

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6141

Chapter 480, Laws of 2007

60th Legislature
2007 Regular Session

FOREST HEALTH

EFFECTIVE DATE: 07/22/07

Passed by the Senate March 14, 2007
YEAS 49 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House April 6, 2007
YEAS 94 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved May 14, 2007, 4:00 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6141** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 15, 2007

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6141

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By Senate Committee on Natural Resources, Ocean & Recreation
(originally sponsored by Senators Jacobsen and Morton)

READ FIRST TIME 02/28/07.

1 AN ACT Relating to forest health; amending RCW 76.06.140,
2 76.06.020, 76.06.030, 76.06.040, 76.09.220, 76.09.060, 76.04.005, and
3 76.04.660; adding new sections to chapter 76.06 RCW; and repealing RCW
4 76.06.050, 76.06.060, 76.06.070, 76.06.080, 76.06.090, and 76.06.110.

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

6 **Sec. 1.** RCW 76.06.140 and 2004 c 218 s 1 are each amended to read
7 as follows:

8 ~~((1))~~ The legislature finds ~~((that))~~ as follows:

9 (1) Washington faces serious forest health problems, primarily in
10 eastern Washington, where forests are overcrowded or trees ~~((are~~
11 ~~infested with or susceptible))~~ lack sufficient resilience to insects,
12 diseases, wind, ice storms, and fire. The causes of and contributions
13 to these ~~((susceptible))~~ conditions include fire suppression, past
14 timber harvesting and silvicultural practices, altered species
15 composition and stand structure, and the amplified risks that occur
16 when the urban interface penetrates forest land.

17 ~~((The legislature further finds that))~~ There is a private and
18 public interest in addressing uncharacteristic outbreaks of native,
19 naturalized, and nonnative insects and diseases, and reducing the risk

1 of significant loss due to ice storms, wind storms, and
2 uncharacteristic fire. The public interest is in protecting forest
3 productivity on forests managed for commodity production; restoring and
4 maintaining forest ecosystem vitality and natural forest processes and
5 functions; reducing the cost of fire suppression and the resulting
6 public expenditures; protecting, restoring, and enhancing fish and
7 wildlife habitat, including the habitat of threatened or endangered
8 species; and protecting drinking water supplies and water quality.

9 (3) Well managed forests are the first line of defense in reducing
10 the likelihood of uncharacteristic fire, insect, and disease events,
11 and supporting conservation and restoration of desired plants and
12 animals. Active management of forests, consistent with landowner
13 objectives and the protection of public resources, is the most
14 economical and effective way to promote forest health and protect
15 communities. Fire, native insects, and diseases perform important
16 ecological functions when their occurrence does not present a material
17 threat to long-term forest productivity and increase the likelihood of
18 uncharacteristic fire.

19 (4) Forest health problems may exist on forest land regardless of
20 ownership, and the state should ((~~explore all possible avenues for~~
21 working in)) pursue collaboration with the federal government to
22 address common health deficiencies.

23 ~~((3) The legislature further finds that healthy forests benefit~~
24 ~~not only the economic interests that rely on forest products but also~~
25 ~~provide environmental benefits, such as improved water quality and~~
26 ~~habitat for fish and wildlife.))~~

27 **Sec. 2.** RCW 76.06.020 and 2003 c 314 s 2 are each amended to read
28 as follows:

29 The definitions in this section apply throughout this chapter
30 unless the context clearly requires otherwise.

31 (1) "Agent" means the recognized legal representative,
32 representatives, agent, or agents for any owner.

33 (2) "Commissioner" means the commissioner of public lands.

34 (3) "Department" means the department of natural resources.

35 ~~((3) "Owner" means and includes persons or their agents.~~

36 ~~(4) "Timber land" means any land on which there is a sufficient~~
37 ~~number of trees, standing or down, to constitute, in the judgment of~~

1 ~~the department, a forest insect or forest disease breeding ground of a~~
2 ~~nature to constitute a menace, injurious and dangerous to permanent~~
3 ~~forest growth in the district under consideration.~~

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

5 ~~(6)) (4) "Disturbance agent" means those forces that damage or~~
6 ~~kill significant numbers of forest trees, such as insects, diseases,~~
7 ~~wind storms, ice storms, and fires.~~

8 ~~(5) "Exotic" means not native to forest lands in Washington state.~~

9 ~~((7) "Forest land" means any land on which there are sufficient~~
10 ~~numbers and distribution of trees and associated species to, in the~~
11 ~~judgment of the department, contribute to the spread of forest insect~~
12 ~~or forest disease outbreaks that could be injurious to forest health.~~

