

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 2399

57th Legislature
2002 Regular Session

Passed by the House January 28, 2002
Yeas 96 Nays 0

Speaker of the House of Representatives

Passed by the Senate March 5, 2002
Yeas 47 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 2399** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 2399

Passed Legislature - 2002 Regular Session

State of Washington 57th Legislature 2002 Regular Session

By Representatives Rockefeller, Doumit, Jackley, Chase, McDermott and Haigh; by request of Department of Natural Resources

Read first time 01/16/2002. Referred to Committee on Natural Resources.

1 AN ACT Relating to Class IV forest practices in urbanizing areas;
2 and amending RCW 76.09.050 and 76.09.240.

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

4 **Sec. 1.** RCW 76.09.050 and 1997 c 173 s 2 are each amended to read
5 as follows:

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

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

16 Class II: Forest practices which have a less than ordinary
17 potential for damaging a public resource that may be conducted without
18 submitting an application and may begin five calendar days, or such
19 lesser time as the department may determine, after written notification

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

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

8 (b) Which require approvals under the provisions of the hydraulics
9 act, RCW (~~(75.20.100)~~) 77.55.100;

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

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

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

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

21 Class IV: Forest practices other than those contained in Class I
22 or II: (a) On lands platted after January 1, 1960, as provided in
23 chapter 58.17 RCW, (b) on lands that have or are being converted to
24 another use, (c) on lands which, pursuant to RCW 76.09.070 as now or
25 hereafter amended, are not to be reforested because of the likelihood
26 of future conversion to urban development, (d) (~~except on those~~
27 ~~lands~~) involving timber harvesting or road construction on lands that
28 are contained within "urban growth areas," designated pursuant to
29 chapter 36.70A RCW, except where the forest landowner provides: (i) A
30 written statement of intent signed by the forest landowner not to
31 convert to a use other than commercial forest product operations for
32 ten years, accompanied by either a written forest management plan
33 acceptable to the department or documentation that the land is enrolled
34 under the provisions of chapter 84.33 RCW; or (ii) a conversion option
35 harvest plan approved by the local governmental entity and submitted to
36 the department as part of the application, and/or (e) which have a
37 potential for a substantial impact on the environment and therefore
38 require an evaluation by the department as to whether or not a detailed
39 statement must be prepared pursuant to the state environmental policy

1 act, chapter 43.21C RCW. Such evaluation shall be made within ten days
2 from the date the department receives the application: PROVIDED, That
3 nothing herein shall be construed to prevent any local or regional
4 governmental entity from determining that a detailed statement must be
5 prepared for an action pursuant to a Class IV forest practice taken by
6 that governmental entity concerning the land on which forest practices
7 will be conducted. A Class IV application must be approved or
8 disapproved by the department within thirty calendar days from the date
9 the department receives the application, unless the department
10 determines that a detailed statement must be made, in which case the
11 application must be approved or disapproved by the department within
12 sixty calendar days from the date the department receives the
13 application, unless the commissioner of public lands, through the
14 promulgation of a formal order, determines that the process cannot be
15 completed within such period. However, the applicant may not begin
16 work on that forest practice until all forest practice fees required
17 under RCW 76.09.065 have been received by the department.

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

21 (2) Except for those forest practices being regulated by local
22 governmental entities as provided elsewhere in this chapter, no Class
23 II, Class III, or Class IV forest practice shall be commenced or
24 continued after January 1, 1975, unless the department has received a
25 notification with regard to a Class II forest practice or approved an
26 application with regard to a Class III or Class IV forest practice
27 containing all information required by RCW 76.09.060 as now or
28 hereafter amended. However, in the event forest practices regulations
29 necessary for the scheduled implementation of this chapter and RCW
30 90.48.420 have not been adopted in time to meet such schedules, the
31 department shall have the authority to regulate forest practices and
32 approve applications on such terms and conditions consistent with this
33 chapter and RCW 90.48.420 and the purposes and policies of RCW
34 76.09.010 until applicable forest practices regulations are in effect.

35 (3) Except for those forest practices being regulated by local
36 governmental entities as provided elsewhere in this chapter, if a
37 notification or application is delivered in person to the department by
38 the operator or the operator's agent, the department shall immediately

1 provide a dated receipt thereof. In all other cases, the department
2 shall immediately mail a dated receipt to the operator.

3 (4) Except for those forest practices being regulated by local
4 governmental entities as provided elsewhere in this chapter, forest
5 practices shall be conducted in accordance with the forest practices
6 regulations, orders and directives as authorized by this chapter or the
7 forest practices regulations, and the terms and conditions of any
8 approved applications.

