
HOUSE BILL 2570

State of Washington

57th Legislature

2002 Regular Session

By Representatives Doumit, Sump, Buck and Hatfield

Read first time 01/22/2002. Referred to Committee on Natural Resources.

1 AN ACT Relating to extending the time period for federal assurances
2 related to the forests and fish report; and amending RCW 77.85.190.

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

4 **Sec. 1.** RCW 77.85.190 and 1999 sp.s. c 4 s 1301 are each amended
5 to read as follows:

6 (1) Chapter 4, Laws of 1999 sp. sess. has been enacted on the
7 assumption that the federal assurances described in the forests and
8 fish report as defined in RCW 76.09.020 will be obtained and that
9 forest practices conducted in accordance with chapter 4, Laws of 1999
10 sp. sess. and the rules adopted under chapter 4, Laws of 1999 sp. sess.
11 will not be subject to additional regulations or restrictions for
12 aquatic resources except as provided in the forests and fish report.

13 (2) The occurrence of any of the following events shall constitute
14 a failure of assurances:

15 (a) Either (i) the national marine fisheries service or the United
16 States fish and wildlife service fails to promulgate an effective rule
17 under 16 U.S.C. Sec. 1533(d) covering each aquatic resource that is
18 listed as threatened under the endangered species act within two years
19 after the date on which the aquatic resource is so listed or, in the

1 case of bull trout, within two years after August 18, 1999; or (ii) any
2 such rule fails to permit any incidental take that would occur from the
3 conduct of forest practices in compliance with the rules adopted under
4 chapter 4, Laws of 1999 sp. sess. or fails to confirm that such forest
5 practices would not otherwise be in violation of the endangered species
6 act and the regulations promulgated under that act. However, this
7 subsection (2)(a) is not applicable to any aquatic resource covered by
8 an incidental take permit described in (c) of this subsection;

9 (b) Either the national marine fisheries service or the United
10 States fish and wildlife service shall promulgate an effective rule
11 under 16 U.S.C. Sec. 1533(d) covering any aquatic resource that would
12 preclude the conduct of forest practices consistent with the
13 prescriptions outlined in the forests and fish report. However, this
14 subsection (2)(b) is not applicable to any aquatic resource covered by
15 an incidental take permit described in (c) of this subsection;

16 (c) Either the secretary of the interior or the secretary of
17 commerce fails to issue an acceptable incidental take permit under 16
18 U.S.C. Sec. 1539(a) covering all fish and wildlife species included
19 within aquatic resources on or before June 30, ((2003)) 2005. An
20 acceptable incidental take permit will (i) permit the incidental take,
21 if any, of all fish and wildlife species included within aquatic
22 resources resulting from the conduct of forest practices in compliance
23 with the prescriptions outlined in the forests and fish report; (ii)
24 provide protection to the state of Washington and its subdivisions and
25 to landowners and operators; (iii) not require the commitment of
26 additional resources beyond those required to be committed under the
27 forests and fish report; and (iv) provide "no-surprises" protection as
28 described in 50 C.F.R. Parts 17 and 222 (1998);

29 (d) Either the national marine fisheries service or the United
30 States fish and wildlife service fails to promulgate an effective rule
31 under 16 U.S.C. Sec. 1533(d) within five years after the date on which
32 a fish species is listed as threatened or endangered under the
33 endangered species act which prohibits actions listed under 16 U.S.C.
34 1538;

35 (e) The environmental protection agency or department of ecology
36 fails to provide the clean water act assurances described in appendix
37 M to the forests and fish report; or

38 (f) The assurances described in (a) through (e) of this subsection
39 are reversed or otherwise rendered ineffective by subsequent federal

1 legislation or rule making or by final decision of any court of
2 competent jurisdiction.

3 Upon the occurrence of a failure of assurances, any agency, tribe,
4 or other interested person including, without limitation, any forest
5 landowner, may provide written notice of the occurrence of such failure
6 of assurances to the legislature and to the office of the governor.
7 Promptly upon receipt of such a notice, the governor shall review
8 relevant information and if he or she determines that a failure of
9 assurances has occurred, the governor shall make such a finding in a
10 written report with recommendations and deliver such report to the
11 legislature. Upon notice of the occurrence of a failure of assurances,
12 the legislature shall review chapter 4, Laws of 1999 sp. sess., all
13 rules adopted by the forest practices board, the department of ecology,
14 or the department of fish and wildlife at any time after January 1,
15 1999, that were adopted primarily for the protection of one or more
16 aquatic resources and affect forest practices and the terms of the
17 forests and fish report, and shall take such action, including the
18 termination of funding or the modification of other statutes, as it
19 deems appropriate.

20 (3) The governor may negotiate with federal officials, directly or
21 through designated representatives, on behalf of the state and its
22 agencies and subdivisions, to obtain assurances from federal agencies
23 to the effect that compliance with the forest practices rules as
24 amended under chapter 4, Laws of 1999 sp. sess. and implementation of
25 the recommendations in the forests and fish report will satisfy federal
26 requirements under the endangered species act and the clean water act
27 and related regulations, including the negotiation of a rule adopted
28 under section 4(d) of the endangered species act, entering into
29 implementation agreements and receiving incidental take permits under
30 section 10 of the endangered species act or entering into other
31 intergovernmental agreements.

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