13 ~~(8)) (6) "Forest health" means, for the purposes of this chapter,~~
14 ~~the condition of a forest being sound in ecological function,~~
15 ~~sustainable, resilient, and resistant to insects, diseases, fire, and~~
16 ~~other disturbance, and having the capacity to meet landowner~~
17 ~~objectives.~~

18 ~~((9)) (7) "Forest health emergency" means the introduction of, or~~
19 ~~an outbreak of, an exotic forest insect or disease that poses an~~
20 ~~imminent danger of damage to the environment by threatening the~~
21 ~~survivability of native tree species.~~

22 ~~((10)) (8) "Forest insect or disease" means a living stage of an~~
23 ~~insect, other invertebrate animal, or disease-causing organism or agent~~
24 ~~that can directly or indirectly injure or cause disease or damage in~~
25 ~~trees, or parts of trees, or in processed or manufactured wood, or~~
26 ~~other products of trees.~~

27 ~~((11)) (9) "Forest land" means any land on which there are~~
28 ~~sufficient numbers and distribution of trees and associated species to,~~
29 ~~in the judgment of the department, contribute to the spread of forest~~
30 ~~insect or forest disease outbreaks that could be detrimental to forest~~
31 ~~health.~~

32 ~~(10) "Integrated pest management" means a strategy that uses~~
33 ~~various combinations of pest control methods, including biological,~~
34 ~~cultural, and chemical methods, in a compatible manner to achieve~~
35 ~~satisfactory control and ensure favorable economic and environmental~~
36 ~~consequences.~~

37 ~~((12)) (11) "Native" means having populated Washington's forested~~
38 ~~lands prior to European settlement.~~

1 ~~((13))~~ (12) "Outbreak" means a rapidly expanding population of
2 insects or diseases with potential to spread.

3 (13) "Owner" means and includes persons or their agents.

4 (14) "Person" means any individual, partnership, private, public,
5 or municipal corporation, county, federal, state, or local governmental
6 agency, tribes, or association of individuals of whatever nature.

7 (15) "Timber land" means any land on which there is a sufficient
8 number of trees, standing or down, to constitute, in the judgment of
9 the department, a forest insect or forest disease breeding ground of a
10 nature to constitute a menace, injurious and dangerous to permanent
11 forest growth in the district under consideration.

12 (16) "Uncharacteristic" means ecologically atypical for a forest or
13 vegetation type or plant association and refers to fire, insect, or
14 disease events that are not within a natural range of variability.

15 **Sec. 3.** RCW 76.06.030 and 1988 c 128 s 16 are each amended to read
16 as follows:

17 (1) This chapter shall be administered by the department.

18 (2) The department has the lead role in developing a comprehensive
19 forest health program to achieve the goals of this act. Within
20 available funding, the department shall:

21 (a) Develop, gather, and disseminate information on forest health
22 conditions, monitor forest health conditions and changes over time, and
23 coordinate and enter agreements with interested and affected parties;

24 (b) Coordinate with universities, university extension services,
25 federal and state agencies, private, public, and tribal forest
26 landowners, consulting foresters, and forest managers to monitor forest
27 fuel buildup, forest insect and disease outbreaks, and wind and ice
28 storm events; and

29 (c) Coordinate with universities, university extension services,
30 and state and federal agencies to provide education and technical
31 assistance to private, public, and tribal forest landowners on
32 silvicultural and forest management science, techniques, and technology
33 to maintain forests in conditions that are resilient and resistant to
34 disturbance agents.

35 (3) The department may implement a technical committee to advise on
36 subjects and procedures for monitoring forest health conditions and
37 program activities.

1 (4) The department may coordinate, support, and assist in
2 establishing cooperative forest health projects to address outbreaks of
3 insects or diseases. Priority for assistance authorized under this
4 section shall be given to areas under forest health hazard warnings and
5 areas where forest health decline has resulted in increased risk to
6 public safety from fire.

7 (5) The state and its officers and employees are not liable for
8 damages to a person or their property to the extent that liability is
9 asserted to arise from providing or failing to provide assistance under
10 this act.

