
SUBSTITUTE HOUSE BILL 2740

State of Washington

59th Legislature

2006 Regular Session

By House Committee on Natural Resources, Ecology & Parks (originally sponsored by Representatives Orcutt, Blake and Kretz)

READ FIRST TIME 02/03/06.

1 AN ACT Relating to reauthorizing the department of natural
2 resources to have exclusive jurisdiction over all forest practices
3 applications; amending RCW 76.09.060, 76.09.065, and 76.09.240; and
4 providing an effective date.

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

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

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

11 (1) The department shall prescribe the form and contents of the
12 notification and application. The forest practices rules shall specify
13 by whom and under what conditions the notification and application
14 shall be signed or otherwise certified as acceptable. The application
15 or notification shall be delivered in person to the department, sent by
16 first class mail to the department or electronically filed in a form
17 defined by the department. The form for electronic filing shall be
18 readily convertible to a paper copy, which shall be available to the

1 public pursuant to chapter 42.56 RCW. The information required may
2 include, but is not limited to:

3 (a) Name and address of the forest landowner, timber owner, and
4 operator;

5 (b) Description of the proposed forest practice or practices to be
6 conducted;

7 (c) Legal description and tax parcel identification numbers of the
8 land on which the forest practices are to be conducted;

9 (d) Planimetric and topographic maps showing location and size of
10 all lakes and streams and other public waters in and immediately
11 adjacent to the operating area and showing all existing and proposed
12 roads and major tractor roads;

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

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

19 (g) Soil, geological, and hydrological data with respect to forest
20 practices;

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

23 (i) Provisions for continuing maintenance of roads and other
24 construction or other measures necessary to afford protection to public
25 resources;

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

28 (k) All necessary application or notification fees.

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

31 (3) The application for a forest practice or the notification of a
32 Class II forest practice is subject to the three-year reforestation
33 requirement.

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

36 (i) The reforestation requirements of this chapter and of the
37 forest practices rules shall not apply if the land is in fact so

1 converted unless applicable alternatives or limitations are provided in
2 forest practices rules issued under RCW 76.09.070 as now or hereafter
3 amended;

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

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

12 ~~(b) ((Except as provided elsewhere in this section, if the
13 application or notification does not state that any land covered by the
14 application or notification will be or is intended to be so converted:~~

15 ~~(i) For six years after the date of the application the))~~ A county,
16 city, town, ((and)) or regional governmental ((entities shall)) entity
17 may not deny any ((or all)) applications for permits or approvals,
18 including building permits and subdivision approvals, relating to
19 nonforestry uses of land subject to the application((+)

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

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

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

1 ~~(D) The local governmental entity shall develop a process for~~
2 ~~lifting the six year moratorium, which shall include public~~
3 ~~notification, and procedures for appeals and public hearings.~~

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

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

16 ~~(ii) Failure to comply with the reforestation requirements~~
17 ~~contained in any final order or decision shall constitute a removal of~~
18 ~~designation under the provisions of RCW 84.33.140, and a change of use~~
19 ~~under the provisions of RCW 84.34.080, and, if applicable, shall~~
20 ~~subject such lands to the payments and/or penalties resulting from such~~
21 ~~removals or changes; and~~

22 ~~(iii) Conversion to a use other than commercial forest product~~
23 ~~operations within six years after approval of the forest practices~~
24 ~~without the consent of the county, city, or town shall constitute a~~
25 ~~violation of each of the county, municipal city, town, and regional~~
26 ~~authorities to which the forest practice operations would have been~~
27 ~~subject if the application had so stated.~~

28 ~~(c) The application or notification shall be signed by the forest~~
29 ~~landowner and accompanied by a statement signed by the forest landowner~~
30 ~~indicating his or her intent with respect to conversion and~~
31 ~~acknowledging that he or she is familiar with the effects of this~~
32 ~~subsection)), based on an applicant's failure to state an intention for~~
33 ~~any land covered by an application under this section to be converted~~
34 ~~into a nonforestry use or on an applicant's failure to satisfy any~~
35 ~~forest practices standards that are not required by this chapter.~~
36 ~~However, any applicant who does not state an intention to convert the~~
37 ~~lands covered by the application into a nonforestry use must satisfy~~
38 ~~the reforestation requirements of the forest practices rules.~~

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

7 (5) Before the operator commences any forest practice in a manner
8 or to an extent significantly different from that described in a
9 previously approved application or notification, there shall be
10 submitted to the department a new application or notification form in
11 the manner set forth in this section.

