
SUBSTITUTE HOUSE BILL 1985

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Buck, Regala, Sump, Pennington, Sheldon, Hatfield, Anderson, Butler and Dyer)

Read first time 03/10/97.

1 AN ACT Relating to forest practices landscape management plan pilot
2 projects; amending RCW 76.09.060, 75.20.100, and 76.09.220; adding new
3 sections to chapter 76.09 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 76.09 RCW
6 to read as follows:

7 The legislature recognizes the importance of providing the greatest
8 diversity of habitats, particularly riparian, wetland, and old growth
9 habitats, and of assuring the greatest diversity of species within
10 those habitats for the survival and reproduction of enough individuals
11 to maintain the native wildlife of Washington forest lands. The
12 legislature also recognizes the importance of long-term habitat
13 productivity for natural and wild fish, for the protection of hatchery
14 water supplies, and for the protection of water quality and quantity to
15 meet the needs of people, fish, and wildlife. The legislature
16 recognizes the importance of maintaining and enhancing fish and
17 wildlife habitats capable of sustaining the commercial and
18 noncommercial uses of fish and wildlife. The legislature further
19 recognizes the importance of the continued growth and development of

1 the state's forest products industry which has a vital stake in the
2 long-term productivity of both the public and private forest land base.

3 The development of a landscape planning system would help achieve
4 these goals. Landowners and resource managers should be provided
5 incentives to voluntarily develop long-term multispecies landscape
6 management plans that will provide protection to public resources.
7 Because landscape planning represents a departure from the use of
8 standard baseline rules and may result in unintended consequences to
9 both the affected habitats and to a landowner's economic interests, the
10 legislature desires to establish up to seven experimental pilot
11 programs to gain experience with landscape planning that may prove
12 useful in fashioning legislation of a more general application.

13 (1) Until December 31, 2000, the department in cooperation with the
14 department of fish and wildlife, and the department of ecology when
15 relating to water quality protection, is granted authority to select
16 not more than seven pilot projects for the purpose of developing
17 individual landowner multispecies landscape management plans.

18 (a) Pilot project participants must be selected by the department
19 in cooperation with the department of fish and wildlife, and the
20 department of ecology when relating to water quality protection, no
21 later than October 1, 1997.

22 (b) The number and the location of the pilot projects are to be
23 determined by the department in cooperation with the department of fish
24 and wildlife, and the department of ecology when relating to water
25 quality protection, and should be selected on the basis of risk to the
26 habitat and species, variety and importance of species and habitats in
27 the planning area, geographic distribution, surrounding ownership,
28 other ongoing landscape and watershed planning activities in the area,
29 potential benefits to water quantity and quality, financial and
30 staffing capabilities of participants, and other factors that will
31 contribute to the creation of landowner multispecies landscape planning
32 efforts.

33 (c) Each pilot project shall have a landscape management plan with
34 the following elements:

35 (i) An identification of public resources selected for coverage
36 under the plan and measurable objectives for the protection of the
37 selected public resources;

38 (ii) A termination date of not later than 2050;

1 (iii) A general description of the planning area including its
2 geographic location, physical and biological features, habitats, and
3 species known to be present;

4 (iv) An identification of the existing forest practices rules that
5 will not apply during the term of the plan;

6 (v) Proposed habitat management strategies or prescriptions;

7 (vi) A projection of the habitat conditions likely to result from
8 the implementation of the specified management strategies or
9 prescriptions;

10 (vii) An assessment of habitat requirements and the current habitat
11 conditions of representative species included in the plan;

12 (viii) An assessment of potential or likely impacts to
13 representative species resulting from the prescribed forest practices;

14 (ix) A description of the anticipated benefits to those species or
15 other species as a result of plan implementation;

16 (x) A monitoring plan;

17 (xi) Reporting requirements including a schedule for review of the
18 plan's performance in meeting its objectives;

19 (xii) Conditions under which a plan may be modified, including a
20 procedure for adaptive management;

21 (xiii) Conditions under which a plan may be terminated;

22 (xiv) A procedure for adaptive management that evaluates the
23 effectiveness of the plan to meet its measurable public resources
24 objectives, reflects changes in the best available science, and
25 provides changes to its habitat management strategies, prescriptions,
26 and hydraulic project standards to the extent agreed to in the plan and
27 in a timely manner and schedule;

28 (xv) A description of how the plan relates to publicly available
29 plans of adjacent federal, state, tribal, and private timberland
30 owners; and

31 (xvi) A statement of whether the landowner intends to apply for
32 approval of the plan under applicable federal law.