11 **Sec. 4.** RCW 76.06.040 and 1951 c 233 s 4 are each amended to read
12 as follows:

13 ~~((Every owner of timber lands, or his agent, shall make every~~
14 ~~reasonable effort to control, destroy and eradicate such forest insect~~
15 ~~pests and forest tree diseases which threaten the existence of any~~
16 ~~stand of timber or provide for the same to be done on timber lands~~
17 ~~owned by him or under his control. In the event he fails, neglects, or~~
18 ~~is unable to accomplish such control, the action may be performed as~~
19 ~~provided for in this chapter.)) Landowners and managers are encouraged
20 to maintain their forest lands in a healthy condition in order to meet
21 their individual ownership objectives, protect public resources as
22 defined in chapter 76.09 RCW, and avoid contributing to forest insect
23 or disease outbreaks or increasing the risk of uncharacteristic fire.~~

24 NEW SECTION. **Sec. 5.** A new section is added to chapter 76.06 RCW
25 to read as follows:

26 Forest health issues shall be addressed by a tiered system.

27 (1) The first tier is intended to maintain forest health and
28 protect forests from disturbance agents through the voluntary efforts
29 of landowners. Tier 1 is the desired status. Consistent with
30 landowner objectives and the protection of public resources, forests
31 should be managed in ways that create, restore, or maintain healthy
32 forest ecosystems so that disturbance agents occur or exist at
33 nonepidemic levels. To the extent of available funding, information
34 and technical assistance will be made available to forest landowners so
35 they can plan for and implement necessary forest health maintenance and
36 restoration activities.

1 (2) The second tier is intended to manage the development of
2 threats to forest health, or address existing threats to forest health,
3 due to disturbance agents. Actions by landowners to address such
4 threats to forest health are voluntary except as required under chapter
5 76.04 RCW to reduce the danger of the spread of fire. Actions
6 suggested to reduce threats to forest health are specified in forest
7 health hazard warnings issued by the commissioner of public lands under
8 section 7 of this act. Within available funding, site-specific
9 information, technical assistance, and project coordination services
10 shall be offered as determined appropriate by the department.

11 (3) The third tier is intended to address significant threats to
12 forest health due to disturbance agents that have spread to multiple
13 forest ownerships or increased forest fuel that is likely to further
14 the spread of fire. Actions required to reduce significant threats to
15 forest health are specified in forest health hazard orders issued by
16 the commissioner of public lands under section 7(5) of this act.
17 Within available funding, site-specific information, technical
18 assistance, and project coordination services shall be offered as
19 determined appropriate by the department. Landowners who are provided
20 notice of a forest health hazard order under section 7(5) of this act
21 and fail to take the action required under such order may be subject to
22 increased liability for the spread of fire as described in RCW
23 76.04.495 and 76.04.660. However, a private landowner need not take
24 actions required under the third tier, and may not be held liable for
25 the failure to take such actions, where the disturbance agents on the
26 private landowner's land spread from state or federal lands or where
27 the presence of disturbance agents on state or federal lands would
28 limit the effectiveness of actions required on the private landowner's
29 land under the third tier.

30 NEW SECTION. **Sec. 6.** A new section is added to chapter 76.06 RCW
31 to read as follows:

32 (1) The commissioner of public lands may appoint a forest health
33 technical advisory committee when the commissioner determines that
34 forest lands in any area of the state appear to be threatened by a
35 forest health condition of such a nature, extent, or timing that action
36 to reduce the threat may be necessary.

1 (a) The committee shall consist of one scientist chosen for
2 expertise in forest ecology, one scientist chosen for expertise in
3 aquatic ecology, one scientist chosen for expertise in wildlife
4 biology, two scientists chosen for expertise relative to the attendant
5 risk, one specialist in wildfire protection, one specialist in fuels
6 management, one forester with extensive silvicultural experience in the
7 affected forest type, and a chairperson who shall represent the
8 commissioner. The departments of fish and wildlife, ecology, and
9 natural resources shall provide technical assistance to the committee
10 in the areas of fish and wildlife, water quality, and forest practices,
11 but shall not be members of the committee. The director of forest
12 health protection of region 6 of the United States department of
13 agriculture forest service or their named designee shall be invited to
14 be an ex officio member of the committee. In the event the area
15 affected contains substantial acreage of tribal or federally owned
16 lands, representatives of the affected agencies and tribes shall be
17 invited to participate in the proceedings of the committee.

18 (b) The commissioner may disband the committee when he or she deems
19 appropriate.

20 (2) The committee shall evaluate the threat to forest health and
21 make a timely report to the commissioner on its nature, extent, and
22 location.

23 (a) In its deliberations, the committee shall consider the need for
24 action to reduce the threat and alternative methods of achieving the
25 desired results, including the environmental risks associated with the
26 alternatives and the risks associated with taking no action.

27 (b) The committee shall also recommend potential approaches to
28 achieve the desired results for forest land ownerships of fewer than
29 ten acres and for forests owned for scientific, study, recreational, or
30 other uses not compatible with active management.

31 (c) The committee shall recommend to the commissioner whether a
32 forest health hazard warning or forest health hazard order is warranted
33 based on the factors in section 7(2) of this act or when otherwise
34 determined by the committee to be warranted.