12 (6) Except as provided in RCW 76.09.350(4), the notification to or
13 the approval given by the department to an application to conduct a
14 forest practice shall be effective for a term of two years from the
15 date of approval or notification and shall not be renewed unless a new
16 application is filed and approved or a new notification has been filed.
17 At the option of the applicant, an application or notification may be
18 submitted to cover a single forest practice or a number of forest
19 practices within reasonable geographic or political boundaries as
20 specified by the department. An application or notification that
21 covers more than one forest practice may have an effective term of more
22 than two years. The board shall adopt rules that establish standards
23 and procedures for approving an application or notification that has an
24 effective term of more than two years. Such rules shall include
25 extended time periods for application or notification approval or
26 disapproval. On an approved application with a term of more than two
27 years, the applicant shall inform the department before commencing
28 operations.

29 (7) Notwithstanding any other provision of this section, no prior
30 application or notification shall be required for any emergency forest
31 practice necessitated by fire, flood, windstorm, earthquake, or other
32 emergency as defined by the board, but the operator shall submit an
33 application or notification, whichever is applicable, to the department
34 within forty-eight hours after commencement of such practice or as
35 required by local regulations.

36 (8) Forest practices applications or notifications are not required
37 for forest practices conducted to control exotic forest insect or
38 disease outbreaks, when conducted by or under the direction of the

1 department of agriculture in carrying out an order of the governor or
2 director of the department of agriculture to implement pest control
3 measures as authorized under chapter 17.24 RCW, and are not required
4 when conducted by or under the direction of the department in carrying
5 out emergency measures under a forest health emergency declaration by
6 the commissioner of public lands as provided in RCW 76.06.130.

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

9 (b) In order to minimize adverse impacts to public resources,
10 control measures must be based on integrated pest management, as
11 defined in RCW 17.15.010, and must follow forest practices rules
12 relating to road construction and maintenance, timber harvest, and
13 forest chemicals, to the extent possible without compromising control
14 objectives.

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

19 (d) When the appropriate regulatory staff of the department are
20 notified under (c) of this subsection, they must consult with the
21 landowner, interested agencies, and affected tribes, and assist the
22 notifying agencies in the development of integrated pest management
23 plans that comply with forest practices rules as required under (b) of
24 this subsection.

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

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

31 (g) The exemption from obtaining approved forest practices
32 applications or notifications does not apply to forest practices
33 conducted after the governor, the director of the department of
34 agriculture, or the commissioner of public lands have declared that an
35 emergency no longer exists because control objectives have been met,
36 that there is no longer an imminent threat, or that there is no longer
37 a good likelihood of control.

1 **Sec. 2.** RCW 76.09.065 and 2000 c 11 s 5 are each amended to read
2 as follows:

3 (1) Effective July 1, 1997, an applicant shall pay an application
4 fee (~~(and a recording fee, if applicable,)~~) at the time an application
5 or notification is submitted to the department (~~(or to the local~~
6 ~~governmental entity as provided in this chapter)~~).

7 (2) For applications and notifications (~~(submitted to the~~
8 ~~department)~~), the application fee shall be fifty dollars for class II,
9 III, and IV forest practices applications or notifications relating to
10 the commercial harvest of timber. However, the fee shall be five
11 hundred dollars for class IV forest practices applications on lands
12 being converted to other uses or on lands which are not to be
13 reforested because of the likelihood of future conversion to urban
14 development or on lands that are contained within "urban growth areas,"
15 designated pursuant to chapter 36.70A RCW, except the fee shall be
16 fifty dollars on those lands where the forest landowner provides(~~(+~~

17 ~~(a))~~ a written statement of intent signed by the forest landowner
18 not to convert to a use other than commercial forest product operations
19 for ten years, accompanied by either a written forest management plan
20 acceptable to the department or documentation that the land is enrolled
21 under the provisions of chapter 84.33 RCW(~~(+ or~~

22 ~~(b) A conversion option harvest plan approved by the local~~
23 ~~governmental entity and submitted to the department as part of the~~
24 ~~forest practices application)~~).

