
HOUSE BILL 1854

State of Washington

52nd Legislature

1991 Regular Session

By Representatives Wang and Holland; by request of Office of Financial Management.

Read first time February 12, 1991. Referred to Committee on Revenue.

1 AN ACT Relating to imposing fees for certain forest practices;
2 amending RCW 76.09.010, 76.09.040, 76.09.050, and 76.09.060; and
3 declaring an emergency.

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

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

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

1 (2) The legislature further finds and declares it to be in the
2 public interest of this state to create and maintain through the
3 adoption of this chapter a comprehensive state-wide system of laws and
4 forest practices regulations which will achieve the following purposes
5 and policies:

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

10 (b) Afford protection to forest soils and public resources by
11 utilizing all reasonable methods of technology in conducting forest
12 practices;

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

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

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

19 (f) Provide for interagency input and intergovernmental and tribal
20 coordination and cooperation;

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

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

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

28 (3) The legislature further finds and declares that it is also in
29 the public interest of the state to encourage forest landowners to

1 undertake corrective and remedial action to reduce the impact of mass
2 earth movements and fluvial processes.

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

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

9 (1) Where necessary to accomplish the purposes and policies stated
10 in RCW 76.09.010, and to implement the provisions of this chapter, the
11 board shall promulgate forest practices regulations pursuant to chapter
12 34.05 RCW and in accordance with the procedures enumerated in this
13 section that:

14 (a) Establish minimum standards for forest practices;

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

20 (c) Set forth necessary administrative provisions; and

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

23 Forest practices regulations pertaining to water quality protection
24 shall be promulgated individually by the board and by the department of
25 ecology after they have reached agreement with respect thereto. All
26 other forest practices regulations shall be promulgated by the board.

27 Forest practices regulations shall be administered and enforced by
28 the department except as otherwise provided in this chapter. Such

1 regulations shall be promulgated and administered so as to give
2 consideration to all purposes and policies set forth in RCW 76.09.010.

3 (2) The board shall prepare proposed forest practices regulations.
4 In addition to any forest practices regulations relating to water
5 quality protection proposed by the board, the department of ecology
6 shall prepare proposed forest practices regulations relating to water
7 quality protection.

8 Prior to initiating the rule making process, the proposed
9 regulations shall be submitted for review and comments to the
10 department of fisheries, the department of wildlife, and to the
11 counties of the state. After receipt of the proposed forest practices
12 regulations, the departments of fisheries and wildlife and the counties
13 of the state shall have thirty days in which to review and submit
14 comments to the board, and to the department of ecology with respect to
15 its proposed regulations relating to water quality protection. After
16 the expiration of such thirty day period the board and the department
17 of ecology shall jointly hold one or more hearings on the proposed
18 regulations pursuant to chapter 34.05 RCW. At such hearing(s) any
19 county may propose specific forest practices regulations relating to
20 problems existing within such county. The board and the department of
21 ecology may adopt such proposals if they find the proposals are
22 consistent with the purposes and policies of this chapter.

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

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

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

1 Class II: Forest practices which have a less than ordinary
2 potential for damaging a public resource that may be conducted without
3 submitting an application and may begin five calendar days, or such
4 lesser time as the department may determine, after written notification
5 by the operator, in the manner, content, and form as prescribed by the
6 department, is received by the department. However, the work may not
7 begin until all forest practice fees required under RCW 76.09.060 have
8 been received by the department. Class II shall not include forest
9 practices:

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

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

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

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

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 76.09.060 have been received by the department;

23 Class IV: Forest practices other than those contained in Class I
24 or II: (a) On lands platted after January 1, 1960, (b) on lands being
25 converted to another use, (c) on lands which, pursuant to RCW 76.09.070
26 as now or hereafter amended, are not to be reforested because of the
27 likelihood of future conversion to urban development, and/or (d) which
28 have a potential for a substantial impact on the environment and
29 therefore require an evaluation by the department as to whether or not
30 a detailed statement must be prepared pursuant to the state

1 environmental policy act, chapter 43.21C RCW. Such evaluation shall be
2 made within ten days from the date the department receives the
3 application: PROVIDED, That nothing herein shall be construed to
4 prevent any local or regional governmental entity from determining that
5 a detailed statement must be prepared for an action pursuant to a Class
6 IV forest practice taken by that governmental entity concerning the
7 land on which forest practices will be conducted. A Class IV
8 application must be approved or disapproved by the department within
9 thirty calendar days from the date the department receives the
10 application, unless the department determines that a detailed statement
11 must be made, in which case the application must be approved or
12 disapproved by the department within sixty calendar days from the date
13 the department receives the application, unless the commissioner of
14 public lands, through the promulgation of a formal order, determines
15 that the process cannot be completed within such period. However, the
16 applicant may not begin work on that forest practice until all forest
17 practice fees required under RCW 76.09.060 have been received by the
18 department.

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

22 (2) No Class II, Class III, or Class IV forest practice shall be
23 commenced or continued after January 1, 1975, unless the department has
24 received a notification with regard to a Class II forest practice or
25 approved an application with regard to a Class III or Class IV forest
26 practice containing all information required by RCW 76.09.060 as now or
27 hereafter amended: PROVIDED, That any person commencing a forest
28 practice during 1974 may continue such forest practice until April 1,
29 1975, if such person has submitted an application to the department
30 prior to January 1, 1975: PROVIDED, FURTHER, That in the event forest

