
HOUSE BILL 1286

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1995 Regular Session

By Representatives Buck, Pennington, Fuhrman, Pelesky, Johnson, McMorris, Sheldon, Cairnes, B. Thomas, Kessler, Stevens and Talcott

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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,
6 threatened, or sensitive species be adopted under the normal rule-
7 making procedures of the board, be directed toward ensuring the
8 survival of the affected species as a whole, and impose the burden for
9 the recovery of the species on public lands other than state trust
10 lands.

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

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

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

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

36 (b) Afford protection to forest soils and public resources by
37 utilizing all reasonable methods of technology in conducting forest
38 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 **Sec. 4.** RCW 76.09.050 and 1994 c 264 s 49 are each amended to read
14 as follows:

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

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

20 (b) Class II: Forest practices which have a less than ordinary
21 potential for damaging a public resource that may be conducted without
22 submitting an application and may begin five calendar days, or such
23 lesser time as the department may determine, after written notification
24 by the operator, in the manner, content, and form as prescribed by the
25 department, is received by the department. However, the work may not
26 begin until all forest practice fees required under RCW 76.09.065 have
27 been received by the department. Class II shall not include forest
28 practices:

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

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

33 ~~((c))~~ (iii) Within "shorelines of the state" as defined in RCW
34 90.58.030; or

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

36 (c) Class III: Forest practices other than those contained in
37 Class I, II, or IV, and the following, unless they are determined to be
38 Class I or Class II forest practices:

1 (i) Forest practices within an area covered by an approved
2 watershed analysis and consistent with the watershed analysis
3 prescriptions for that area;

4 (ii) Forest practices consistent with a habitat conservation plan
5 and federally issued incidental take permit;

6 (iii) Forest practices consistent with a federally issued
7 incidental take statement;

8 (iv) Forest practices consistent with a federally approved unlisted
9 species agreement, whether part of or separate from an approved habitat
10 conservation plan;

11 (v) Forest practices consistent with a federally approved habitat
12 management plan, which plan is accompanied by a federal letter
13 indicating no take will occur if such a plan is implemented; and

14 (vi) Forest practices consistent with a federal rule adopted for
15 the conservation of species under the endangered species act.

16 For purposes of this Class III rule, "federally approved" or
17 "federally issued" means approved or issued by the United States fish
18 and wildlife service, the national marine fisheries service, or a
19 similar federal agency pursuant to the endangered species act. Without
20 limitation, those forest practices identified in (c)(i) through (vi) of
21 this subsection do not have the potential for a substantial impact on
22 the environment. Substantive provisions of this chapter and any forest
23 practice regulations adopted by the forest practices board which
24 purport to regulate activities pertaining to the modules covered by the
25 applicable watershed analysis are inapplicable to forest practices
26 described in (c)(i) of this subsection. Substantive provisions of this
27 chapter and any forest practice regulations adopted by the forest
28 practices board which purport to regulate activities affecting the
29 species covered by the federally approved or issued documents described
30 in (c) (ii) through (vi) of this subsection are inapplicable to the
31 forest practices identified in (c) (ii) through (vi) of this
32 subsection. A Class III application must be approved or disapproved by
33 the department within thirty calendar days from the date the department
34 receives the application. However, the applicant may not begin work on
35 that forest practice until all forest practice fees required under RCW
36 76.09.065 have been received by the department;

37 (d) Class IV: Forest practices other than those contained in Class
38 I or II: ((+a)) (i) On lands platted after January 1, 1960, ((+b))
39 (ii) on lands being converted to another use, ((+e)) (iii) on lands

1 which, pursuant to RCW 76.09.070 as now or hereafter amended, are not
2 to be reforested because of the likelihood of future conversion to
3 urban development, and/or ~~((+d))~~ (iv) which have a potential for a
4 substantial impact on the environment and therefore require an
5 evaluation by the department as to whether or not a detailed statement
6 must be prepared pursuant to the state environmental policy act,
7 chapter 43.21C RCW. Such evaluation shall be made within ten days from
8 the date the department receives the application: PROVIDED, That
9 nothing herein shall be construed to prevent any local or regional
10 governmental entity from determining that a detailed statement must be
11 prepared for an action pursuant to a Class IV forest practice taken by
12 that governmental entity concerning the land on which forest practices
13 will be conducted. A Class IV application must be approved or
14 disapproved by the department within thirty calendar days from the date
15 the department receives the application, unless the department
16 determines that a detailed statement must be made, in which case the
17 application must be approved or disapproved by the department within
18 sixty calendar days from the date the department receives the
19 application, unless the commissioner of public lands, through the
20 promulgation of a formal order, determines that the process cannot be
21 completed within such period. However, the applicant may not begin
22 work on that forest practice until all forest practice fees required
23 under RCW 76.09.065 have been received by the department.