33 (2) Until December 31, 2000, the department, in agreement with the
34 department of fish and wildlife, and the department of ecology when the
35 landowner elects to cover water quality in the plan, shall approve a
36 landscape management plan and enter into a binding implementation
37 agreement with the landowner when such departments find, based upon the
38 best scientific data available, that:

1 (a) The plan contains all of the elements required under this
2 section including measurable public resource objectives;

3 (b) The plan is expected to be effective in meeting those
4 objectives;

5 (c) The landowner has sufficient financial resources to implement
6 the management strategies or prescriptions to be implemented by the
7 landowner under the plan;

8 (d) The plan will:

9 (i) Provide better protection than current state law for the public
10 resources selected for coverage under the plan considered in the
11 aggregate; and

12 (ii) Compared to conditions that could result from compliance with
13 current state law:

14 (A) Not result in poorer habitat conditions over the life of the
15 plan for any species selected for coverage that is listed as threatened
16 or endangered under federal or state law, or that has been identified
17 as a candidate for such listing, at the time the plan is approved; and

18 (B) Measurably improve habitat conditions for species selected for
19 special consideration under the plan;

20 (e) The plan shall include watershed analysis or provide for a
21 level of protection that meets or exceeds the protection that would be
22 provided by watershed analysis, if the landowner selects fish or water
23 quality as a public resource to be covered under the plan. Any
24 alternative process to watershed analysis would be subject to timely
25 peer review;

26 (f) The planning process provides for a public participation
27 process during the development of the plan, which shall be developed by
28 the department in cooperation with the landowner.

29 The management plans must be submitted to the department and the
30 department of fish and wildlife, and the department of ecology when the
31 landowner elects to cover water quality in the plan, no later than
32 March 1, 2000. The department shall provide an opportunity for public
33 comment on the proposed plan. The comment period shall not be less
34 than forty-five days. The department shall approve or reject plans
35 within one hundred twenty days of submittal by the landowner of a final
36 plan. The decision by the department, in agreement with the department
37 of fish and wildlife, and the department of ecology when the landowner
38 has elected to cover water quality in the plan, to approve or
39 disapprove the management plan is subject to the environmental review

1 process of chapter 43.21C RCW, provided that any public comment period
2 provided for under chapter 43.21C RCW shall run concurrently with the
3 public comment period provided in this subsection (2).

4 (3) After a landscape management plan is adopted:

5 (a) Forest practices consistent with the plan need not comply with:

6 (i) The specific forest practices rules identified in the plan; and

7 (ii) Any forest practice rules and policies adopted after the
8 approval of the plan to the extent that the rules:

9 (A) Have been adopted primarily for the protection of a public
10 resource selected for coverage under the plan; or

11 (B) Provide for procedural or administrative obligations
12 inconsistent with or in addition to those provided for in the plan with
13 respect to those public resources; and

14 (b) If the landowner has selected fish as one of the public
15 resources to be covered under the plan, the plan shall serve as the
16 hydraulic project approval for the life of the plan, in compliance with
17 RCW 75.20.100.

18 (4) The department is authorized to issue a single landscape level
19 permit valid for the life of the plan to a landowner who has an
20 approved landscape management plan and who has requested a landscape
21 permit from the department. Landowners receiving a landscape level
22 permit shall meet annually with the department and the department of
23 fish and wildlife, and the department of ecology where water quality
24 has been selected as a public resource to be covered under the plan, to
25 review the specific forest practices activities planned for the next
26 twelve months and to determine whether such activities are in
27 compliance with the plan. The departments will consult with the
28 affected Indian tribes and other interested parties who have expressed
29 an interest in connection with the review. The landowner is to provide
30 ten calendar days' notice to the department prior to the commencement
31 of any forest practices authorized under a landscape level permit. The
32 landscape level permit will not impose additional conditions relating
33 to the public resources selected for coverage under the plan beyond
34 those agreed to in the plan. For the purposes of chapter 43.21C RCW,
35 forest practices conducted in compliance with an approved plan are
36 deemed not to have the potential for a substantial impact on the
37 environment as to any public resource selected for coverage under the
38 plan.

