

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1582

Chapter 207, Laws of 2011

62nd Legislature
2011 Regular Session

FOREST PRACTICES--LAND CONVERSION

EFFECTIVE DATE: 07/22/11

Passed by the House April 13, 2011
Yeas 96 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 30, 2011
Yeas 48 Nays 0

BRAD OWEN

President of the Senate

Approved April 29, 2011, 3:56 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1582** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

April 29, 2011

**Secretary of State
State of Washington**

HOUSE BILL 1582

AS AMENDED BY THE SENATE

Passed Legislature - 2011 Regular Session

State of Washington

62nd Legislature

2011 Regular Session

By Representatives Lytton, Morris, Chandler, Blake, Wilcox, Orcutt, Tharinger, Hinkle, McCune, Pearson, and Van De Wege

Read first time 01/26/11. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to forest practices applications leading to
2 conversion of land for development purposes; and amending RCW
3 76.09.050, 76.09.240, and 43.21C.037.

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

5 **Sec. 1.** RCW 76.09.050 and 2010 c 210 s 20 are each amended to read
6 as follows:

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

9 Class I: Minimal or specific forest practices that have no direct
10 potential for damaging a public resource and that may be conducted
11 without submitting an application or a notification except that when
12 the regulating authority is transferred to a local governmental entity,
13 those Class I forest practices that involve timber harvesting or road
14 construction within "urban growth areas," designated pursuant to
15 chapter 36.70A RCW, are processed as Class IV forest practices, but are
16 not subject to environmental review under chapter 43.21C RCW;

17 Class II: Forest practices which have a less than ordinary
18 potential for damaging a public resource that may be conducted without
19 submitting an application and may begin five calendar days, or such

1 lesser time as the department may determine, after written notification
2 by the operator, in the manner, content, and form as prescribed by the
3 department, is received by the department. However, the work may not
4 begin until all forest practice fees required under RCW 76.09.065 have
5 been received by the department. Class II shall not include forest
6 practices:

7 (a) On ~~((lands-platted-after-January-1,-1960,-as-provided-in~~
8 ~~chapter-58.17-RCW-or-on-lands-that-have-or-are-being-converted-to~~
9 ~~another-use))~~ forest lands that are being converted to another use;

10 (b) Which require approvals under the provisions of the hydraulics
11 act, RCW 77.55.021;

12 (c) Within "shorelines of the state" as defined in RCW 90.58.030;

13 (d) Excluded from Class II by the board; or

14 (e) Including timber harvesting or road construction within "urban
15 growth areas," designated pursuant to chapter 36.70A RCW, which are
16 Class IV;

17 Class III: Forest practices other than those contained in Class I,
18 II, or IV. A Class III application must be approved or disapproved by
19 the department within thirty calendar days from the date the department
20 receives the application. However, the applicant may not begin work on
21 that forest practice until all forest practice fees required under RCW
22 76.09.065 have been received by the department;

23 Class IV: Forest practices other than those contained in Class I
24 or II:

25 (a) On ~~((lands-platted-after-January-1,-1960,-as-provided-in~~
26 ~~chapter-58.17-RCW,-(b)-on-lands-that-have-or-are-being-converted-to~~
27 ~~another-use,-(c))~~ forest lands that are being converted to another
28 use;

29 (b) On lands which, pursuant to RCW 76.09.070 as now or hereafter
30 amended, are not to be reforested because of the likelihood of future
31 conversion to urban development~~((τ))~~;

32 ~~((d)-involving))~~ (c) That involve timber harvesting or road
33 construction on forest lands that are contained within "urban growth
34 areas," designated pursuant to chapter 36.70A RCW, except where the
35 forest landowner provides:

36 (i) A written statement of intent signed by the forest landowner
37 not to convert to a use other than commercial forest product operations

1 for ten years, accompanied by either a written forest management plan
2 acceptable to the department or documentation that the land is enrolled
3 under the provisions of chapter 84.33 or 84.34 RCW; or

4 (ii) A conversion option harvest plan approved by the local
5 governmental entity and submitted to the department as part of the
6 application(~~(7)~~); and/or

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

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

31 (2) Except for those forest practices being regulated by local
32 governmental entities as provided elsewhere in this chapter, no Class
33 II, Class III, or Class IV forest practice shall be commenced or
34 continued after January 1, 1975, unless the department has received a
35 notification with regard to a Class II forest practice or approved an
36 application with regard to a Class III or Class IV forest practice
37 containing all information required by RCW 76.09.060 as now or
38 hereafter amended. However, in the event forest practices regulations

1 necessary for the scheduled implementation of this chapter and RCW
2 90.48.420 have not been adopted in time to meet such schedules, the
3 department shall have the authority to regulate forest practices and
4 approve applications on such terms and conditions consistent with this
5 chapter and RCW 90.48.420 and the purposes and policies of RCW
6 76.09.010 until applicable forest practices regulations are in effect.