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

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

1 consistent with this chapter and RCW 90.48.420 and the purposes and
2 policies of RCW 76.09.010 until applicable forest practices regulations
3 are in effect.

4 (3) If a notification or application is delivered in person to the
5 department by the operator or the operator's agent, the department
6 shall immediately provide a dated receipt thereof. In all other cases,
7 the department shall immediately mail a dated receipt to the operator.

8 (4) Forest practices shall be conducted in accordance with the
9 forest practices regulations, orders and directives as authorized by
10 this chapter or the forest practices regulations, and the terms and
11 conditions of any approved applications. The department may impose a
12 condition on an application only after it has concluded that the
13 condition is necessary to prevent material damage to a public resource.
14 The department must also determine that there is no less restrictive or
15 less costly measure reasonably likely to prevent the material damage.
16 Before imposing the condition, the department must prepare a written
17 decision document, which it shall attach to the approved application.
18 The decision document shall:

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

22 (b) Identify all evidence relied upon by the department. Where
23 evidence includes observations of department personnel or others, the
24 observers shall be identified. Copies of any research results or other
25 written authorities relied upon shall be included, or cited if commonly
26 available; and

27 (c) Identify the alternative conditions, if any, which were
28 considered and rejected and the reasons such alternatives were not
29 accepted.

30 In an appeal of a condition imposed by the department, the
31 department shall bear the burden of proving that the condition is
32 necessary to prevent material damage to public resources, and that no
33 less restrictive or costly condition is reasonably likely to prevent
34 the material damage. The department shall be limited in the appeal to
35 presenting the evidence identified in the decision document.

36 (5) The department of natural resources shall notify the applicant
37 in writing of either its approval of the application or its disapproval
38 of the application and the specific manner in which the application
39 fails to comply with the provisions of this section or with the forest

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

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

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

28 (a) The department receives written notice from the county, city,
29 or town of such objections within fourteen business days from the time
30 of transmittal of the application to the county, city, or town, or one
31 day before the department acts on the application, whichever is later;
32 and

33 (b) The objections relate to lands either:

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

35 (ii) Being converted to another use.

36 The department shall either disapprove those portions of such
37 application or appeal the county, city, or town objections to the
38 appeals board. If the objections related to subparagraphs (b) (i) and
39 (ii) of this subsection are based on local authority consistent with

1 RCW 76.09.240 as now or hereafter amended, the department shall
2 disapprove the application until such time as the county, city, or town
3 consents to its approval or such disapproval is reversed on appeal.
4 The applicant shall be a party to all department appeals of county,
5 city, or town objections. Unless the county, city, or town either
6 consents or has waived its rights under this subsection, the department
7 shall not approve portions of an application affecting such lands until
8 the minimum time for county, city, or town objections has expired.

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

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

19 (10) The department shall, within four business days notify the
20 county, city, or town of all notifications, approvals, and disapprovals
21 of an application affecting lands within the county, city, or town,
22 except to the extent the county, city, or town has waived its right to
23 such notice.

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

27 **Sec. 5.** RCW 76.09.080 and 1989 c 175 s 163 are each amended to
28 read as follows:

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

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

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

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

37 In cases where the department issues a stop work order under (c) of
38 this subsection, the department shall, within two business days

1 following the service of the stop work order on the operator, prepare
2 and mail to the operator and landowner a written decision document
3 which shall:

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

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

12 (iii) Identify the reasonable alternative actions, if any, which
13 were considered and rejected, and discuss the reasons why the
14 alternatives were not accepted.

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

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

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

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

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

30 (e) Whether a written decision document is required under this
31 section.

