

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2541

61st Legislature
2010 Regular Session

Passed by the House March 6, 2010
Yeas 95 Nays 0

Speaker of the House of Representatives

Passed by the Senate March 3, 2010
Yeas 45 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2541** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2541

AS AMENDED BY THE SENATE

Passed Legislature - 2010 Regular Session

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 76.09.010 and 76.09.040; reenacting and
4 amending RCW 76.09.020; adding a new section to chapter 76.44 RCW;
5 creating new sections; and providing an expiration date.

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

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

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

1 (3) The legislature further finds that maintaining sustainable
2 working forests is important for the quality of life of all
3 Washingtonians, and that sustainable forest practices can help to
4 maintain and restore the vitality of Washington's communities while
5 also helping to preserve Washington's natural landscapes and
6 ecosystems.

7 (4) The legislature further finds that it is necessary to assist
8 landowners in gaining access to additional sources of revenue, such as
9 emerging ecosystem services markets, and to help landowners diversify
10 their incomes, improve the ecological functions of their lands, and
11 pass their lands and the lands' associated benefits to future
12 generations.

13 (5) The legislature further finds that the conservation and
14 restoration of forest ecosystems provide services to the residents of
15 the state that help improve water and habitat quality, help avoid
16 carbon emissions, help address impacts associated with climate change,
17 and help natural resources adapt to these impacts.

18 (6) The legislature further finds that ecosystem services markets
19 can lead to efficient, innovative, and effective conservation and
20 restoration actions and facilitate improved integration of public and
21 private investment.

22 (7) Therefore, it is the intent of the legislature to develop tools
23 to facilitate small and industrial forest landowners' access to market
24 capital from existing and emerging ecosystem services markets.

25 (8) The legislature further intends to enable forest landowners who
26 provide ecosystem services access to financing to protect, restore, and
27 maintain the ecological values provided by protection of public
28 resources.

29 NEW SECTION. **Sec. 2.** A new section is added to chapter 76.44 RCW
30 to read as follows:

31 The legislature finds that there are many issues facing the forest
32 sector, such as climate change, forest health and fire, carbon
33 accounting, habitat and diversity, timber and water supplies, economic
34 competitiveness, and the economic health of forest dependent
35 communities. Enhancing the capability to effectively address these
36 forest issues is critical to the state of Washington. To meet this
37 need, the University of Washington school of forest resources will

1 continue to work with the various interests concerned with the state's
2 forest resources, including the legislature, state and federal
3 governments, environmental organizations, local communities, the timber
4 industry, and tribes, to improve these entities' ability to
5 competitively recruit, educate, and train a high quality workforce.

6 **Sec. 3.** RCW 76.09.010 and 1999 sp.s. c 4 s 901 are each amended to
7 read as follows:

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

17 (2) The legislature further finds and declares it to be in the
18 public interest of this state to create and maintain through the
19 adoption of this chapter a comprehensive statewide system of laws and
20 forest practices rules which will achieve the following purposes and
21 policies:

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

26 (b) Afford protection to forest soils and public resources by
27 utilizing all reasonable methods of technology in conducting forest
28 practices;

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

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

33 (e) Provide for regulation of forest practices so as to avoid
34 unnecessary duplication in such rules;

35 (f) Provide for interagency input and intergovernmental and tribal
36 coordination and cooperation;

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

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

6 (i) Foster cooperation among managers of public resources, forest
7 landowners, Indian tribes and the citizens of the state; (~~and~~)

8 (j) Develop a watershed analysis system that addresses the
9 cumulative effect of forest practices on, at a minimum, the public
10 resources of fish, water, and public capital improvements of the state
11 and its political subdivisions; and

12 (k) Assist forest landowners in accessing market capital and
13 financing for the ecosystem services provided to the public as a result
14 of the protection of public resources.

