27 limitations on the applicability of reforestation requirements with
28 respect to forest lands being converted in whole or in part to another
29 use which is compatible with timber growing. The forest practices
30 regulations may identify classifications and/or areas of forest land
31 that have the likelihood of future conversion to urban development
32 within a ten year period. The reforestation requirements may be
33 modified or eliminated on such lands(~~(: PROVIDED, That)~~). However,
34 such identification and/or such conversion to urban development must be
35 consistent with any local or regional land use plans or ordinances.

36 **Sec. 5.** RCW 76.09.067 and 1998 c 100 s 1 are each amended to read
37 as follows:

1 Notwithstanding any other provision of this chapter to the
2 contrary, for the purposes of RCW 76.09.050(1)((~~7~~)) and 76.09.060(~~(3)~~
3 ~~(b)(i)(A) and (c)~~, and ~~76.09.065(2)(a)~~), where timber rights have been
4 transferred by deed to a perpetual owner who is different from the
5 forest landowner, the owner of perpetual timber rights may sign the
6 forest practices application (~~(and the statement of intent not to~~
7 ~~convert for a set period of time)~~) or notification. The forest
8 practices application is not complete until the holder of perpetual
9 timber rights has submitted evidence to the department that the signed
10 forest practices application (~~(and the signed statement of intent~~
11 ~~have)~~) or notification has been (~~(served on)~~) received by the forest
12 landowner.

13 **Sec. 6.** RCW 76.09.240 and 2002 c 121 s 2 are each amended to read
14 as follows:

15 (1) By December 31, 2005, each county and each city shall adopt
16 ordinances or promulgate regulations setting standards for those Class
17 IV forest practices regulated by local government. The regulations
18 shall: (a) Establish minimum standards for Class IV forest practices;
19 (b) set forth necessary administrative provisions; and (c) establish
20 procedures for the collection and administration of forest practices
21 and recording fees as set forth in this chapter.

22 (2) Class IV forest practices regulations shall be administered and
23 enforced by the counties and cities that promulgate them.

24 (3) The forest practices board shall continue to promulgate
25 regulations and the department shall continue to administer and enforce
26 the regulations promulgated by the board in each county and each city
27 for all forest practices as provided in this chapter until such time
28 as, in the opinion of the department, the county or city has
29 promulgated forest practices regulations that meet the requirements as
30 set forth in this section and that meet or exceed the standards set
31 forth by the board in regulations in effect at the time the local
32 regulations are adopted. Regulations promulgated by the county or city
33 thereafter shall be reviewed in the usual manner set forth for county
34 or city rules or ordinances. Amendments to local ordinances must meet
35 or exceed the forest practices rules at the time the local ordinances
36 are amended.

1 (a) Department review of the initial regulations promulgated by a
2 county or city shall take place upon written request by the county or
3 city. The department, in consultation with the department of ecology,
4 may approve or disapprove the regulations in whole or in part.

5 (b) Until January 1, 2006, the department shall provide technical
6 assistance to all counties or cities that have adopted forest practices
7 regulations acceptable to the department and that have assumed
8 regulatory authority over all Class IV forest practices within their
9 jurisdiction.

10 (c) Decisions by the department approving or disapproving the
11 initial regulations promulgated by a county or city may be appealed to
12 the forest practices appeals board, which has exclusive jurisdiction to
13 review the department's approval or disapproval of regulations
14 promulgated by counties and cities.

15 (4) For those forest practices over which the board and the
16 department maintain regulatory authority no county, city, municipality,
17 or other local or regional governmental entity shall adopt or enforce
18 any law, ordinance, or regulation pertaining to forest practices,
19 except that to the extent otherwise permitted by law, such entities may
20 exercise any:

21 (a) Land use planning or zoning authority: PROVIDED, That exercise
22 of such authority may regulate forest practices only: (i) Where the
23 application submitted under RCW 76.09.060 as now or hereafter amended
24 indicates that the lands have been or will be converted to a use other
25 than commercial forest product production; or (ii) on lands which have
26 been platted after January 1, 1960, as provided in chapter 58.17 RCW:
27 PROVIDED, That no permit system solely for forest practices shall be
28 allowed; that any additional or more stringent regulations shall not be
29 inconsistent with the forest practices regulations enacted under this
30 chapter; and such local regulations shall not unreasonably prevent
31 timber harvesting;

32 (b) Taxing powers;

33 (c) Regulatory authority with respect to public health; and

34 (d) Authority granted by chapter 90.58 RCW, the "Shoreline
35 Management Act of 1971".

36 (5) All counties and cities adopting or enforcing regulations or
37 ordinances under this section shall include in the regulation or
38 ordinance a requirement that a verification accompany every permit

1 issued for forest land by that county or city associated with the
2 conversion to a use other than commercial timber operation, as that
3 term is defined in RCW 76.09.020, that verifies that the land in
4 question is not or has not been subject to a notice of conversion to
5 nonforestry uses under RCW 76.09.060 during the six-year period prior
6 to the submission of a permit application.

Passed by the Senate March 12, 2007.

Passed by the House April 3, 2007.

Approved by the Governor April 18, 2007.

Filed in Office of Secretary of State April 18, 2007.