
SUBSTITUTE SENATE BILL 5981

State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Owen, Spanel and Rinehart; by request of Office of Financial Management)

Read first time 04/14/93.

1 AN ACT Relating to imposing fees for certain forest practices;
2 amending RCW 76.09.010, 76.09.040, 76.09.050, 76.09.060, and 76.09.220;
3 adding a new section to chapter 76.09 RCW; and declaring an emergency.

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

5 **Sec. 1.** RCW 76.09.010 and 1987 c 95 s 1 are each amended to read
6 as follows:

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

16 (2) The legislature further finds and declares it to be in the
17 public interest of this state to create and maintain through the
18 adoption of this chapter a comprehensive state-wide system of laws and

1 forest practices regulations which will achieve the following purposes
2 and policies:

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

7 (b) Afford protection to forest soils and public resources by
8 utilizing all reasonable methods of technology in conducting forest
9 practices;

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

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

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

16 (f) Provide for interagency input and intergovernmental and tribal
17 coordination and cooperation;

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

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

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

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

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

33 **Sec. 2.** RCW 76.09.040 and 1988 c 36 s 46 are each amended to read
34 as follows:

35 (1) Where necessary to accomplish the purposes and policies stated
36 in RCW 76.09.010, and to implement the provisions of this chapter, the
37 board shall promulgate forest practices regulations pursuant to chapter

1 34.05 RCW and in accordance with the procedures enumerated in this
2 section that:

3 (a) Establish minimum standards for forest practices;

4 (b) Provide procedures for the voluntary development of resource
5 management plans which may be adopted as an alternative to the minimum
6 standards in (a) of this subsection if the plan is consistent with the
7 purposes and policies stated in RCW 76.09.010 and the plan meets or
8 exceeds the objectives of the minimum standards; (~~and~~)

9 (c) Set forth necessary administrative provisions; and

10 (d) Establish procedures for the collection and administration of
11 forest practice fees as set forth by this chapter.

12 Forest practices regulations pertaining to water quality protection
13 shall be promulgated individually by the board and by the department of
14 ecology after they have reached agreement with respect thereto. All
15 other forest practices regulations shall be promulgated by the board.

16 Forest practices regulations shall be administered and enforced by
17 the department except as otherwise provided in this chapter. Such
18 regulations shall be promulgated and administered so as to give
19 consideration to all purposes and policies set forth in RCW 76.09.010.

20 (2) The board shall prepare proposed forest practices regulations.
21 In addition to any forest practices regulations relating to water
22 quality protection proposed by the board, the department of ecology
23 shall prepare proposed forest practices regulations relating to water
24 quality protection.

25 Prior to initiating the rule making process, the proposed
26 regulations shall be submitted for review and comments to the
27 department of fisheries, the department of wildlife, and to the
28 counties of the state. After receipt of the proposed forest practices
29 regulations, the departments of fisheries and wildlife and the counties
30 of the state shall have thirty days in which to review and submit
31 comments to the board, and to the department of ecology with respect to
32 its proposed regulations relating to water quality protection. After
33 the expiration of such thirty day period the board and the department
34 of ecology shall jointly hold one or more hearings on the proposed
35 regulations pursuant to chapter 34.05 RCW. At such hearing(s) any
36 county may propose specific forest practices regulations relating to
37 problems existing within such county. The board and the department of
38 ecology may adopt such proposals if they find the proposals are
39 consistent with the purposes and policies of this chapter.

1 **Sec. 3.** RCW 76.09.050 and 1990 1st ex.s. c 17 s 61 are each
2 amended to read as follows:

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

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

8 Class II: Forest practices which have a less than ordinary
9 potential for damaging a public resource that may be conducted without
10 submitting an application and may begin five calendar days, or such
11 lesser time as the department may determine, after written notification
12 by the operator, in the manner, content, and form as prescribed by the
13 department, is received by the department. However, the work may not
14 begin until all forest practice fees required under section 5 of this
15 act have been received by the department. Class II shall not include
16 forest practices:

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

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

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

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

24 Class III: Forest practices other than those contained in Class I,
25 II, or IV. A Class III application must be approved or disapproved by
26 the department within thirty calendar days from the date the department
27 receives the application. However, the applicant may not begin work on
28 that forest practice until all forest practice fees required under
29 section 5 of this act have been received by the department;