7 (3) Except for those forest practices being regulated by local
8 governmental entities as provided elsewhere in this chapter, if a
9 notification or application is delivered in person to the department by
10 the operator or the operator's agent, the department shall immediately
11 provide a dated receipt thereof. In all other cases, the department
12 shall immediately mail a dated receipt to the operator.

13 (4) Except for those forest practices being regulated by local
14 governmental entities as provided elsewhere in this chapter, forest
15 practices shall be conducted in accordance with the forest practices
16 regulations, orders and directives as authorized by this chapter or the
17 forest practices regulations, and the terms and conditions of any
18 approved applications.

19 (5) Except for those forest practices being regulated by local
20 governmental entities as provided elsewhere in this chapter, the
21 department of natural resources shall notify the applicant in writing
22 of either its approval of the application or its disapproval of the
23 application and the specific manner in which the application fails to
24 comply with the provisions of this section or with the forest practices
25 regulations. Except as provided otherwise in this section, if the
26 department fails to either approve or disapprove an application or any
27 portion thereof within the applicable time limit, the application shall
28 be deemed approved and the operation may be commenced: PROVIDED, That
29 this provision shall not apply to applications which are neither
30 approved nor disapproved pursuant to the provisions of subsection (7)
31 of this section: PROVIDED, FURTHER, That if seasonal field conditions
32 prevent the department from being able to properly evaluate the
33 application, the department may issue an approval conditional upon
34 further review within sixty days: PROVIDED, FURTHER, That the
35 department shall have until April 1, 1975, to approve or disapprove an
36 application involving forest practices allowed to continue to April 1,
37 1975, under the provisions of subsection (2) of this section. Upon
38 receipt of any notification or any satisfactorily completed application

1 the department shall in any event no later than two business days after
2 such receipt transmit a copy to the departments of ecology and fish and
3 wildlife, and to the county, city, or town in whose jurisdiction the
4 forest practice is to be commenced. Any comments by such agencies
5 shall be directed to the department of natural resources.

6 (6) For those forest practices regulated by the board and the
7 department, if the county, city, or town believes that an application
8 is inconsistent with this chapter, the forest practices regulations, or
9 any local authority consistent with RCW 76.09.240 as now or hereafter
10 amended, it may so notify the department and the applicant, specifying
11 its objections.

12 (7) For those forest practices regulated by the board and the
13 department, the department shall not approve portions of applications
14 to which a county, city, or town objects if:

15 (a) The department receives written notice from the county, city,
16 or town of such objections within fourteen business days from the time
17 of transmittal of the application to the county, city, or town, or one
18 day before the department acts on the application, whichever is later;
19 and

20 (b) The objections relate to ~~((lands either:~~
21 ~~(i) Platted after January 1, 1960, as provided in chapter 58.17~~
22 ~~RCW; or~~

23 ~~(ii) On))~~ forest lands that ~~((have or))~~ are being converted to
24 another use.

25 The department shall either disapprove those portions of such
26 application or appeal the county, city, or town objections to the
27 appeals board. If the objections related to ~~((subparagraphs))~~ (b)~~((i)~~
28 ~~and (ii))~~ of this subsection are based on local authority consistent
29 with RCW 76.09.240 as now or hereafter amended, the department shall
30 disapprove the application until such time as the county, city, or town
31 consents to its approval or such disapproval is reversed on appeal.
32 The applicant shall be a party to all department appeals of county,
33 city, or town objections. Unless the county, city, or town either
34 consents or has waived its rights under this subsection, the department
35 shall not approve portions of an application affecting such lands until
36 the minimum time for county, city, or town objections has expired.

37 (8) For those forest practices regulated by the board and the
38 department, in addition to any rights under the above paragraph, the

1 county, city, or town may appeal any department approval of an
2 application with respect to any lands within its jurisdiction. The
3 appeals board may suspend the department's approval in whole or in part
4 pending such appeal where there exists potential for immediate and
5 material damage to a public resource.

