

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE HOUSE BILL 1095

Chapter 311, Laws of 2003

58th Legislature
2003 Regular Session

FOREST PRACTICES

EFFECTIVE DATE: 5/14/03

Passed by the House April 21, 2003
Yeas 96 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 9, 2003
Yeas 49 Nays 0

BRAD OWEN

President of the Senate

Approved May 14, 2003.

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 1095** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER

Chief Clerk

FILED

May 14, 2003 - 3:41 p.m.

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 1095

AS AMENDED BY THE SENATE

Passed Legislature - 2003 Regular Session

State of Washington

58th Legislature

2003 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Rockefeller, Sump, Linville, Orcutt, Schoesler, Pearson, Holmquist, Haigh and Kristiansen; by request of Commissioner of Public Lands)

READ FIRST TIME 03/10/03.

1 AN ACT Relating to assisting small forest landowners with the
2 forest road maintenance and abandonment plan elements of the forest
3 practices rules; amending RCW 76.09.020, 76.09.055, and 76.09.390;
4 adding new sections to chapter 76.09 RCW; adding a new section to
5 chapter 76.13 RCW; adding a new section to chapter 77.12 RCW; creating
6 new sections; and declaring an emergency.

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

8 NEW SECTION. **Sec. 1.** (1) The legislature finds that chapter 4,
9 Laws of 1999 sp. sess. strongly encouraged the forest practices board
10 to adopt administrative rules that were substantially similar to the
11 recommendations presented to the legislature in the form of the forests
12 and fish report. The rules adopted pursuant to the 1999 legislation
13 require all forest landowners to complete a road maintenance and
14 abandonment plan, and those rules cannot be changed by the forest
15 practices board without either a final order from a court, direct
16 instructions from the legislature, or a recommendation from the
17 adaptive management process. In the time since the enactment of
18 chapter 4, Laws of 1999 sp. sess., it has become clear that both the

1 planning aspect and the implementation aspect of the road maintenance
2 and abandonment plan requirement may cause an unforeseen and unintended
3 disproportionate financial hardship on small forest landowners.

4 (2) The legislature further finds that the commissioner of public
5 lands and the governor have explored solutions that minimize the
6 hardship caused to small forest landowners by the forest road
7 maintenance and abandonment requirements of the forests and fish law,
8 while maintaining protection for public resources. This act represents
9 recommendations stemming from that process.

10 (3) The legislature further finds that it is in the state's
11 interest to help small forest landowners comply with the requirements
12 of the forest practices rules in a way that does not require the
13 landowner to spend unreasonably high and unpredictable amounts of money
14 to complete road maintenance and abandonment plan preparation and
15 implementation. Small forest landowners provide significant wildlife
16 habitat and serve as important buffers between urban development and
17 Washington's public forest land holdings.

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

20 (1) The state may not require a small forest landowner to invest in
21 upgrades, replacements, or other engineering of a forest road, and any
22 fish passage barriers that are a part of the road, that do not threaten
23 public resources or create a barrier to the passage of fish.

24 (2) Participation in the forests and fish agreement provides a
25 benefit to both the landowner in terms of federal assurances, and the
26 public in terms of aquatic habitat preservation and water quality
27 enhancement; therefore, if conditions do threaten public resources or
28 create a fish passage barrier, the road maintenance and abandonment
29 planning process may not require a small forest landowner to take a
30 positive action that will result in high cost without a significant
31 portion of that cost being shared by the public.

32 (3) Some fish passage barriers are more of a threat to public
33 resources than others; therefore, no small forest landowner should be
34 required to repair a fish passage barrier until higher priority fish
35 passage barriers on other lands in the watershed have been repaired.

36 (4) If an existing fish passage barrier on land owned by a small
37 forest landowner was installed under an approved forest practices

1 application or notification, and hydraulics approval, and that fish
2 passage barrier becomes a high priority for fish passage based on the
3 watershed ranking in section 7 of this act, one hundred percent public
4 funding shall be provided.