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

1 application: PROVIDED, That nothing herein shall be construed to
2 prevent any local or regional governmental entity from determining that
3 a detailed statement must be prepared for an action pursuant to a Class
4 IV forest practice taken by that governmental entity concerning the
5 land on which forest practices will be conducted. A Class IV
6 application must be approved or disapproved by the department within
7 thirty calendar days from the date the department receives the
8 application, unless the department determines that a detailed statement
9 must be made, in which case the application must be approved or
10 disapproved by the department within sixty calendar days from the date
11 the department receives the application, unless the commissioner of
12 public lands, through the promulgation of a formal order, determines
13 that the process cannot be completed within such period. However, the
14 applicant may not begin work on that forest practice until all forest
15 practice fees required under section 5 of this act have been received
16 by the department.

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

20 (2) No Class II, Class III, or Class IV forest practice shall be
21 commenced or continued after January 1, 1975, unless the department has
22 received a notification with regard to a Class II forest practice or
23 approved an application with regard to a Class III or Class IV forest
24 practice containing all information required by RCW 76.09.060 as now or
25 hereafter amended: PROVIDED, That any person commencing a forest
26 practice during 1974 may continue such forest practice until April 1,
27 1975, if such person has submitted an application to the department
28 prior to January 1, 1975: PROVIDED, FURTHER, That in the event forest
29 practices regulations necessary for the scheduled implementation of
30 this chapter and RCW 90.48.420 have not been adopted in time to meet
31 such schedules, the department shall have the authority to regulate
32 forest practices and approve applications on such terms and conditions
33 consistent with this chapter and RCW 90.48.420 and the purposes and
34 policies of RCW 76.09.010 until applicable forest practices regulations
35 are in effect.

36 (3) If a notification or application is delivered in person to the
37 department by the operator or his agent, the department shall
38 immediately provide a dated receipt thereof. In all other cases, the
39 department shall immediately mail a dated receipt to the operator.

1 (4) Forest practices shall be conducted in accordance with the
2 forest practices regulations, orders and directives as authorized by
3 this chapter or the forest practices regulations, and the terms and
4 conditions of any approved applications.

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

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

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

36 (a) The department receives written notice from the county, city,
37 or town of such objections within fourteen business days from the time
38 of transmittal of the application to the county, city, or town, or one

1 day before the department acts on the application, whichever is later;
2 and

3 (b) The objections relate to lands either:

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

5 (ii) Being converted to another use.

6 The department shall either disapprove those portions of such
7 application or appeal the county, city, or town objections to the
8 appeals board. If the objections related to subparagraphs (b) (i) and
9 (ii) of this subsection are based on local authority consistent with
10 RCW 76.09.240 as now or hereafter amended, the department shall
11 disapprove the application until such time as the county, city, or town
12 consents to its approval or such disapproval is reversed on appeal.
13 The applicant shall be a party to all department appeals of county,
14 city, or town objections. Unless the county, city, or town either
15 consents or has waived its rights under this subsection, the department
16 shall not approve portions of an application affecting such lands until
17 the minimum time for county, city, or town objections has expired.

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

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

28 (10) The department shall, within four business days notify the
29 county, city, or town of all notifications, approvals, and disapprovals
30 of an application affecting lands within the county, city, or town,
31 except to the extent the county, city, or town has waived its right to
32 such notice.

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

36 **Sec. 4.** RCW 76.09.060 and 1992 c 52 s 22 are each amended to read
37 as follows:

1 (1) The department shall prescribe the form and contents of the
2 notification and application. The forest practices rules shall specify
3 by whom and under what conditions the notification and application
4 shall be signed or otherwise certified as acceptable. The application
5 or notification shall be delivered in person to the department, sent by
6 first class mail to the department or electronically filed in a form
7 defined by the department. The form for electronic filing shall be
8 readily convertible to a paper copy, which shall be available to the
9 public pursuant to chapter 42.17 RCW. The information required may
10 include, but is not limited to:

11 (a) Name and address of the forest landowner, timber owner, and
12 operator;

13 (b) Description of the proposed forest practice or practices to be
14 conducted;

15 (c) Legal description of the land on which the forest practices are
16 to be conducted;

17 (d) Planimetric and topographic maps showing location and size of
18 all lakes and streams and other public waters in and immediately
19 adjacent to the operating area and showing all existing and proposed
20 roads and major tractor roads;