6 (9) For those forest practices regulated by the board and the
7 department, appeals under this section shall be made to the appeals
8 board in the manner and time provided in RCW 76.09.205. In such
9 appeals there shall be no presumption of correctness of either the
10 county, city, or town or the department position.

11 (10) For those forest practices regulated by the board and the
12 department, the department shall, within four business days notify the
13 county, city, or town of all notifications, approvals, and disapprovals
14 of an application affecting lands within the county, city, or town,
15 except to the extent the county, city, or town has waived its right to
16 such notice.

17 (11) For those forest practices regulated by the board and the
18 department, a county, city, or town may waive in whole or in part its
19 rights under this section, and may withdraw or modify any such waiver,
20 at any time by written notice to the department.

21 (12) Notwithstanding subsections (2) through (5) of this section,
22 forest practices applications or notifications are not required for
23 exotic insect and disease control operations conducted in accordance
24 with RCW 76.09.060(8) where eradication can reasonably be expected.

25 **Sec. 2.** RCW 76.09.240 and 2010 c 219 s 1 are each amended to read
26 as follows:

27 (1)(a) Counties planning under RCW 36.70A.040 with a population
28 greater than one hundred thousand, and the cities and towns within
29 those counties, where more than a total of twenty-five Class IV forest
30 practices applications, as defined in RCW 76.09.050(1) Class IV (a)
31 through (d), have been filed with the department between January 1,
32 2003, and December 31, 2005, shall adopt and enforce ordinances or
33 regulations as provided in subsection (2) of this section for the
34 following:

35 (i) Forest practices classified as Class I, II, III, and IV that
36 are within urban growth areas designated under RCW 36.70A.110, except
37 for forest practices on ownerships of contiguous forest land equal to

1 or greater than twenty acres where the forest landowner provides, to
2 the department and the county, city, or town, a written statement of
3 intent, signed by the forest landowner, not to convert to a use other
4 than growing commercial timber for ten years. This statement must be
5 accompanied by either:

6 (A) A written forest management plan acceptable to the department;
7 or

8 (B) Documentation that the land is enrolled as forest land of long-
9 term commercial significance under the provisions of chapter 84.33 RCW;
10 and

11 (ii) Forest practices classified as Class IV, outside urban growth
12 areas designated under RCW 36.70A.110, involving either timber harvest
13 or road construction, or both on:

14 (A) (~~Lands platted after January 1, 1960, as provided in chapter~~
15 ~~58.17 RCW;~~

16 ~~(B))~~ Forest lands that (~~have or~~) are being converted to another
17 use; or

18 (~~(C))~~ (B) Lands which, under RCW 76.09.070, are not to be
19 reforested because of the likelihood of future conversion to urban
20 development;

21 (b) Counties planning under RCW 36.70A.040, and the cities and
22 towns within those counties, not included in (a) of this subsection,
23 may adopt and enforce ordinances or regulations as provided in (a) of
24 this subsection; and

25 (c) Counties not planning under RCW 36.70A.040, and the cities and
26 towns within those counties, may adopt and enforce ordinances or
27 regulations as provided in subsection (2) of this section for forest
28 practices classified as Class IV involving either timber harvest or
29 road construction, or both on:

30 (i) (~~Lands platted after January 1, 1960, as provided in chapter~~
31 ~~58.17 RCW;~~

32 ~~(ii))~~ Forest lands that (~~have or~~) are being converted to another
33 use; or

34 (~~(iii))~~ (ii) Lands which, under RCW 76.09.070, are not to be
35 reforested because of the likelihood of future conversion to urban
36 development.

37 (2) Before a county, city, or town may regulate forest practices
38 under subsection (1) of this section, it shall ensure that its critical

1 areas and development regulations are in compliance with RCW 36.70A.130
2 and, if applicable, RCW 36.70A.215. The county, city, or town shall
3 notify the department and the department of ecology in writing sixty
4 days prior to adoption of the development regulations required in this
5 section. The transfer of jurisdiction shall not occur until the
6 county, city, or town has notified the department, the department of
7 revenue, and the department of ecology in writing of the effective date
8 of the regulations. Ordinances and regulations adopted under
9 subsection (1) of this section and this subsection must be consistent
10 with or supplement development regulations that protect critical areas
11 pursuant to RCW 36.70A.060, and shall at a minimum include:

12 (a) Provisions that require appropriate approvals for all phases of
13 the conversion of forest lands, including land clearing and grading;
14 and

15 (b) Procedures for the collection and administration of permit and
16 recording fees.