1 (5) Except as otherwise provided in a plan, the agreement
2 implementing the landscape management plan is an agreement that runs
3 with the property covered by the approved landscape management plan and
4 the department shall record notice of the plan in the real property
5 records of the counties in which the affected properties are located.
6 Prior to its termination, no plan shall permit forest land covered by
7 its terms to be withdrawn from such coverage, whether by sale,
8 exchange, or other means, nor to be converted to nonforestry uses
9 except to the extent that such withdrawal or conversion would not
10 measurably impair the achievement of the plan's stated public resource
11 objectives. If a participant transfers all or part of its interest in
12 the property, the terms of the plan still apply to the new landowner
13 for the plan's stated duration unless the plan is terminated under its
14 terms or unless the plan specifies the conditions under which the
15 terms of the plan do not apply to the new landowner.

16 (6) The departments of natural resources, fish and wildlife, and
17 ecology shall seek to develop memorandums of agreements with federal
18 agencies and affected Indian tribes relating to tribal issues in the
19 landscape management plans. The departments shall solicit input from
20 affected Indian tribes in connection with the selection, review, and
21 approval of any landscape management plan. If any recommendation is
22 received from an affected Indian tribe and is not adopted by the
23 departments, the departments shall provide a written explanation of
24 their reasons for not adopting the recommendation.

25 (7) The department is directed to report to the forest practices
26 board annually through the year 2000, but no later than December 31st
27 of each year, on the status of each pilot project. The department is
28 directed to provide to the forest practices board, no later than
29 December 31, 2000, an evaluation of the pilot projects including a
30 determination if a permanent landscape planning process should be
31 established along with a discussion of what legislative and rule
32 modifications are necessary.

33 NEW SECTION. **Sec. 2.** A new section is added to chapter 76.09 RCW
34 to read as follows:

35 The department together with the department of fish and wildlife,
36 and the department of ecology relating to water quality protection,
37 shall develop a suitable process to permit landowners to secure all
38 permits required for the conduct of forest practices in a single

1 multiyear permit to be jointly issued by the departments and the
2 departments shall report their findings to the legislature not later
3 than December 31, 2000.

4 **Sec. 3.** RCW 76.09.060 and 1993 c 443 s 4 are each amended to read
5 as follows:

6 (1) The department shall prescribe the form and contents of the
7 notification and application. The forest practices rules shall specify
8 by whom and under what conditions the notification and application
9 shall be signed or otherwise certified as acceptable. The application
10 or notification shall be delivered in person to the department, sent by
11 first class mail to the department or electronically filed in a form
12 defined by the department. The form for electronic filing shall be
13 readily convertible to a paper copy, which shall be available to the
14 public pursuant to chapter 42.17 RCW. The information required may
15 include, but is not limited to:

16 (a) Name and address of the forest landowner, timber owner, and
17 operator;

18 (b) Description of the proposed forest practice or practices to be
19 conducted;

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

22 (d) Planimetric and topographic maps showing location and size of
23 all lakes and streams and other public waters in and immediately
24 adjacent to the operating area and showing all existing and proposed
25 roads and major tractor roads;

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

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

32 (g) Soil, geological, and hydrological data with respect to forest
33 practices;

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

36 (i) Provisions for continuing maintenance of roads and other
37 construction or other measures necessary to afford protection to public
38 resources;

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

3 (k) All necessary application or notification fees.

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

6 (3) The application for a forest practice or the notification of a
7 class II forest practice shall indicate whether any land covered by the
8 application or notification will be converted or is intended to be
9 converted to a use other than commercial timber production within three
10 years after completion of the forest practices described in it.

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

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

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

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

26 (b) If the application or notification does not state that any land
27 covered by the application or notification will be or is intended to be
28 so converted:

29 (i) For six years after the date of the application the county,
30 city, town, and regional governmental entities may deny any or all
31 applications for permits or approvals, including building permits and
32 subdivision approvals, relating to nonforestry uses of land subject to
33 the application;

34 (ii) Failure to comply with the reforestation requirements
35 contained in any final order or decision shall constitute a removal of
36 designation under the provisions of RCW 84.33.140, and a change of use
37 under the provisions of RCW 84.34.080, and, if applicable, shall
38 subject such lands to the payments and/or penalties resulting from such
39 removals or changes; and

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

7 (c) The application or notification shall be either signed by the
8 landowner or accompanied by a statement signed by the landowner
9 indicating his or her intent with respect to conversion and
10 acknowledging that he or she is familiar with the effects of this
11 subsection.