35 (d) When the commissioner issues a forest health hazard warning or
36 forest health hazard order, the committee shall monitor the progress
37 and results of activities to address the hazard, and periodically
38 report its findings to the commissioner.

1 (3) The exercise by forest health technical advisory committee
2 members of their authority under this section shall not imply or create
3 any liability on their part. Advisory committee members shall be
4 compensated as provided in RCW 43.03.250 and shall receive
5 reimbursement for travel expenses as provided by RCW 43.03.050 and
6 43.03.060. Costs associated with the committee may be paid from the
7 general fund appropriation made available to the department of natural
8 resources for fire suppression.

9 NEW SECTION. **Sec. 7.** A new section is added to chapter 76.06 RCW
10 to read as follows:

11 (1) Prior to issuing a forest health hazard warning or forest
12 health hazard order, the commissioner shall consider the findings and
13 recommendations of the forest health technical advisory committee and
14 shall consult with county government officials, forest landowners and
15 forest land managers, consulting foresters, and other interested
16 parties to gather information on the threat, opportunities or
17 constraints on treatment options, and other information they may
18 provide. The commissioner, or a designee, shall conduct a public
19 hearing in a county within the geographical area being considered.

20 (2) The commissioner of public lands may issue a forest health
21 hazard warning when he or she deems such action is necessary to manage
22 the development of a threat to forest health or address an existing
23 threat to forest health. A decision to issue a forest health hazard
24 warning may be based on existing forest stand conditions and:

25 (a) The presence of an uncharacteristic insect or disease outbreak
26 that has or is likely to (i) spread to multiple forest ownerships and
27 cause extensive damage to forests; or (ii) significantly increase
28 forest fuel that is likely to further the spread of uncharacteristic
29 fire;

30 (b) When, due to extensive physical damage from wind or ice storm
31 or other cause, there are (i) insect populations building up to large
32 scale levels; or (ii) significantly increased forest fuels that are
33 likely to further the spread of uncharacteristic fire; or

34 (c) When otherwise determined by the commissioner to be
35 appropriate.

36 (3) The commissioner of public lands may issue a forest health
37 hazard order when he or she deems such action is necessary to address

1 a significant threat to forest health. A decision to issue a forest
2 health hazard order may be based on existing forest stand conditions
3 and:

4 (a) The presence of an uncharacteristic insect or disease outbreak
5 that has (i) spread to multiple forest ownerships and has caused and is
6 likely to continue to cause extensive damage to forests; or (ii)
7 significantly increased forest fuels that are likely to further the
8 spread of uncharacteristic fire;

9 (b) When, due to extensive physical damage from wind or ice storm
10 or other cause (i) insect populations are causing extensive damage to
11 forests; or (ii) significantly increased forest fuels are likely to
12 further the spread of uncharacteristic fire;

13 (c) Insufficient landowner action under a forest health hazard
14 warning; or

15 (d) When otherwise determined by the commissioner to be
16 appropriate.

17 (4) A forest health hazard warning or forest health hazard order
18 shall be issued by use of a commissioner's order. General notice of
19 the commissioner's order shall be published in a newspaper of general
20 circulation in each county within the area covered by the order and on
21 the department's web site. The order shall specify the boundaries of
22 the area affected, including federal and tribal lands, the forest stand
23 conditions that would make a parcel subject to the provisions of the
24 order, and the actions landowners or land managers should take to
25 reduce the hazard.

26 (5) Written notice of a forest health hazard warning or forest
27 health hazard order shall be provided to forest landowners of
28 specifically affected property.

29 (a) The notice shall set forth:

30 (i) The reasons for the action;

31 (ii) The boundaries of the area affected, including federal and
32 tribal lands;

33 (iii) Suggested actions that should be taken by the forest
34 landowner under a forest health hazard warning or the actions that must
35 be taken by a forest landowner under a forest health hazard order;

36 (iv) The time within which such actions should or must be taken;

37 (v) How to obtain information or technical assistance on forest
38 health conditions and treatment options;

1 (vi) The right to request mitigation under subsection (6) of this
2 section and appeal under subsection (7) of this section;

3 (vii) These requirements are advisory only for federal and tribal
4 lands.

5 (b) The notice shall be served by personal service or by mail to
6 the latest recorded real property owner, as shown by the records of the
7 county recording officer as defined in RCW 65.08.060. Service by mail
8 is effective on the date of mailing. Proof of service shall be by
9 affidavit or declaration under penalty of perjury.