5 (5) The preparation of a road maintenance and abandonment plan can
6 require technical expertise that may require large expenditures before
7 the time that the landowner plans to conduct any revenue-generating
8 operations on his or her land; therefore, small forest landowners
9 should be allowed to complete a simplified road maintenance and
10 abandonment plan checklist, that does not require professional
11 engineering or forestry expertise to complete, and that does not need
12 to be submitted until the time that the landowner submits a forest
13 practices application or notification for final or intermediate
14 harvesting, or for salvage of trees. This act is intended to provide
15 an alternate way for small forest landowners to comply with the road
16 maintenance and abandonment plan goals identified in the forest
17 practices rules.

18 **Sec. 3.** RCW 76.09.020 and 2002 c 17 s 1 are each amended to read
19 as follows:

20 (~~For purposes of this chapter:~~) The definitions in this section
21 apply throughout this chapter unless the context clearly requires
22 otherwise.

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

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

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

36 (4) "Commissioner" means the commissioner of public lands.

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

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

7 (7) "Department" means the department of natural resources.

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

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

20 (a) Residential home sites, which may include up to five acres; and

21 (b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens,
22 and the land on which appurtenances necessary to the production,
23 preparation, or sale of crops, fruit, dairy products, fish, and
24 livestock exist.

25 ((+9)) (10) "Forest landowner" means any person in actual control
26 of forest land, whether such control is based either on legal or
27 equitable title, or on any other interest entitling the holder to sell
28 or otherwise dispose of any or all of the timber on such land in any
29 manner(~~(+PROVIDED, That)~~). However, any lessee or other person in
30 possession of forest land without legal or equitable title to such land
31 shall be excluded from the definition of "forest landowner" unless such
32 lessee or other person has the right to sell or otherwise dispose of
33 any or all of the timber located on such forest land.

34 ((+10)) (11) "Forest practice" means any activity conducted on or
35 directly pertaining to forest land and relating to growing, harvesting,
36 or processing timber, including but not limited to:

37 (a) Road and trail construction;

38 (b) Harvesting, final and intermediate;

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

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

13 ~~((11))~~ (12) "Forest practices rules" means any rules adopted
14 pursuant to RCW 76.09.040.

15 ~~((12))~~ (13) "Forest road," as it applies to the operation of the
16 road maintenance and abandonment plan element of the forest practices
17 rules on small forest landowners, means a road or road segment that
18 crosses land that meets the definition of forest land, but excludes
19 residential access roads.

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

27 ~~((13))~~ (15) "Forests and fish report" means the forests and fish
28 report to the board dated April 29, 1999.

29 ~~((14))~~ (16) "Application" means the application required pursuant
30 to RCW 76.09.050.

31 ~~((15))~~ (17) "Operator" means any person engaging in forest
32 practices except an employee with wages as his or her sole
33 compensation.

34 ~~((16))~~ (18) "Person" means any individual, partnership, private,
35 public, or municipal corporation, county, the department or other state
36 or local governmental entity, or association of individuals of whatever
37 nature.

1 (~~(17)~~) (19) "Public resources" means water, fish and wildlife,
2 and in addition shall mean capital improvements of the state or its
3 political subdivisions.

4 (~~(18)~~) (20) "Small forest landowner" has the same meaning as
5 defined in section 11 of this act.

6 (21) "Timber" means forest trees, standing or down, of a commercial
7 species, including Christmas trees. However, "timber" does not include
8 Christmas trees that are cultivated by agricultural methods, as that
9 term is defined in RCW 84.33.035.

10 (~~(19)~~) (22) "Timber owner" means any person having all or any
11 part of the legal interest in timber. Where such timber is subject to
12 a contract of sale, "timber owner" shall mean the contract purchaser.

13 (~~(20)~~) (23) "Board" means the forest practices board created in
14 RCW 76.09.030.

15 (~~(21)~~) (24) "Unconfined avulsing channel migration zone" means
16 the area within which the active channel of an unconfined avulsing
17 stream is prone to move and where the movement would result in a
18 potential near-term loss of riparian forest adjacent to the stream.
19 Sizeable islands with productive timber may exist within the zone.