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

18 (5) Before the operator commences any forest practice in a manner
19 or to an extent significantly different from that described in a
20 previously approved application or notification, there shall be
21 submitted to the department a new application or notification form in
22 the manner set forth in this section.

23 (6) Except as provided in section 1(4) of this act, the
24 notification to or the approval given by the department to an
25 application to conduct a forest practice shall be effective for a term
26 of two years from the date of approval or notification and shall not be
27 renewed unless a new application is filed and approved or a new
28 notification has been filed. At the option of the applicant, an
29 application or notification may be submitted to cover a single forest
30 practice or a number of forest practices within reasonable geographic
31 or political boundaries as specified by the department. An application
32 or notification that covers more than one forest practice may have an
33 effective term of more than two years. The board shall adopt rules
34 that establish standards and procedures for approving an application or
35 notification that has an effective term of more than two years. Such
36 rules shall include extended time periods for application or
37 notification approval or disapproval. On an approved application with
38 a term of more than two years, the applicant shall inform the
39 department before commencing operations.

1 (7) Notwithstanding any other provision of this section, no prior
2 application or notification shall be required for any emergency forest
3 practice necessitated by fire, flood, windstorm, earthquake, or other
4 emergency as defined by the board, but the operator shall submit an
5 application or notification, whichever is applicable, to the department
6 within forty-eight hours after commencement of such practice.

7 **Sec. 4.** RCW 75.20.100 and 1993 sp.s. c 2 s 30 are each amended to
8 read as follows:

9 In the event that any person or government agency desires to
10 construct any form of hydraulic project or perform other work that will
11 use, divert, obstruct, or change the natural flow or bed of any of the
12 salt or fresh waters of the state, such person or government agency
13 shall, before commencing construction or work thereon and to ensure the
14 proper protection of fish life, secure the written approval of the
15 department as to the adequacy of the means proposed for the protection
16 of fish life. This approval shall not be unreasonably withheld.
17 Except as provided in RCW 75.20.1001 (~~and 75.20.1002~~), the department
18 shall grant or deny approval within forty-five calendar days of the
19 receipt of a complete application and notice of compliance with any
20 applicable requirements of the state environmental policy act, made in
21 the manner prescribed in this section. The applicant may document
22 receipt of application by filing in person or by registered mail. A
23 complete application for approval shall contain general plans for the
24 overall project, complete plans and specifications of the proposed
25 construction or work within the mean higher high water line in salt
26 water or within the ordinary high water line in fresh water, and
27 complete plans and specifications for the proper protection of fish
28 life. The forty-five day requirement shall be suspended if (1) after
29 ten working days of receipt of the application, the applicant remains
30 unavailable or unable to arrange for a timely field evaluation of the
31 proposed project; (2) the site is physically inaccessible for
32 inspection; or (3) the applicant requests delay. Immediately upon
33 determination that the forty-five day period is suspended, the
34 department shall notify the applicant in writing of the reasons for the
35 delay. Approval is valid for a period of up to five years from date of
36 issuance. The permittee must demonstrate substantial progress on
37 construction of that portion of the project relating to the approval
38 within two years of the date of issuance. If the department denies

1 approval, the department shall provide the applicant, in writing, a
2 statement of the specific reasons why and how the proposed project
3 would adversely affect fish life. Protection of fish life shall be the
4 only ground upon which approval may be denied or conditioned. Chapter
5 34.05 RCW applies to any denial of project approval, conditional
6 approval, or requirements for project modification upon which approval
7 may be contingent. If any person or government agency commences
8 construction on any hydraulic works or projects subject to this section
9 without first having obtained written approval of the department as to
10 the adequacy of the means proposed for the protection of fish life, or
11 if any person or government agency fails to follow or carry out any of
12 the requirements or conditions as are made a part of such approval, the
13 person or director of the agency is guilty of a gross misdemeanor. If
14 any such person or government agency is convicted of violating any of
15 the provisions of this section and continues construction on any such
16 works or projects without fully complying with the provisions hereof,
17 such works or projects are hereby declared a public nuisance and shall
18 be subject to abatement as such.

19 For the purposes of this section and RCW 75.20.103, "bed" shall
20 mean the land below the ordinary high water lines of state waters.
21 This definition shall not include irrigation ditches, canals, storm
22 water run-off devices, or other artificial watercourses except where
23 they exist in a natural watercourse that has been altered by man.

24 The phrase "to construct any form of hydraulic project or perform
25 other work" shall not include the act of driving across an established
26 ford. Driving across streams or on wetted stream beds at areas other
27 than established fords requires approval. Work within the ordinary
28 high water line of state waters to construct or repair a ford or
29 crossing requires approval.