10 (6) Forest landowners who have been issued a forest health hazard
11 order under subsection (5) of this section may apply to the department
12 for the remission or mitigation of such order. The application shall
13 be made to the department within fifteen days after notice of the order
14 has been served. Upon receipt of the application, the department may
15 remit or mitigate the order upon whatever terms the department in its
16 discretion deems proper, provided the department deems the remission or
17 mitigation to be in the best interests of carrying out the purposes of
18 this chapter. The department may ascertain the facts regarding all
19 such applications in such reasonable manner and under such rule as it
20 deems proper.

21 (7) Forest landowners who have been issued a forest health hazard
22 order under subsection (5) of this section may appeal the order to the
23 forest practices appeals board.

24 (a) The appeal shall be filed within thirty days after notice of
25 the order has been served, unless application for mitigation has been
26 made to the department. When such an application for mitigation is
27 made, such appeal shall be filed within thirty days after notice of the
28 disposition of the application for mitigation has been served.

29 (b) The appeal must set forth:

30 (i) The name and mailing address of the appellant;

31 (ii) The name and mailing address of the appellant's attorney, if
32 any;

33 (iii) A duplicate copy of the forest health hazard order;

34 (iv) A separate and concise statement of each error alleged to have
35 been committed;

36 (v) A concise statement of facts upon which the appellant relies to
37 sustain the statement of error; and

38 (vi) A statement of the relief requested.

1 (8) A forest health hazard order issued under subsection (5) of
2 this section is effective thirty days after date of service unless
3 application for remission or mitigation is made or an appeal is filed.
4 When an application for remission or mitigation is made, the order is
5 effective thirty days after notice setting forth the disposition of the
6 application is served unless an appeal is filed from such disposition.
7 Whenever an appeal of the order is filed, the order shall become
8 effective only upon completion of all administrative and judicial
9 review proceedings and the issuance of a final decision confirming the
10 order in whole or in part.

11 (9) Upon written request, the department may certify as adequate a
12 forest health management plan developed by a forest landowner, before
13 or in response to a forest health hazard warning or forest health
14 hazard order, if the plan is likely to achieve the desired result and
15 the terms of the plan are being diligently followed by the forest
16 landowner. The certification of adequacy shall be determined by the
17 department in its sole discretion, and be provided to the requestor in
18 writing.

19 **Sec. 8.** RCW 76.09.220 and 2003 c 393 s 20 are each amended to read
20 as follows:

21 (1) The appeals board shall operate on either a part-time or a
22 full-time basis, as determined by the governor. If it is determined
23 that the appeals board shall operate on a full-time basis, each member
24 shall receive an annual salary to be determined by the governor. If it
25 is determined that the appeals board shall operate on a part-time
26 basis, each member shall be compensated in accordance with RCW
27 43.03.250. The director of the environmental hearings office shall
28 make the determination, required under RCW 43.03.250, as to what
29 statutorily prescribed duties, in addition to attendance at a hearing
30 or meeting of the board, shall merit compensation. This compensation
31 shall not exceed ten thousand dollars in a fiscal year. Each member
32 shall receive reimbursement for travel expenses incurred in the
33 discharge of his or her duties in accordance with the provisions of RCW
34 43.03.050 and 43.03.060.

35 (2) The appeals board shall as soon as practicable after the
36 initial appointment of the members thereof, meet and elect from among

1 its members a chair, and shall at least biennially thereafter meet and
2 elect or reelect a chair.

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

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

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

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

28 (7) The forest practices appeals board shall have exclusive
29 jurisdiction to hear appeals arising from an action or determination by
30 the department, and the department of fish and wildlife, and the
31 department of ecology with respect to management plans provided for
32 under RCW 76.09.350.

33 (8)(a) Any person aggrieved by the approval or disapproval of an
34 application to conduct a forest practice or the approval or disapproval
35 of any landscape plan or permit or watershed analysis may, except as
36 otherwise provided in chapter 43.21L RCW, seek review from the appeals
37 board by filing a request for the same within thirty days of the
38 approval or disapproval. Concurrently with the filing of any request

1 for review with the board as provided in this section, the requestor
2 shall file a copy of his or her request with the department and the
3 attorney general. The attorney general may intervene to protect the
4 public interest and ensure that the provisions of this chapter are
5 complied with.

6 (b) The review proceedings authorized in (a) of this subsection are
7 subject to the provisions of chapter 34.05 RCW pertaining to procedures
8 in adjudicative proceedings.

9 (9) The forest practices appeals board shall have exclusive
10 jurisdiction to hear appeals of forest health hazard orders issued by
11 the commissioner under section 7(5) of this act. Such proceedings are
12 subject to the provisions of chapter 34.05 RCW pertaining to procedures
13 in adjudicative proceedings.