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

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

23 **Sec. 4.** RCW 76.09.040 and 2009 c 246 s 1 are each amended to read
24 as follows:

25 (1)(a) Where necessary to accomplish the purposes and policies
26 stated in RCW 76.09.010, and to implement the provisions of this
27 chapter, the board shall adopt forest practices rules pursuant to
28 chapter 34.05 RCW and in accordance with the procedures enumerated in
29 this section that:

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

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

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

1 ~~((d))~~ (iv) Establish procedures for the collection and
2 administration of forest practice fees as set forth by this chapter;
3 and

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

5 (b) Forest practices rules pertaining to water quality protection
6 shall be adopted by the board after reaching agreement with the
7 director of the department of ecology or the director's designee on the
8 board with respect thereto. All other forest practices rules shall be
9 adopted by the board.

10 (c) Forest practices rules shall be administered and enforced by
11 either the department or the local governmental entity as provided in
12 this chapter. Such rules shall be adopted and administered so as to
13 give consideration to all purposes and policies set forth in RCW
14 76.09.010.

15 (2)(a) The board shall prepare proposed forest practices rules
16 consistent with this section and chapter 34.05 RCW. In addition to any
17 forest practices rules relating to water quality protection proposed by
18 the board, the department of ecology may submit to the board proposed
19 forest practices rules relating to water quality protection.

20 (b)(i) Prior to initiating the rule-making process, the proposed
21 rules shall be submitted for review and comments to the department of
22 fish and wildlife and to the counties of the state. After receipt of
23 the proposed forest practices rules, the department of fish and
24 wildlife and the counties of the state shall have thirty days in which
25 to review and submit comments to the board, and to the department of
26 ecology with respect to its proposed rules relating to water quality
27 protection.

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

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

37 (3)(a) The board shall establish by rule a program for the
38 acquisition of riparian open space and critical habitat for threatened

1 or endangered species as designated by the board. Acquisition must be
2 a conservation easement. Lands eligible for acquisition are forest
3 lands within unconfined channel migration zones or forest lands
4 containing critical habitat for threatened or endangered species as
5 designated by the board. Once acquired, these lands may be held and
6 managed by the department, transferred to another state agency,
7 transferred to an appropriate local government agency, or transferred
8 to a private nonprofit nature conservancy corporation, as defined in
9 RCW 64.04.130, in fee or transfer of management obligation. The board
10 shall adopt rules governing the acquisition by the state or donation to
11 the state of such interest in lands including the right of refusal if
12 the lands are subject to unacceptable liabilities. The rules shall
13 include definitions of qualifying lands, priorities for acquisition,
14 and provide for the opportunity to transfer such lands with limited
15 warranties and with a description of boundaries that does not require
16 full surveys where the cost of securing the surveys would be
17 unreasonable in relation to the value of the lands conveyed. The rules
18 shall provide for the management of the lands for ecological protection
19 or fisheries enhancement. For the purposes of conservation easements
20 entered into under this section, the following apply:

21 ~~((a))~~ (i) For conveyances of a conservation easement in which the
22 landowner conveys an interest in the trees only, the compensation must
23 include the timber value component, as determined by the cruised volume
24 of any timber located within the channel migration zone or critical
25 habitat for threatened or endangered species as designated by the
26 board, multiplied by the appropriate quality code stumpage value for
27 timber of the same species shown on the appropriate table used for
28 timber harvest excise tax purposes under RCW 84.33.091;

29 ~~((b))~~ (ii) For conveyances of a conservation easement in which
30 the landowner conveys interests in both land and trees, the
31 compensation must include the timber value component in (a)(i) of this
32 subsection plus such portion of the land value component as determined
33 just and equitable by the department. The land value component must be
34 the acreage of qualifying channel migration zone or critical habitat
35 for threatened or endangered species as determined by the board, to be
36 conveyed, multiplied by the average per acre value of all commercial
37 forest land in western Washington or the average for eastern
38 Washington, whichever average is applicable to the qualifying lands.

1 The department must determine the western and eastern Washington
2 averages based on the land value tables established by RCW 84.33.140
3 and revised annually by the department of revenue.