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

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

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

16 (5) The department of natural resources shall notify the applicant
17 in writing of either its approval of the application or its disapproval
18 of the application and the specific manner in which the application
19 fails to comply with the provisions of this section or with the forest
20 practices regulations. Except as provided otherwise in this section,
21 if the department fails to either approve or disapprove an application
22 or any portion thereof within the applicable time limit, the
23 application shall be deemed approved and the operation may be
24 commenced: PROVIDED, That this provision shall not apply to
25 applications which are neither approved nor disapproved pursuant to the
26 provisions of subsection (7) of this section: PROVIDED, FURTHER, That
27 if seasonal field conditions prevent the department from being able to
28 properly evaluate the application, the department may issue an approval
29 conditional upon further review within sixty days: PROVIDED, FURTHER,
30 That the department shall have until April 1, 1975, to approve or

1 disapprove an application involving forest practices allowed to
2 continue to April 1, 1975, under the provisions of subsection (2) of
3 this section. Upon receipt of any notification or any satisfactorily
4 completed application the department shall in any event no later than
5 two business days after such receipt transmit a copy to the departments
6 of ecology, wildlife, and fisheries, and to the county, city, or town
7 in whose jurisdiction the forest practice is to be commenced. Any
8 comments by such agencies shall be directed to the department of
9 natural resources.

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

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

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

22 (b) The objections relate to lands either:

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

24 (ii) Being converted to 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) and
28 (ii) of this subsection are based on local authority consistent with
29 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

1 consents to its approval or such disapproval is reversed on appeal.
2 The applicant shall be a party to all department appeals of county,
3 city, or town objections. Unless the county, city, or town either
4 consents or has waived its rights under this subsection, the department
5 shall not approve portions of an application affecting such lands until
6 the minimum time for county, city, or town objections has expired.

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

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

17 (10) The department shall, within four business days notify the
18 county, city, or town of all notifications, approvals, and disapprovals
19 of an application affecting lands within the county, city, or town,
20 except to the extent the county, city, or town has waived its right to
21 such notice.

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

25 **Sec. 4.** RCW 76.09.060 and 1990 1st ex.s. c 17 s 62 are each
26 amended to read as follows:

27 (1) The department shall prescribe the form and contents of the
28 notification and application. The forest practices regulations shall
29 specify by whom and under what conditions the notification and

1 application shall be signed. The application or notification shall be
2 delivered in person or sent by certified mail to the department. The
3 information required may include, but shall not be limited to:

4 (a) Name and address of the forest land owner, timber owner, and
5 operator;

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

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

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

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

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

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

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

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

27 (j) An affirmation that the statements contained in the
28 notification or application are true.

1 (2) Applications for Class II, III, and IV forest practices shall
2 be charged a forest practices fee. All money collected from this fee
3 shall be deposited in the state general fund.

4 (a) The board shall enact these fees no later than July 1, 1991.

5 (b) The board shall review forest practices fees biennially. The
6 board may modify these fees to facilitate administration, improve
7 equity, or to cover additional program costs. Any fee structure
8 adopted by the board must cover a minimum of forty-five percent of
9 program costs per biennium and must take into account the percentage of
10 field and compliance time required for each type of application.

11 (3) At the option of the applicant, the application or notification
12 may be submitted to cover a single forest practice or any number of
13 forest practices within reasonable geographic or political boundaries
14 as specified by the department. Long range plans may be submitted to
15 the department for review and consultation. An application which
16 includes more than a single forest practice shall be charged a forest
17 practice fee according to subsection (2) of this section for each
18 forest practice contained in the application.

19 (~~(3)~~) (4) The application shall indicate whether any land covered
20 by the application will be converted or is intended to be converted to
21 a use other than commercial timber production within three years after
22 completion of the forest practices described in it.

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

25 (i) The reforestation requirements of this chapter and of the
26 forest practices regulations shall not apply if the land is in fact so
27 converted unless applicable alternatives or limitations are provided in
28 forest practices regulations issued under RCW 76.09.070 as now or
29 hereafter amended;

1 (ii) Completion of such forest practice operations shall be deemed
2 conversion of the lands to another use for purposes of chapters 84.28,
3 84.33, and 84.34 RCW unless the conversion is to a use permitted under
4 a current use tax agreement permitted under chapter 84.34 RCW;

5 (iii) The forest practices described in the application are subject
6 to applicable county, city, town, and regional governmental authority
7 permitted under RCW 76.09.240 as now or hereafter amended as well as
8 the forest practices regulations.

9 (b) If the application does not state that any land covered by the
10 application will be or is intended to be so converted:

11 (i) For six years after the date of the application the county,
12 city, town, and regional governmental entities may deny any or all
13 applications for permits or approvals, including building permits and
14 subdivision approvals, relating to nonforestry uses of land subject to
15 the application;

16 (ii) Failure to comply with the reforestation requirements
17 contained in any final order or decision shall constitute a removal
18 from classification under the provisions of RCW 84.28.065, a removal of
19 designation under the provisions of RCW 84.33.140, and a change of use
20 under the provisions of RCW 84.34.080, and, if applicable, shall
21 subject such lands to the payments and/or penalties resulting from such
22 removals or changes; and

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

29 (c) The application shall be either signed by the land owner or
30 accompanied by a statement signed by the land owner indicating his or

1 her intent with respect to conversion and acknowledging that he or she
2 is familiar with the effects of this subsection.

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

9 ~~((5))~~ (6) Before the operator commences any forest practice in a
10 manner or to an extent significantly different from that described in
11 a 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))~~ (7) The notification to or the approval given by the
15 department to an application to conduct a forest practice shall be
16 effective for a term of one year from the date of approval or
17 notification and shall not be renewed unless a new application is filed
18 and approved or a new notification has been filed.

19 ~~((7))~~ (8) Notwithstanding any other provision of this section, no
20 prior application or notification shall be required for any emergency
21 forest practice necessitated by fire, flood, windstorm, earthquake, or
22 other emergency as defined by the board, but the operator shall submit
23 an application or notification, whichever is applicable, to the
24 department within forty-eight hours after commencement of such
25 practice.

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