14 NEW SECTION. Sec. 9. A new section is added to chapter 76.06 RCW
15 to read as follows:

16 Nothing in this act shall exempt actions specified under the
17 authority of this act from the application of the provisions of chapter
18 76.09 RCW and rules adopted thereunder which govern forest practices.

19 NEW SECTION. Sec. 10. A new section is added to chapter 76.06 RCW
20 to read as follows:

21 If any part of this chapter or requirements imposed upon landowners
22 pursuant to this chapter are found to conflict with requirements of
23 other statutes or rules, the conflicting part of this chapter or
24 requirements imposed pursuant to this chapter shall be inoperative
25 solely to the extent of the conflict. The finding or determination
26 shall not affect the operation of the remainder of this chapter or such
27 requirements.

28 **Sec. 11.** RCW 76.09.060 and 2005 c 274 s 357 are each amended to
29 read as follows:

30 ~~((The following shall apply to those forest practices administered~~
31 ~~and enforced by the department and for which the board shall promulgate~~
32 ~~regulations as provided in this chapter:))~~

33 (1) The department shall prescribe the form and contents of the
34 notification and application. The forest practices rules shall specify
35 by whom and under what conditions the notification and application

1 shall be signed or otherwise certified as acceptable. Activities
2 conducted by the department or a contractor under the direction of the
3 department under the provisions of RCW 76.04.660, shall be exempt from
4 the landowner signature requirement on any forest practice application
5 required to be filed. The application or notification shall be
6 delivered in person to the department, sent by first class mail to the
7 department or electronically filed in a form defined by the department.
8 The form for electronic filing shall be readily convertible to a paper
9 copy, which shall be available to the public pursuant to chapter 42.56
10 RCW. The information required may 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 and tax parcel identification numbers of the
16 land on which the forest practices are 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;

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 is subject to the three-year reforestation
3 requirement.

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

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

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

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

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

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

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

1 (B) The department shall collect the recording fee and reimburse
2 the local governmental entity for the cost of recording the
3 application.

4 (C) When harvesting takes place without an application, the local
5 governmental entity shall impose the six-year moratorium provided in
6 (b)(i) of this subsection from the date the unpermitted harvesting was
7 discovered by the department or the local governmental entity.

8 (D) The local governmental entity shall develop a process for
9 lifting the six-year moratorium, which shall include public
10 notification, and procedures for appeals and public hearings.

11 (E) The local governmental entity may develop an administrative
12 process for lifting or waiving the six-year moratorium for the purposes
13 of constructing a single-family residence or outbuildings, or both, on
14 a legal lot and building site. Lifting or waiving of the six-year
15 moratorium is subject to compliance with all local ordinances.

16 (F) The six-year moratorium shall not be imposed on a forest
17 practices application that contains a conversion option harvest plan
18 approved by the local governmental entity unless the forest practice
19 was not in compliance with the approved forest practice permit. Where
20 not in compliance with the conversion option harvest plan, the six-year
21 moratorium shall be imposed from the date the application was approved
22 by the department or the local governmental entity;

23 (ii) Failure to comply with the reforestation requirements
24 contained in any final order or decision shall constitute a removal of
25 designation under the provisions of RCW 84.33.140, and a change of use
26 under the provisions of RCW 84.34.080, and, if applicable, shall
27 subject such lands to the payments and/or penalties resulting from such
28 removals or changes; and

29 (iii) Conversion to a use other than commercial forest product
30 operations within six years after approval of the forest practices
31 without the consent of the county, city, or town shall constitute a
32 violation of each of the county, municipal city, town, and regional
33 authorities to which the forest practice operations would have been
34 subject if the application had so stated.

35 (c) The application or notification shall be signed by the forest
36 landowner and accompanied by a statement signed by the forest landowner
37 indicating his or her intent with respect to conversion and

1 acknowledging that he or she is familiar with the effects of this
2 subsection.

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

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

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

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

1 (8) Forest practices applications or notifications are not required
2 for forest practices conducted to control exotic forest insect or
3 disease outbreaks, when conducted by or under the direction of the
4 department of agriculture in carrying out an order of the governor or
5 director of the department of agriculture to implement pest control
6 measures as authorized under chapter 17.24 RCW, and are not required
7 when conducted by or under the direction of the department in carrying
8 out emergency measures under a forest health emergency declaration by
9 the commissioner of public lands as provided in RCW 76.06.130.