4 ~~((+4))~~ (b) Subject to appropriations sufficient to cover the cost
5 of such an acquisition program and the related costs of administering
6 the program, the department must establish a conservation easement in
7 land that an owner tenders for purchase; provided that such lands have
8 been taxed as forest lands and are located within an unconfined channel
9 migration zone or contain critical habitat for threatened or endangered
10 species as designated by the board. Lands acquired under this section
11 shall become riparian or habitat open space. These acquisitions shall
12 not be deemed to trigger the compensating tax of chapters 84.33 and
13 84.34 RCW.

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

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

19 NEW SECTION. **Sec. 5.** (1) The department of natural resources
20 shall, to the degree that resources are available, develop, consistent
21 with this section, proposals for the development of appropriate
22 landowner conservation incentives that support forest landowners
23 maintaining their land in forestry. These incentives may include, but
24 are not limited to, incentives that are related to ecosystem service
25 markets, tax incentives, easements, technical assistance, and
26 recognition or certification.

27 (2) The department of natural resources shall consult with the
28 forest practices board, representatives of federal, state, and local
29 government, Indian tribes, small forest landowners, conservation
30 groups, industrial foresters, and other individuals deemed beneficial
31 by the department in implementing this section.

32 (3) By December 31, 2011, the department of natural resources must
33 present their research and any proposed incentives to the governor, the
34 appropriate committees of the legislature, the commissioner of public
35 lands, and the forest practices board. The department of natural
36 resources shall also offer to present their findings and
37 recommendations to the Washington congressional delegation, local

1 governments, and any state or federal agency that has as a portion of
2 their mission the support of Washington's working land base and the
3 jobs, products, and ecological values that working lands provide.

4 (4) Neither the activities nor outcome of the department of natural
5 resources' actions or decisions under this section shall cause,
6 promote, or delay rule making by the forest practices board in the
7 execution of its applicable duties.

8 (5) The department of natural resources is authorized to seek
9 federal and private funds, and in-kind contributions to complete the
10 work in this act. At the discretion of the department of natural
11 resources, the department must comply with this act only to the degree
12 that existing or acquired nonstate resources permit.

13 (6) This section expires July 1, 2012.

14 **Sec. 6.** RCW 76.09.020 and 2009 c 354 s 5 and 2009 c 246 s 4 are
15 each reenacted and amended to read as follows:

16 The definitions in this section apply throughout this chapter
17 unless the context clearly requires otherwise.

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

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

23 (3) "Application" means the application required pursuant to RCW
24 76.09.050.

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

33 (5) "Board" means the forest practices board created in RCW
34 76.09.030.

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

36 (7) "Contiguous" means land adjoining or touching by common corner

1 or otherwise. Land having common ownership divided by a road or other
2 right-of-way shall be considered contiguous.

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

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

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

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

- 19 (a) Residential home sites, which may include up to five acres; and
- 20 (b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens,
21 and the land on which appurtenances necessary to the production,
22 preparation, or sale of crops, fruit, dairy products, fish, and
23 livestock exist.

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

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

- 36 (a) Road and trail construction;
- 37 (b) Harvesting, final and intermediate;
- 38 (c) Precommercial thinning;

- 1 (d) Reforestation;
- 2 (e) Fertilization;
- 3 (f) Prevention and suppression of diseases and insects;
- 4 (g) Salvage of trees; and
- 5 (h) Brush control.

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

12 (14) "Forest practices rules" means any rules adopted pursuant to
13 RCW 76.09.040.

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

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

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

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

30 (19) "Person" means any individual, partnership, private, public,
31 or municipal corporation, county, the department or other state or
32 local governmental entity, or association of individuals of whatever
33 nature.

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

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

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

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

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

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

20 (26) "Ecosystem services" means the benefits that the public enjoys
21 as a result of natural processes and biological diversity.

22 (27) "Ecosystem services market" means a system in which providers
23 of ecosystem services can access financing or market capital to
24 protect, restore, and maintain ecological values, including the full
25 spectrum of regulatory, quasiregulatory, and voluntary markets.

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