25 All money collected from fees under this subsection shall be deposited
26 in the state general fund.

27 (3) (~~For applications submitted to the local governmental entity,~~
28 ~~the fee shall be five hundred dollars for class IV forest practices on~~
29 ~~lands being converted to other uses or lands that are contained within~~
30 ~~"urban growth areas," designated pursuant to chapter 36.70A RCW, except~~
31 ~~as otherwise provided in this section, unless a different fee is~~
32 ~~otherwise provided by the local governmental entity.~~

33 ~~(4) Recording fees shall be as provided in chapter 36.18 RCW.~~

34 ~~(5))~~ An application fee under subsection (2) of this section shall
35 be refunded or credited to the applicant if either the application or
36 notification is disapproved by the department or the application or
37 notification is withdrawn by the applicant due to restrictions imposed
38 by the department.

1 NEW SECTION. **Sec. 3.** Section 1 of this act takes effect July 1,
2 2006.

3 **Sec. 4.** RCW 76.09.240 and 2002 c 121 s 2 are each amended to read
4 as follows:

5 ~~((1) By December 31, 2005, each county and each city shall adopt~~
6 ~~ordinances or promulgate regulations setting standards for those Class~~
7 ~~IV forest practices regulated by local government. The regulations~~
8 ~~shall: (a) Establish minimum standards for Class IV forest practices;~~
9 ~~(b) set forth necessary administrative provisions; and (c) establish~~
10 ~~procedures for the collection and administration of forest practices~~
11 ~~and recording fees as set forth in this chapter.~~

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

14 ~~(3) The forest practices board shall continue to promulgate~~
15 ~~regulations and the department shall continue to administer and enforce~~
16 ~~the regulations promulgated by the board in each county and each city~~
17 ~~for all forest practices as provided in this chapter until such time~~
18 ~~as, in the opinion of the department, the county or city has~~
19 ~~promulgated forest practices regulations that meet the requirements as~~
20 ~~set forth in this section and that meet or exceed the standards set~~
21 ~~forth by the board in regulations in effect at the time the local~~
22 ~~regulations are adopted. Regulations promulgated by the county or city~~
23 ~~thereafter shall be reviewed in the usual manner set forth for county~~
24 ~~or city rules or ordinances. Amendments to local ordinances must meet~~
25 ~~or exceed the forest practices rules at the time the local ordinances~~
26 ~~are amended.~~

27 ~~(a) Department review of the initial regulations promulgated by a~~
28 ~~county or city shall take place upon written request by the county or~~
29 ~~city. The department, in consultation with the department of ecology,~~
30 ~~may approve or disapprove the regulations in whole or in part.~~

31 ~~(b) Until January 1, 2006, the department shall provide technical~~
32 ~~assistance to all counties or cities that have adopted forest practices~~
33 ~~regulations acceptable to the department and that have assumed~~
34 ~~regulatory authority over all Class IV forest practices within their~~
35 ~~jurisdiction.~~

36 ~~(c) Decisions by the department approving or disapproving the~~
37 ~~initial regulations promulgated by a county or city may be appealed to~~

1 the forest practices appeals board, which has exclusive jurisdiction to
2 review the department's approval or disapproval of regulations
3 promulgated by counties and cities.

4 (4) For those forest practices over which the board and the
5 department maintain regulatory authority)) No county, city,
6 municipality, or other local or regional governmental entity shall
7 adopt or enforce any law, ordinance, or regulation pertaining to forest
8 practices, except that to the extent otherwise permitted by law, such
9 entities may exercise any:

10 ((a) Land use planning or zoning authority: PROVIDED, That
11 exercise of such authority may regulate forest practices only: (i)
12 Where the application submitted under RCW 76.09.060 as now or hereafter
13 amended indicates that the lands have been or will be converted to a
14 use other than commercial forest product production; or (ii) on lands
15 which have been platted after January 1, 1960, as provided in chapter
16 58.17 RCW: PROVIDED, That no permit system solely for forest practices
17 shall be allowed; that any additional or more stringent regulations
18 shall not be inconsistent with the forest practices regulations enacted
19 under this chapter; and such local regulations shall not unreasonably
20 prevent timber harvesting;

21 (b)) (1) Taxing powers;
22 ((c)) (2) Regulatory authority with respect to public health; and
23 ((d)) (3) Authority granted by chapter 90.58 RCW, the "Shoreline
24 Management Act of 1971".

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