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

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

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

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

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

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

34 (g) The exemption from obtaining approved forest practices
35 applications or notifications does not apply to forest practices
36 conducted after the governor, the director of the department of
37 agriculture, or the commissioner of public lands have declared that an

1 emergency no longer exists because control objectives have been met,
2 that there is no longer an imminent threat, or that there is no longer
3 a good likelihood of control.

4 **Sec. 12.** RCW 76.04.005 and 1992 c 52 s 24 are each amended to read
5 as follows:

6 As used in this chapter, the following terms have the meanings
7 indicated unless the context clearly requires otherwise.

8 (1) "Additional fire hazard" means a condition existing on any land
9 in the state:

10 (a) Covered wholly or in part by forest debris which is likely to
11 further the spread of fire and thereby endanger life or property; or

12 (b) When, due to the effects of disturbance agents, broken, down,
13 dead, or dying trees exist on forest land in sufficient quantity to be
14 likely to further the spread of fire within areas covered by a forest
15 health hazard warning or order issued by the commissioner of public
16 lands under section 7 of this act. The term "additional fire hazard"
17 does not include green trees or snags left standing in upland or
18 riparian areas under the provisions of RCW 76.04.465 or chapter 76.09
19 RCW.

20 (2) "Closed season" means the period between April 15 and October
21 15, unless the department designates different dates because of
22 prevailing fire weather conditions.

23 (3) "Department" means the department of natural resources, or its
24 authorized representatives, as defined in chapter 43.30 RCW.

25 (4) "Department protected lands" means all lands subject to the
26 forest protection assessment under RCW 76.04.610 or covered under
27 contract or agreement pursuant to RCW 76.04.135 by the department.

28 (5) "Disturbance agent" means those forces that damage or kill
29 significant numbers of forest trees, such as insects, diseases, wind
30 storms, ice storms, and fires.

31 (6) "Emergency fire costs" means those costs incurred or approved
32 by the department for emergency forest fire suppression, including the
33 employment of personnel, rental of equipment, and purchase of supplies
34 over and above costs regularly budgeted and provided for nonemergency
35 fire expenses for the biennium in which the costs occur.

36 ~~((+6))~~ (7) "Forest debris" includes forest slash, chips, and any
37 other vegetative residue resulting from activities on forest land.

1 ~~((7))~~ (8) "Forest fire service" includes all wardens, rangers,
2 and other persons employed especially for preventing or fighting forest
3 fires.

4 ~~((8))~~ (9) "Forest land" means any unimproved lands which have
5 enough trees, standing or down, or flammable material, to constitute in
6 the judgment of the department, a fire menace to life or property.
7 Sagebrush and grass areas east of the summit of the Cascade mountains
8 may be considered forest lands when such areas are adjacent to or
9 intermingled with areas supporting tree growth. Forest land, for
10 protection purposes, does not include structures.

11 ~~((9))~~ (10) "Forest landowner," "owner of forest land,"
12 "landowner," or "owner" means the owner or the person in possession of
13 any public or private forest land.

14 ~~((10))~~ (11) "Forest material" means forest slash, chips, timber,
15 standing or down, or other vegetation.

16 ~~((11))~~ (12) "Landowner operation" means every activity, and
17 supporting activities, of a forest landowner and the landowner's
18 agents, employees, or independent contractors or permittees in the
19 management and use of forest land subject to the forest protection
20 assessment under RCW 76.04.610 for the primary benefit of the owner.
21 The term includes, but is not limited to, the growing and harvesting of
22 forest products, the development of transportation systems, the
23 utilization of minerals or other natural resources, and the clearing of
24 land. The term does not include recreational and/or residential
25 activities not associated with these enumerated activities.

26 ~~((12))~~ (13) "Participating landowner" means an owner of forest
27 land whose land is subject to the forest protection assessment under
28 RCW 76.04.610.

29 ~~((13))~~ (14) "Slash" means organic forest debris such as tree
30 tops, limbs, brush, and other dead flammable material remaining on
31 forest land as a result of a landowner operation.

32 ~~((14))~~ (15) "Slash burning" means the planned and controlled
33 burning of forest debris on forest lands by broadcast burning,
34 underburning, pile burning, or other means, for the purposes of
35 silviculture, hazard abatement, or reduction and prevention or
36 elimination of a fire hazard.

37 ~~((15))~~ (16) "Suppression" means all activities involved in the

1 containment and control of forest fires, including the patrolling
2 thereof until such fires are extinguished or considered by the
3 department to pose no further threat to life or property.

4 ~~((+16+))~~ (17) "Unimproved lands" means those lands that will
5 support grass, brush and tree growth, or other flammable material when
6 such lands are not cleared or cultivated and, in the opinion of the
7 department, are a fire menace to life and property.