20 (~~(22)~~) (25) "Unconfined avulsing stream" means generally fifth
21 order or larger waters that experience abrupt shifts in channel
22 location, creating a complex flood plain characterized by extensive
23 gravel bars, disturbance species of vegetation of variable age,
24 numerous side channels, wall-based channels, oxbow lakes, and wetland
25 complexes. Many of these streams have dikes and levees that may
26 temporarily or permanently restrict channel movement.

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

29 (1) The board must amend the forest practices rules relating to
30 road maintenance and abandonment plans that exist on the effective date
31 of this section to reflect the following:

32 (a) A forest landowner who owns a total of eighty acres or less of
33 forest land in Washington is not required to submit a road maintenance
34 and abandonment plan for any block of forest land that is twenty
35 contiguous acres or less in area;

36 (b) A landowner who satisfies the definition of a small forest
37 landowner, but who does not qualify under (a) of this subsection, is

1 only required to submit a checklist road maintenance and abandonment
2 plan with the abbreviated content requirements provided for in
3 subsection (3) of this section, and is not required to comply with
4 annual reporting and review requirements; and

5 (c) Existing forest roads must be maintained only to the extent
6 necessary to prevent damage to public resources.

7 (2) The department must provide a landowner who is either exempted
8 from submitting a road maintenance and abandonment plan under
9 subsection (1)(a) of this section, or who qualifies for a checklist
10 road maintenance and abandonment plan under subsection (1)(b) of this
11 section, with an educational brochure outlining road maintenance
12 standards and requirements. In addition, the department must develop
13 a series of nonmandatory educational workshops on the rules associated
14 with road construction and maintenance.

15 (3)(a) A landowner who qualifies for a checklist road maintenance
16 and abandonment plan under subsection (1)(b) of this section is only
17 required to submit a checklist, designed by the department in
18 consultation with the small forest landowner office advisory committee
19 created in RCW 76.13.110, that confirms that the landowner is applying
20 the checklist criteria to forest roads covered or affected by a forest
21 practices application or notification. When developing the checklist
22 road maintenance and abandonment plan, the department shall ensure that
23 the checklist does not exceed current state law. Nothing in this
24 subsection increases or adds to small forest landowners' duties or
25 responsibilities under any other section of the forest practices rules
26 or any other state law or rule.

27 (b) A landowner who qualifies for the checklist road maintenance
28 and abandonment plan is not required to submit the checklist before the
29 time that he or she submits a forest practices application or
30 notification for final or intermediate harvesting, or for salvage of
31 trees. The department may encourage and accept checklists prior to the
32 time that they are due.

33 (4) The department must monitor the extent of the checklist road
34 maintenance and abandonment plan approach and report its findings to
35 the appropriate committees of the legislature by December 31, 2008, and
36 December 31, 2013.

37 (5) The board shall adopt emergency rules under RCW 34.05.090 by
38 October 31, 2003, to implement this section. The emergency rules shall

1 remain in effect until permanent rules can be adopted. The forest
2 practices rules that relate to road maintenance and abandonment plans
3 shall remain in effect as they existed on the effective date of this
4 section until emergency rules have been adopted under this section.

5 (6) This section is only intended to relate to the board's duties
6 as they relate to the road maintenance and abandonment plan element of
7 the forests and fish report. Nothing in this section alters any forest
8 landowner's duties and responsibilities under any other section of the
9 forest practices rules, or any other state law or rule.

10 **Sec. 5.** RCW 76.09.055 and 2000 c 11 s 4 are each amended to read
11 as follows:

12 (1) The legislature finds that the (~~declines~~) levels of fish
13 stocks throughout much of the state require immediate action to be
14 taken to help (~~restore~~) these fish runs where possible. The
15 legislature also recognizes that federal and state agencies, tribes,
16 county representatives, and private timberland owners have spent
17 considerable effort and time to develop the forests and fish report.
18 Given the agreement of the parties, the legislature believes that the
19 immediate adoption of emergency rules is appropriate in this particular
20 instance. These rules can implement many provisions of the forests and
21 fish report to protect the economic well-being of the state, and to
22 minimize the risk to the state and landowners to legal challenges.
23 This authority is not designed to set any precedents for the forest
24 practices board in future rule making or set any precedents for other
25 rule-making bodies of the state.