21 (e) Description of the silvicultural, harvesting, or other forest
22 practice methods to be used, including the type of equipment to be used
23 and materials to be applied;

24 (f) Proposed plan for reforestation and for any revegetation
25 necessary to reduce erosion potential from roadsides and yarding roads,
26 as required by the forest practices rules;

27 (g) Soil, geological, and hydrological data with respect to forest
28 practices;

29 (h) The expected dates of commencement and completion of all forest
30 practices specified in the application;

31 (i) Provisions for continuing maintenance of roads and other
32 construction or other measures necessary to afford protection to public
33 resources; ((and))

34 (j) An affirmation that the statements contained in the
35 notification or application are true; and

36 (k) All necessary application or notification fees.

37 (2) Long range plans may be submitted to the department for review
38 and consultation.

1 (3) The application for a forest practice or the notification of a
2 class II forest practice shall indicate whether any land covered by the
3 application or notification will be converted or is intended to be
4 converted to a use other than commercial timber production within three
5 years after completion of the forest practices described in it.

6 (a) If the application states that any such land will be or is
7 intended to be so converted:

8 (i) The reforestation requirements of this chapter and of the
9 forest practices rules shall not apply if the land is in fact so
10 converted unless applicable alternatives or limitations are provided in
11 forest practices rules issued under RCW 76.09.070 as now or hereafter
12 amended;

13 (ii) Completion of such forest practice operations shall be deemed
14 conversion of the lands to another use for purposes of chapters
15 (~~(84.287)~~) 84.33(~~(7)~~) and 84.34 RCW unless the conversion is to a use
16 permitted under a current use tax agreement permitted under chapter
17 84.34 RCW;

18 (iii) The forest practices described in the application are subject
19 to applicable county, city, town, and regional governmental authority
20 permitted under RCW 76.09.240 as now or hereafter amended as well as
21 the forest practices rules.

22 (b) If the application or notification does not state that any land
23 covered by the application or notification will be or is intended to be
24 so converted:

25 (i) For six years after the date of the application the county,
26 city, town, and regional governmental entities may deny any or all
27 applications for permits or approvals, including building permits and
28 subdivision approvals, relating to nonforestry uses of land subject to
29 the application;

30 (ii) Failure to comply with the reforestation requirements
31 contained in any final order or decision shall constitute a removal
32 (~~(from classification under the provisions of RCW 84.28.065, a~~
33 ~~removal~~)) of designation under the provisions of RCW 84.33.140, and a
34 change of use under the provisions of RCW 84.34.080, and, if
35 applicable, shall subject such lands to the payments and/or penalties
36 resulting from such removals or changes; and

37 (iii) Conversion to a use other than commercial timber operations
38 within three years after completion of the forest practices without the
39 consent of the county, city, or town shall constitute a violation of

1 each of the county, municipal city, town, and regional authorities to
2 which the forest practice operations would have been subject if the
3 application had so stated.

4 (c) The application or notification shall be either signed by the
5 landowner or accompanied by a statement signed by the landowner
6 indicating his or her intent with respect to conversion and
7 acknowledging that he or she is familiar with the effects of this
8 subsection.

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

15 (5) Before the operator commences any forest practice in a manner
16 or to an extent significantly different from that described in a
17 previously approved application or notification, there shall be
18 submitted to the department a new application or notification form in
19 the manner set forth in this section.

20 (6) The notification to or the approval given by the department to
21 an application to conduct a forest practice shall be effective for a
22 term of two years from the date of approval or notification and shall
23 not be renewed unless a new application is filed and approved or a new
24 notification has been filed. At the option of the applicant, an
25 application or notification may be submitted to cover a single forest
26 practice or a number of forest practices within reasonable geographic
27 or political boundaries as specified by the department. An application
28 or notification that covers more than one forest practice may have an
29 effective term of more than two years. The board shall adopt rules
30 that establish standards and procedures for approving an application or
31 notification that has an effective term of more than two years. Such
32 rules shall include extended time periods for application or
33 notification approval or disapproval. On an approved application with
34 a term of more than two years, the applicant shall inform the
35 department before commencing operations.

36 (7) Notwithstanding any other provision of this section, no prior
37 application or notification shall be required for any emergency forest
38 practice necessitated by fire, flood, windstorm, earthquake, or other
39 emergency as defined by the board, but the operator shall submit an

1 application or notification, whichever is applicable, to the department
2 within forty-eight hours after commencement of such practice.