17 (3) Activities regulated by counties, cities, or towns as provided
18 in subsections (1) and (2) of this section shall be administered and
19 enforced by those counties, cities, or towns. The department shall not
20 regulate these activities under this chapter.

21 (4) The board shall continue to adopt rules and the department
22 shall continue to administer and enforce those rules in each county,
23 city, or town for all forest practices as provided in this chapter
24 until such a time as the county, city, or town has updated its
25 development regulations as required by RCW 36.70A.130 and, if
26 applicable, RCW 36.70A.215, and has adopted ordinances or regulations
27 under subsections (1) and (2) of this section. However, counties,
28 cities, and towns that have adopted ordinances or regulations regarding
29 forest practices prior to ~~((July 22, 2007,))~~ the effective date of this
30 section are not required to readopt their ordinances or regulations in
31 order to satisfy the requirements of this section except as necessary
32 to ensure consistency with Class IV forest practices as defined in RCW
33 76.09.050.

34 (5) Upon request, the department shall provide technical assistance
35 to all counties, cities, and towns while they are in the process of
36 adopting the regulations required by this section, and after the
37 regulations become effective.

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

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

18 (b) Taxing powers;

19 (c) Regulatory authority with respect to public health; and

20 (d) Authority granted by chapter 90.58 RCW, the "Shoreline
21 Management Act of 1971."

22 (7) All counties and cities adopting or enforcing regulations or
23 ordinances under this section shall include in the regulation or
24 ordinance a requirement that a verification accompany every permit
25 issued for forest land by that county or city associated with the
26 conversion to a use other than commercial timber operation, as that
27 term is defined in RCW 76.09.020, that verifies that the land in
28 question is not or has not been subject to a notice of conversion to
29 nonforestry uses under RCW 76.09.060 during the six-year period prior
30 to the submission of a permit application.

31 (8) To improve the administration of the forest excise tax created
32 in chapter 84.33 RCW, a county, city, or town that regulates forest
33 practices under this section shall report permit information to the
34 department of revenue for all approved forest practices permits. The
35 permit information shall be reported to the department of revenue no
36 later than sixty days after the date the permit was approved and shall
37 be in a form and manner agreed to by the county, city, or town and the

1 department of revenue. Permit information includes the landowner's
2 legal name, address, telephone number, and parcel number.

3 **Sec. 3.** RCW 43.21C.037 and 1997 c 173 s 6 are each amended to read
4 as follows:

5 (1) Decisions pertaining to applications for Class I, II, and III
6 forest practices, as defined by rule of the forest practices board
7 under RCW 76.09.050, are not subject to the requirements of RCW
8 43.21C.030(2)(c) as now or hereafter amended.

9 (2) When the applicable county, city, or town requires a license in
10 connection with any proposal involving forest practices:

11 (a) (~~on lands platted after January 1, 1960, as provided in~~
12 ~~chapter 58.17 RCW, (b))~~ On forest lands that (~~have or~~) are being
13 converted to another use(~~(τ))~~)i or

14 (~~(e))~~) (b) On lands which, pursuant to RCW 76.09.070 as now or
15 hereafter amended, are not to be reforested because of the likelihood
16 of future conversion to urban development, then the local government,
17 rather than the department of natural resources, is responsible for any
18 detailed statement required under RCW 43.21C.030(2)(c).

19 (3) Those forest practices determined by rule of the forest
20 practices board to have a potential for a substantial impact on the
21 environment, and thus to be Class IV practices, require an evaluation
22 by the department of natural resources as to whether or not a detailed
23 statement must be prepared pursuant to this chapter. The evaluation
24 shall be made within ten days from the date the department receives the
25 application. A Class IV forest practice application must be approved
26 or disapproved by the department within thirty calendar days from the
27 date the department receives the application, unless the department
28 determines that a detailed statement must be made, in which case the
29 application must be approved or disapproved by the department within
30 sixty days from the date the department receives the application,
31 unless the commissioner of public lands, through the promulgation of a
32 formal order, determines that the process cannot be completed within
33 such period. This section shall not be construed to prevent any local
34 or regional governmental entity from determining that a detailed
35 statement must be prepared for an action regarding a Class IV forest

1 practice taken by that governmental entity concerning the land on which
2 forest practices will be conducted.

Passed by the House April 13, 2011.

Passed by the Senate March 30, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.