26 (2) The forest practices board is authorized to adopt emergency
27 rules amending the forest practices rules with respect to the
28 protection of aquatic resources, in accordance with RCW 34.05.350,
29 except: (a)(i) That the rules adopted under this section may remain in
30 effect until permanent rules are adopted, or until June 30, 2001,
31 whichever is sooner; (ii) that the rules adopted under section 4(5) of
32 this act must remain in effect until permanent rules are adopted; (b)
33 notice of the proposed rules must be published in the Washington State
34 Register as provided in RCW 34.05.320; (c) at least one public hearing
35 must be conducted with an opportunity to provide oral and written
36 comments; and (d) a rule-making file must be maintained as required by
37 RCW 34.05.370. In adopting (~~the~~) emergency rules consistent with

1 this section, the board is not required to prepare a small business
2 economic impact statement under chapter 19.85 RCW, prepare a statement
3 indicating whether the rules constitute a significant legislative rule
4 under RCW 34.05.328, prepare a significant legislative rule analysis
5 under RCW 34.05.328, or follow the procedural requirements of the state
6 environmental policy act, chapter 43.21C RCW. Except as provided in
7 section 4 of this act, the forest practices board may only adopt
8 recommendations contained in the forests and fish report as emergency
9 rules under this section.

10 **Sec. 6.** RCW 76.09.390 and 1999 sp.s. c 4 s 707 are each amended to
11 read as follows:

12 (1) Except as provided in subsection (2) of this section, prior to
13 the sale or transfer of land or perpetual timber rights subject to
14 continuing forest land obligations under the forest practices rules
15 adopted under RCW 76.09.370, as specifically identified in the forests
16 and fish report the seller shall notify the buyer of the existence and
17 nature of such a continuing obligation and the buyer shall sign a
18 notice of continuing forest land obligation indicating the buyer's
19 knowledge thereof. The notice shall be on a form prepared by the
20 department and shall be sent to the department by the seller at the
21 time of sale or transfer of the land or perpetual timber rights and
22 retained by the department. If the seller fails to notify the buyer
23 about the continuing forest land obligation, the seller shall pay the
24 buyer's costs related to such continuing forest land obligation,
25 including all legal costs and reasonable attorneys' fees, incurred by
26 the buyer in enforcing the continuing forest land obligation against
27 the seller. Failure by the seller to send the required notice to the
28 department at the time of sale shall be prima facie evidence, in an
29 action by the buyer against the seller for costs related to the
30 continuing forest land obligation, that the seller did not notify the
31 buyer of the continuing forest land obligation prior to sale.

32 (2) Subsection (1) of this section does not apply to checklist road
33 maintenance and abandonment plans created by section 4 of this act.

34 NEW SECTION. **Sec. 7.** A new section is added to chapter 76.13 RCW
35 to read as follows:

36 (1) The legislature finds that a state-led cost-sharing program is

1 necessary to assist small forest landowners with removing and replacing
2 fish passage barriers that were added to their land prior to the
3 effective date of this section, to help achieve the goals of the
4 forests and fish report, and to assist small forest landowners in
5 complying with the state's fish passage requirements.

6 (2) The small forest landowner office must, in cooperation with the
7 department of fish and wildlife, establish a program designed to assist
8 small forest landowners with repairing or removing fish passage
9 barriers and assist lead entities in acquiring the data necessary to
10 fill any gaps in fish passage barrier information. The small forest
11 landowner office and the department of fish and wildlife must work
12 closely with lead entities or other local watershed groups to make
13 maximum use of current information regarding the location and priority
14 of current fish passage barriers. Where additional fish passage
15 barrier inventories are necessary, funding will be sought for the
16 collection of this information. Methods, protocols, and formulas for
17 data gathering and prioritizing must be developed in consultation with
18 the department of fish and wildlife. The department of fish and
19 wildlife must assist in the training and management of fish passage
20 barrier location data collection.

21 (3) The small forest landowner office must actively seek out
22 funding for the program authorized in this section. The small forest
23 landowner office must work with consenting landowners to identify and
24 secure funding from local, state, federal, tribal, or nonprofit habitat
25 restoration organizations and other private sources, including the
26 salmon recovery funding board, the United States department of
27 agriculture, the United States department of transportation, the
28 Washington state department of transportation, the United States
29 department of commerce, and the federal highway administration.