3 NEW SECTION. **Sec. 5.** A new section is added to chapter 76.09 RCW
4 to read as follows:

5 (1) Effective July 1, 1993, an applicant shall pay a fee at the
6 time an application or notification is submitted pursuant to RCW
7 76.09.060. All money collected from the fees under this section shall
8 be deposited in the state general fund. The fee shall be fifty dollars
9 for class II, III, and IV forest practices applications relating to the
10 commercial harvest of timber. However, the fee shall be five hundred
11 dollars for those forest practices designated as "class IV - general"
12 involving the conversion of forest lands under WAC 222-16-050.

13 (2) An application fee under subsection (1) of this section shall
14 be refunded or credited to the applicant if either the application is
15 disapproved by the department or the application is withdrawn by the
16 applicant due to restrictions imposed by the department.

17 (3) A filing fee of fifty dollars shall be paid for appeals filed
18 after June 30, 1993, with the forest practices appeals board under RCW
19 76.09.220. This filing fee shall be waived if the appellant has paid
20 the application fee for the forest practices permit being appealed.

21 **Sec. 6.** RCW 76.09.220 and 1989 c 175 s 164 are each amended to
22 read as follows:

23 (1) The appeals board shall operate on either a part-time or a
24 full-time basis, as determined by the governor. If it is determined
25 that the appeals board shall operate on a full-time basis, each member
26 shall receive an annual salary to be determined by the governor. If it
27 is determined that the appeals board shall operate on a part-time
28 basis, each member shall be compensated in accordance with RCW
29 43.03.240: PROVIDED, That such compensation shall not exceed ten
30 thousand dollars in a fiscal year. Each member shall receive
31 reimbursement for travel expenses incurred in the discharge of his
32 duties in accordance with the provisions of RCW 43.03.050 and
33 43.03.060.

34 (2) The appeals board shall as soon as practicable after the
35 initial appointment of the members thereof, meet and elect from among
36 its members a chairman, and shall at least biennially thereafter meet
37 and elect or reelect a chairman.

1 (3) The principal office of the appeals board shall be at the state
2 capital, but it may sit or hold hearings at any other place in the
3 state. A majority of the appeals board shall constitute a quorum for
4 making orders or decisions, promulgating rules and regulations
5 necessary for the conduct of its powers and duties, or transacting
6 other official business, and may act though one position on the board
7 be vacant. One or more members may hold hearings and take testimony to
8 be reported for action by the board when authorized by rule or order of
9 the board. The appeals board shall perform all the powers and duties
10 granted to it in this chapter or as otherwise provided by law.

11 (4) The appeals board shall make findings of fact and prepare a
12 written decision in each case decided by it, and such findings and
13 decision shall be effective upon being signed by two or more members
14 and upon being filed at the appeals board's principal office, and shall
15 be open to public inspection at all reasonable times.

16 (5) The appeals board shall either publish at its expense or make
17 arrangements with a publishing firm for the publication of those of its
18 findings and decisions which are of general public interest, in such
19 form as to assure reasonable distribution thereof.

20 (6) The appeals board shall maintain at its principal office a
21 journal which shall contain all official actions of the appeals board,
22 with the exception of findings and decisions, together with the vote of
23 each member on such actions. The journal shall be available for public
24 inspection at the principal office of the appeals board at all
25 reasonable times.

26 (7) The forest practices appeals board shall have exclusive
27 jurisdiction to hear appeals arising from an action or determination by
28 the department.

29 (8)(a) Any person aggrieved by the approval or disapproval of an
30 application to conduct a forest practice may seek review from the
31 appeals board by filing a request for the same within thirty days of
32 the approval or disapproval, together with the filing fee required
33 under section 5 of this act. Concurrently with the filing of any
34 request for review with the board as provided in this section, the
35 requestor shall file a copy of his request with the department and the
36 attorney general. The attorney general may intervene to protect the
37 public interest and insure that the provisions of this chapter are
38 complied with.

1 (b) The review proceedings authorized in subparagraph (a) of this
2 subsection are subject to the provisions of chapter 34.05 RCW
3 pertaining to procedures in adjudicative proceedings.

4 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
5 preservation of the public peace, health, or safety, or support of the
6 state government and its existing public institutions, and shall take
7 effect immediately.

--- END ---