8 **Sec. 13.** RCW 76.04.660 and 1986 c 100 s 39 are each amended to
9 read as follows:

10 (1) The owner of land on which there is an additional fire hazard
11 ~~((and the person responsible for the existence of an additional fire
12 hazard))~~, when the hazard is the result of a landowner operation or the
13 land is within an area covered by a forest health hazard warning issued
14 under section 7 of this act, shall take reasonable measures to reduce
15 the danger of fire spreading from the area and may abate the hazard by
16 burning or other satisfactory means.

17 (2) An extreme fire hazard shall exist within areas covered by a
18 forest health hazard order issued by the commissioner of public lands
19 under section 7 of this act in which there is an additional fire hazard
20 caused by disturbance agents and the landowner has failed to take such
21 action as required by the forest health hazard order. The duties and
22 liability of such landowner under this chapter are as described in
23 subsections (5), (6), and (7) of this section.

24 (3) The department shall adopt rules defining areas of extreme fire
25 hazard that the owner and person responsible shall abate. The areas
26 shall include but are not limited to high risk areas such as where life
27 or buildings may be endangered, areas adjacent to public highways, and
28 areas of frequent public use.

29 ~~((+3+))~~ (4) The department may adopt rules, after consultation with
30 the forest fire advisory board, defining other conditions of extreme
31 fire hazard with a high potential for fire spreading to lands in other
32 ownerships. The department may prescribe additional measures that
33 shall be taken by the owner and person responsible to isolate or reduce
34 the extreme fire hazard.

35 ~~((+4+))~~ (5) The owner or person responsible for the existence of
36 the extreme fire hazard is required to abate, isolate, or reduce the
37 hazard. The duty to abate, isolate, or reduce, and liability under

1 this chapter, arise upon creation of the extreme fire hazard.
2 Liability shall include but not be limited to all fire suppression
3 expenses incurred by the department, regardless of fire cause.

4 ~~((+5))~~ (6) If the owner or person responsible for the existence of
5 the extreme fire hazard or forest debris subject to RCW 76.04.650
6 refuses, neglects, or unsuccessfully attempts to abate, isolate, or
7 reduce the same, the department may summarily abate, isolate, or reduce
8 the hazard as required by this chapter and recover twice the actual
9 cost thereof from the owner or person responsible. Landowner
10 contingency forest fire suppression account moneys may be used by the
11 department, when available, for this purpose. Moneys recovered by the
12 department pursuant to this section shall be returned to the landowner
13 contingency forest fire suppression account.

14 ~~((+6))~~ (7) Such costs shall include all salaries and expenses of
15 people and equipment incurred therein, including those of the
16 department. All such costs shall also be a lien upon the land
17 enforceable in the same manner with the same effect as a mechanic's
18 lien.

19 ~~((+7))~~ (8) The summary action may be taken only after ten days'
20 notice in writing has been given to the owner or reputed owner of the
21 land on which the extreme fire hazard or forest debris subject to RCW
22 76.04.650 exists. The notice shall include a suggested method of
23 abatement and estimated cost thereof. The notice shall be by personal
24 service or by registered or certified mail addressed to the owner or
25 reputed owner at the owner's last known place of residence.

26 (9) A landowner or manager may make a written request to the
27 department to inspect their property and provide a written notice that
28 they have complied with a forest health hazard warning or forest health
29 hazard order, or otherwise adequately abated, isolated, or reduced an
30 additional or extreme fire hazard. An additional or extreme fire
31 hazard shall be considered to continue to exist unless and until the
32 department, in its sole discretion, issues such notice.

33 NEW SECTION. Sec. 14. The following acts or parts of acts are
34 each repealed:

35 (1) RCW 76.06.050 (Infestation control district--Creation--Notice
36 to owners) and 1988 c 128 s 17, 1961 c 72 s 1, & 1951 c 233 s 5;

- 1 (2) RCW 76.06.060 (Department to control pests and diseases if
2 owner fails) and 1988 c 128 s 18 & 1951 c 233 s 6;
3 (3) RCW 76.06.070 (Lien for costs of control--Collection) and 1988
4 c 128 s 19 & 1951 c 233 s 7;
5 (4) RCW 76.06.080 (Owner complying with notice is exempt) and 1988
6 c 128 s 20 & 1951 c 233 s 11;
7 (5) RCW 76.06.090 (Dissolution of infestation control district) and
8 1988 c 128 s 21 & 1951 c 233 s 12; and
9 (6) RCW 76.06.110 (Deposit of moneys in general fund--Allotment as
10 unanticipated receipts) and 1979 ex.s. c 67 s 12 & 1951 c 233 s 9.

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