30 (4)(a) Except as otherwise provided in this subsection, the small
31 forest landowner office, in implementing the program established in
32 this section, must provide the highest proportion of public funding
33 available for the removal or replacement of any fish passage barrier.

34 (b) In no case shall a small forest landowner be required to pay
35 more than the lesser of either: (i) Twenty-five percent of any costs
36 associated with the removal or replacement of a particular fish passage
37 barrier; or (ii) five thousand dollars for the removal or replacement

1 of a particular fish passage barrier. No small forest landowner shall
2 be required to pay more than the maximum total annual costs in (c) of
3 this subsection.

4 (c) The portion of the total cost of removing or replacing fish
5 passage barriers that a small forest landowner must pay in any calendar
6 year shall be determined based on the average annual timber volume
7 harvested from the landowner's lands in this state during the three
8 preceding calendar years, and whether the fish passage barrier is in
9 eastern or western Washington.

10 (i) In western Washington (west of the Cascade Crest), a small
11 forest landowner who has harvested an average annual timber volume of
12 less than five hundred thousand board feet shall not be required to pay
13 more than a total of eight thousand dollars during that calendar year,
14 a small forest landowner who has harvested an annual average timber
15 volume between five hundred thousand and nine hundred ninety-nine
16 thousand board feet shall not be required to pay more than a total of
17 sixteen thousand dollars during that calendar year, a small forest
18 landowner who has harvested an average annual timber volume between one
19 million and one million four hundred ninety-nine thousand board feet
20 shall not be required to pay more than a total of twenty-four thousand
21 dollars during that calendar year, and a small forest landowner who has
22 harvested an average annual timber volume greater than or equal to one
23 million five hundred thousand board feet shall not be required to pay
24 more than a total of thirty-two thousand dollars during that calendar
25 year, regardless of the number of fish passage barriers removed or
26 replaced on the landowner's lands during that calendar year.

27 (ii) In eastern Washington (east of the Cascade Crest), a small
28 forest landowner who has harvested an average annual timber volume of
29 less than five hundred thousand board feet shall not be required to pay
30 more than a total of two thousand dollars during that calendar year, a
31 small forest landowner who has harvested an annual average timber
32 volume between five hundred thousand and nine hundred ninety-nine
33 thousand board feet shall not be required to pay more than a total of
34 four thousand dollars during that calendar year, a small forest
35 landowner who has harvested an average annual timber volume between one
36 million and one million four hundred ninety-nine thousand board feet
37 shall not be required to pay more than a total of twelve thousand
38 dollars during that calendar year, and a small forest landowner who has

1 harvested an average annual timber volume greater than or equal to one
2 million five hundred thousand board feet shall not be required to pay
3 more than a total of sixteen thousand dollars during that calendar
4 year, regardless of the number of fish passage barriers removed or
5 replaced on the landowner's lands during that calendar year.

6 (iii) Maximum total annual costs for small forest landowners with
7 fish passage barriers in both western and eastern Washington shall be
8 those specified under (c)(i) and (ii) of this subsection.

9 (d) If an existing fish passage barrier on land owned by a small
10 forest landowner was installed under an approved forest practices
11 application or notification, and hydraulics approval, and that fish
12 passage barrier becomes a high priority for fish passage based on the
13 watershed ranking in section 7 of this act, one hundred percent public
14 funding shall be provided.

15 (5) If a small forest landowner is required to contribute a portion
16 of the funding under the cost-share program established in this
17 section, that landowner may satisfy his or her required proportion by
18 providing either direct monetary contributions or in-kind services to
19 the project. In-kind services may include labor, equipment, materials,
20 and other landowner-provided services determined by the department to
21 have an appropriate value to the removal of a particular fish passage
22 barrier.

23 (6)(a) The department, using fish passage barrier assessments and
24 ranked inventory information provided by the department of fish and
25 wildlife and the appropriate lead entity as delineated in section 10 of
26 this act, must establish a prioritized list for the funding of fish
27 passage barrier removals on property owned by small forest landowners
28 that ensures that funding is provided first to the known fish passage
29 barriers existing on forest land owned by small forest landowners that
30 cause the greatest harm to public resources.