30 In case of an emergency arising from weather or stream flow
31 conditions or other natural conditions, the department, through its
32 authorized representatives, shall issue immediately upon request oral
33 approval for removing any obstructions, repairing existing structures,
34 restoring stream banks, or to protect property threatened by the stream
35 or a change in the stream flow without the necessity of obtaining a
36 written approval prior to commencing work. Conditions of an oral
37 approval shall be reduced to writing within thirty days and complied
38 with as provided for in this section. Oral approval shall be granted

1 immediately upon request, for a stream crossing during an emergency
2 situation.

3 This section shall not apply to the construction of any form of
4 hydraulic project or other work which diverts water for agricultural
5 irrigation or stock watering purposes authorized under or recognized as
6 being valid by the state's water codes, or when such hydraulic project
7 or other work is associated with streambank stabilization to protect
8 farm and agricultural land as defined in RCW 84.34.020. These
9 irrigation or stock watering diversion and streambank stabilization
10 projects shall be governed by RCW 75.20.103.

11 A landscape management plan approved by the department and the
12 department of natural resources under section 1(2) of this act, shall
13 serve as a hydraulic project approval for the life of the plan if fish
14 are selected as one of the public resources for coverage under such a
15 plan.

16 **Sec. 5.** RCW 76.09.220 and 1989 c 175 s 164 are each amended to
17 read as follows:

18 (1) The appeals board shall operate on either a part-time or a
19 full-time basis, as determined by the governor. If it is determined
20 that the appeals board shall operate on a full-time basis, each member
21 shall receive an annual salary to be determined by the governor. If it
22 is determined that the appeals board shall operate on a part-time
23 basis, each member shall be compensated in accordance with RCW
24 43.03.240(~~(:—PROVIDED, That))~~). However, such compensation shall not
25 exceed ten thousand dollars in a fiscal year. Each member shall
26 receive reimbursement for travel expenses incurred in the discharge of
27 his duties in accordance with the provisions of RCW 43.03.050 and
28 43.03.060.

29 (2) The appeals board shall as soon as practicable after the
30 initial appointment of the members thereof, meet and elect from among
31 its members a (~~chairman~~) chair, and shall at least biennially
32 thereafter meet and elect or reelect a (~~chairman~~) chair.

33 (3) The principal office of the appeals board shall be at the state
34 capital, but it may sit or hold hearings at any other place in the
35 state. A majority of the appeals board shall constitute a quorum for
36 making orders or decisions, promulgating rules and regulations
37 necessary for the conduct of its powers and duties, or transacting
38 other official business, and may act though one position on the board

1 be vacant. One or more members may hold hearings and take testimony to
2 be reported for action by the board when authorized by rule or order of
3 the board. The appeals board shall perform all the powers and duties
4 granted to it in this chapter or as otherwise provided by law.

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

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

14 (6) The appeals board shall maintain at its principal office a
15 journal which shall contain all official actions of the appeals board,
16 with the exception of findings and decisions, together with the vote of
17 each member on such actions. The journal shall be available for public
18 inspection at the principal office of the appeals board at all
19 reasonable times.

20 (7) The forest practices appeals board shall have exclusive
21 jurisdiction to hear appeals arising from an action or determination by
22 the department, and the department of fish and wildlife, and the
23 department of ecology with respect to management plans provided for
24 under section 1 of this act.

25 (8)(a) Any person aggrieved by the approval or disapproval of an
26 application to conduct a forest practice or the approval or disapproval
27 of any landscape plan or permit may seek review from the appeals board
28 by filing a request for the same within thirty days of the approval or
29 disapproval. Concurrently with the filing of any request for review
30 with the board as provided in this section, the requestor shall file a
31 copy of his or her request with the department and the attorney
32 general. The attorney general may intervene to protect the public
33 interest and ~~((insure))~~ ensure that the provisions of this chapter are
34 complied with.

35 (b) The review proceedings authorized in ~~((subparagraph))~~ (a) of
36 this subsection are subject to the provisions of chapter 34.05 RCW
37 pertaining to procedures in adjudicative proceedings.

1 NEW SECTION. **Sec. 6.** If specific funding for purposes of this
2 act, referencing this act by bill or chapter number, is not provided by
3 June 30, 1997, in the omnibus appropriations act, this act is null and
4 void.

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