9 (5) Except for those forest practices being regulated by local
10 governmental entities as provided elsewhere in this chapter, the
11 department of natural resources shall notify the applicant in writing
12 of either its approval of the application or its disapproval of the
13 application and the specific manner in which the application fails to
14 comply with the provisions of this section or with the forest practices
15 regulations. Except as provided otherwise in this section, if the
16 department fails to either approve or disapprove an application or any
17 portion thereof within the applicable time limit, the application shall
18 be deemed approved and the operation may be commenced: PROVIDED, That
19 this provision shall not apply to applications which are neither
20 approved nor disapproved pursuant to the provisions of subsection (7)
21 of this section: PROVIDED, FURTHER, That if seasonal field conditions
22 prevent the department from being able to properly evaluate the
23 application, the department may issue an approval conditional upon
24 further review within sixty days: PROVIDED, FURTHER, That the
25 department shall have until April 1, 1975, to approve or disapprove an
26 application involving forest practices allowed to continue to April 1,
27 1975, under the provisions of subsection (2) of this section. Upon
28 receipt of any notification or any satisfactorily completed application
29 the department shall in any event no later than two business days after
30 such receipt transmit a copy to the departments of ecology and fish and
31 wildlife, and to the county, city, or town in whose jurisdiction the
32 forest practice is to be commenced. Any comments by such agencies
33 shall be directed to the department of natural resources.

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

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

4 (a) The department receives written notice from the county, city,
5 or town of such objections within fourteen business days from the time
6 of transmittal of the application to the county, city, or town, or one
7 day before the department acts on the application, whichever is later;
8 and

9 (b) The objections relate to lands either:

10 (i) Platted after January 1, 1960, as provided in chapter 58.17
11 RCW; or

12 (ii) On lands that have or are being converted to another use.

13 The department shall either disapprove those portions of such
14 application or appeal the county, city, or town objections to the
15 appeals board. If the objections related to subparagraphs (b)(i) and
16 (ii) of this subsection are based on local authority consistent with
17 RCW 76.09.240 as now or hereafter amended, the department shall
18 disapprove the application until such time as the county, city, or town
19 consents to its approval or such disapproval is reversed on appeal.
20 The applicant shall be a party to all department appeals of county,
21 city, or town objections. Unless the county, city, or town either
22 consents or has waived its rights under this subsection, the department
23 shall not approve portions of an application affecting such lands until
24 the minimum time for county, city, or town objections has expired.

25 (8) For those forest practices regulated by the board and the
26 department, in addition to any rights under the above paragraph, the
27 county, city, or town may appeal any department approval of an
28 application with respect to any lands within its jurisdiction. The
29 appeals board may suspend the department's approval in whole or in part
30 pending such appeal where there exists potential for immediate and
31 material damage to a public resource.

32 (9) For those forest practices regulated by the board and the
33 department, appeals under this section shall be made to the appeals
34 board in the manner and time provided in RCW 76.09.220(8). In such
35 appeals there shall be no presumption of correctness of either the
36 county, city, or town or the department position.

37 (10) For those forest practices regulated by the board and the
38 department, the department shall, within four business days notify the
39 county, city, or town of all notifications, approvals, and disapprovals

1 of an application affecting lands within the county, city, or town,
2 except to the extent the county, city, or town has waived its right to
3 such notice.

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

8 **Sec. 2.** RCW 76.09.240 and 1997 c 173 s 5 are each amended to read
9 as follows:

10 (1) By December 31, (~~(2001)~~) 2005, each county and each city shall
11 adopt ordinances or promulgate regulations setting standards for those
12 Class IV forest practices regulated by local government. The
13 regulations shall: (a) Establish minimum standards for Class IV forest
14 practices; (b) set forth necessary administrative provisions; and (c)
15 establish procedures for the collection and administration of forest
16 practices and recording fees as set forth in this chapter.

17 (2) Class IV forest practices regulations shall be administered and
18 enforced by the counties and cities that promulgate them.

19 (3) The forest practices board shall continue to promulgate
20 regulations and the department shall continue to administer and enforce
21 the regulations promulgated by the board in each county and each city
22 for all forest practices as provided in this chapter until such time
23 as, in the opinion of the department, the county or city has
24 promulgated forest practices regulations that meet the requirements as
25 set forth in this section and that meet or exceed the standards set
26 forth by the board in regulations in effect at the time the local
27 regulations are adopted. Regulations promulgated by the county or city
28 thereafter shall be reviewed in the usual manner set forth for county
29 or city rules or ordinances. Amendments to local ordinances must meet
30 or exceed the forest practices rules at the time the local ordinances
31 are amended.

32 (a) Department review of the initial regulations promulgated by a
33 county or city shall take place upon written request by the county or
34 city. The department, in consultation with the department of ecology,
35 may approve or disapprove the regulations in whole or in part.

36 (b) Until January 1, (~~(2002)~~) 2006, the department shall provide
37 technical assistance to all counties or cities that have adopted forest
38 practices regulations acceptable to the department and that have

1 assumed regulatory authority over all Class IV forest practices within
2 their jurisdiction.

3 (c) Decisions by the department approving or disapproving the
4 initial regulations promulgated by a county or city may be appealed to
5 the forest practices appeals board, which has exclusive jurisdiction to
6 review the department's approval or disapproval of regulations
7 promulgated by counties and cities.

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

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

25 (b) Taxing powers;

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

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

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