32 (3) The department shall immediately file a copy of ((such)) the
33 stop work order with the appeals board and mail a copy thereof to the
34 timber owner and forest land owner at the addresses shown on the
35 application. The operator, timber owner, or forest land owner may
36 commence an appeal to the appeals board within fifteen days after
37 service upon the operator. If such appeal is commenced, a hearing
38 shall be held not more than twenty days after copies of the notice of
39 appeal were filed with the appeals board. Such proceeding shall be an

1 adjudicative proceeding within the meaning of chapter 34.05 RCW, the
2 Administrative Procedure Act, except that in cases where a written
3 decision document is required under subsection (1)(c) of this section
4 the department shall bear the burden of proving that the stop work
5 order is necessary to prevent the continuation of or to avoid material
6 damage to public resources and that no less restrictive or less costly
7 measures are reasonably likely to accomplish the same. The department
8 shall be limited in the appeal to presenting and supporting the
9 evidence identified in the decision document. The operator shall
10 comply with the order of the department immediately upon being served,
11 but the appeals board if requested shall have authority to continue or
12 discontinue in whole or in part the order of the department under such
13 conditions as it may impose pending the outcome of the proceeding.

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

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

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

22 ~~((1))~~(a) The specific nature, extent, and time of failure to
23 comply with the approved application; or identifying the damage or
24 potential damage; and/or

25 ~~((b))~~ the relevant provisions of this chapter or of the forest
26 practice regulations relating thereto;

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

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

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

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

9 (b) Identify all evidence relied upon by the department. Where
10 evidence includes observations of department personnel or others, the
11 observers shall be identified. Copies of any research results or other
12 written authorities relied upon shall be included, or cited if commonly
13 available; and

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

16 (3) In an appeal of a notice to comply, the department shall bear
17 the burden of proving that the notice to comply was necessary, and in
18 cases covered by subsection (2) of this section, the department shall
19 be limited in the appeal to the evidence identified in the decision
20 document.

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

1 such final order, the operator, forest land owner, or timber owner
2 appeals such final order to the appeals board.

3 No person shall be under any obligation under this section to
4 prevent, correct, or compensate for any damage to public resources
5 which occurs more than one year after the date of completion of the
6 forest practices operations involved exclusive of reforestation, unless
7 such forest practices were not conducted in accordance with forest
8 practices rules and regulations: PROVIDED, That this provision shall
9 not relieve the forest land owner from any obligation to comply with
10 forest practices rules and regulations pertaining to providing
11 continuing road maintenance. No action to recover damages shall be
12 taken under this section more than two years after the date the damage
13 involved occurs.

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

16 (1) The board shall not adopt permanent rules for the protection of
17 endangered or threatened species of fish or wildlife, under RCW
18 76.09.040 or 76.09.050 or other authority, until a final recovery plan
19 has been issued for the species.

20 (2) The board shall not adopt an emergency rule, under RCW
21 76.09.040 or 76.09.050 or other authority, to protect fish and wildlife
22 unless:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (ii) Cooperative plans protecting wildlife including, but not
30 limited to, resource management plans and habitat conservation plans;
31 and

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

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

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

4 (3) The board shall not adopt any rule requiring surveys of habitat
5 to determine occupancy or nonoccupancy, or permitting or authorizing
6 the department to reject applications or notifications as incomplete if
7 they do not include survey information of fish and wildlife to
8 determine occupancy or nonoccupancy. Any rules adopted by the board to
9 protect fish or wildlife shall protect only known sites, as documented
10 by the department of fish and wildlife in accordance with published
11 protocols.

12 NEW SECTION. **Sec. 9.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 10.** Any rule adopted by the forest practices
17 board after January 1, 1995, will be invalid unless readopted within
18 ninety days by the board in accordance with the terms of this act. Any
19 rule adopted by the board before January 1, 1995, but which by its
20 terms incorporates by reference a designation, classification, or
21 selection by any person or government agency which designation,
22 classification, or selection occurs after January 1, 1995, shall be
23 invalid to the extent it applies to such designation, classification,
24 or selection unless readopted within ninety days by the board in
25 accordance with the terms of this act.

26 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
27 preservation of the public peace, health, or safety, or support of the
28 state government and its existing public institutions, and shall take
29 effect immediately.

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