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**SENATE BILL 5604**

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**State of Washington**

**52nd Legislature**

**1991 Regular Session**

**By** Senators Metcalf, McDonald, Craswell and Niemi; by request of Office of Financial Management.

Read first time February 11, 1991. Referred to Committee on Environment & Natural Resources.

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.