31 (b) As the department collects information about the presence of
32 fish passage barriers from submitted checklists, it must share this
33 information with the department of fish and wildlife and the technical
34 advisory groups established in RCW 77.85.070. If the addition of the
35 information collected in the checklists or any other changes to the
36 scientific instruments described in section 10 of this act alter the
37 analysis conducted under section 10 of this act, the department must
38 alter the funding order appropriately to reflect the new information.

1 (7) The department may accept commitments from small forest
2 landowners that they will participate in the program to remove fish
3 passage barriers from their land at any time, regardless of the funding
4 order given to the fish passage barriers on a particular landowner's
5 property.

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

8 Section 7 of this act applies to road maintenance and abandonment
9 plans under this chapter.

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

12 The department shall not disapprove a forest practices application
13 filed by a small forest landowner on the basis that fish passage
14 barriers have not been removed or replaced if the small forest
15 landowner filing the application has committed to participate in the
16 program established in section 7 of this act for all fish passage
17 barriers existing on the block of forest land covered by the forest
18 practices application, and the fish passage barriers existing on the
19 block of forest land covered by the forest practices application are
20 lower on the funding order list established for the program than the
21 current projects that are capable of being funded by the program.

22 NEW SECTION. **Sec. 10.** A new section is added to chapter 77.12 RCW
23 to read as follows:

24 In coordination with the department of natural resources and lead
25 entity groups, the department must establish a ranked inventory of fish
26 passage barriers on land owned by small forest landowners based on the
27 principle of fixing the worst first within a watershed consistent with
28 the fish passage priorities of the forest and fish report. The
29 department shall first gather and synthesize all available existing
30 information about the locations and impacts of fish passage barriers in
31 Washington. This information must include, but not be limited to, the
32 most recently available limiting factors analysis conducted pursuant to
33 RCW 77.85.060(2), the stock status information contained in the
34 department of fish and wildlife salmonid stock inventory (SASSI), the
35 salmon and steelhead habitat inventory and assessment project (SSHIAP),

1 and any comparable science-based assessment when available. The
2 inventory of fish passage barriers must be kept current and at a
3 minimum be updated by the beginning of each calendar year. Nothing in
4 this section grants the department or others additional right of entry
5 onto private property.

6 NEW SECTION. **Sec. 11.** A new section is added to chapter 76.09 RCW
7 to read as follows:

8 For the purposes of this chapter and sections 7 and 10 of this act,
9 "small forest landowner" means an owner of forest land who, at the time
10 of submission of required documentation to the department, has
11 harvested from his or her own lands in this state no more than an
12 average timber volume of two million board feet per year during the
13 three years prior to submitting documentation to the department and who
14 certifies that he or she does not expect to harvest from his or her own
15 lands in the state more than an average timber volume of two million
16 board feet per year during the ten years following the submission of
17 documentation to the department. However, any landowner who exceeded
18 the two million board feet annual average timber harvest threshold from
19 their land in the three years prior to submitting documentation to the
20 department, or who expects to exceed the threshold during any of the
21 following ten years, shall still be deemed a "small forest landowner"
22 if he or she establishes to the department's reasonable satisfaction
23 that the harvest limits were, or will be, exceeded in order to raise
24 funds to pay estate taxes or for an equally compelling and unexpected
25 obligation, such as for a court-ordered judgment or for extraordinary
26 medical expenses.

27 NEW SECTION. **Sec. 12.** The existing policy committees of the
28 senate and house of representatives that deal with natural resources
29 issues must review and study the implementation of this act, including
30 checklist preparation and the meaning of both defined and undefined
31 words in chapters 76.09 and 76.13 RCW, and report to the legislature by
32 January 2004.

33 NEW SECTION. **Sec. 13.** This act is necessary for the immediate
34 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect
2 immediately.

Passed by the House April 21, 2003.

Passed by the Senate April 9, 2003.

Approved by the Governor May 14, 2003.

Filed in Office of Secretary of State May 14, 2003.