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**SUBSTITUTE HOUSE BILL 1404**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** House Committee on Natural Resources, Ecology & Parks (originally sponsored by Representatives B. Sullivan, Hinkle, Kretz, Upthegrove and Buck)

READ FIRST TIME 02/24/05.

1       AN ACT Relating to forest practices; amending RCW 76.09.240 and  
2       76.09.060; and adding a new section to chapter 36.70A RCW.

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

4       **Sec. 1.** RCW 76.09.240 and 2002 c 121 s 2 are each amended to read  
5       as follows:

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

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

15       ~~(3) The forest practices board shall continue to promulgate~~  
16       ~~regulations and the department shall continue to administer and enforce~~  
17       ~~the regulations promulgated by the board in each county and each city~~  
18       ~~for all forest practices as provided in this chapter until such time~~  
19       ~~as, in the opinion of the department, the county or city has~~

1 ~~promulgated forest practices regulations that meet the requirements as~~  
2 ~~set forth in this section and that meet or exceed the standards set~~  
3 ~~forth by the board in regulations in effect at the time the local~~  
4 ~~regulations are adopted. Regulations promulgated by the county or city~~  
5 ~~thereafter shall be reviewed in the usual manner set forth for county~~  
6 ~~or city rules or ordinances. Amendments to local ordinances must meet~~  
7 ~~or exceed the forest practices rules at the time the local ordinances~~  
8 ~~are amended.~~

9 ~~(a) Department review of the initial regulations promulgated by a~~  
10 ~~county or city shall take place upon written request by the county or~~  
11 ~~city. The department, in consultation with the department of ecology,~~  
12 ~~may approve or disapprove the regulations in whole or in part.~~

13 ~~(b) Until January 1, 2006, the department shall provide technical~~  
14 ~~assistance to all counties or cities that have adopted forest practices~~  
15 ~~regulations acceptable to the department and that have assumed~~  
16 ~~regulatory authority over all Class IV forest practices within their~~  
17 ~~jurisdiction.~~

18 ~~(c) Decisions by the department approving or disapproving the~~  
19 ~~initial regulations promulgated by a county or city may be appealed to~~  
20 ~~the forest practices appeals board, which has exclusive jurisdiction to~~  
21 ~~review the department's approval or disapproval of regulations~~  
22 ~~promulgated by counties and cities.~~

23 ~~(4))~~ On or before December 31, 2007:

24 (a) Counties planning under RCW 36.70A.040, and the cities and  
25 towns within those counties, where more than a total of twenty-five  
26 Class IV forest practices applications, as defined in RCW 76.09.050(1)  
27 Class IV (a) through (d), have been filed with the department between  
28 January 1, 2000, and December 31, 2002, shall adopt and enforce  
29 ordinances or regulations as provided in subsection (2) of this section  
30 for the following:

31 (i) Forest practices classified as Class I, II, III, and IV that  
32 are within urban growth areas designated under RCW 36.70A.110, except  
33 for forest practices on ownerships of contiguous forest land equal to  
34 or greater than twenty acres where the forest landowner provides, to  
35 the department and the county, a written statement of intent, signed by  
36 the forest landowner, not to convert to a use other than growing  
37 commercial timber for ten years. This statement must be accompanied by  
38 either:

1 (A) A written forest management plan acceptable to the department;  
2 or  
3 (B) Documentation that the land is enrolled as forest land of long-  
4 term commercial significance under the provisions of chapter 84.33 RCW;  
5 and  
6 (ii) Forest practices classified as Class IV, outside urban growth  
7 areas designated under RCW 36.70A.110, involving either timber harvest  
8 or road construction, or both on:  
9 (A) Lands platted after January 1, 1960, as provided in chapter  
10 58.17 RCW;  
11 (B) Lands that have or are being converted to another use; or  
12 (C) Lands which, under RCW 76.09.070 as now or hereafter amended,  
13 are not to be reforested because of the likelihood of future conversion  
14 to urban development.  
15 (b) Counties planning under RCW 36.70A.040, and the cities and  
16 towns within those counties, not included in (a) of this subsection,  
17 may adopt and enforce ordinances or regulations as provided in (a) of  
18 this subsection.  
19 (c) Counties not planning under RCW 36.70A.040, and the cities and  
20 towns within those counties, where more than a total of twenty-five  
21 Class IV forest practices applications, as defined in RCW 76.09.050(1)  
22 Class IV (a) through (d), have been filed with the department between  
23 January 1, 2000, and December 31, 2002, shall adopt and enforce  
24 ordinances or regulations as provided in subsection (2) of this section  
25 for forest practices classified as Class IV involving either timber  
26 harvest or road construction, or both on:  
27 (i) Lands platted after January 1, 1960, as provided in chapter  
28 58.17 RCW;  
29 (ii) Lands that have or are being converted to another use; or  
30 (iii) Lands which, under RCW 76.09.070 as now or hereafter amended,  
31 are not to be reforested because of the likelihood of future conversion  
32 to urban development.  
33 (d) Counties not planning under RCW 36.70A.040, and the cities and  
34 towns within those counties, not included in (c) of this subsection,  
35 may adopt and enforce ordinances or regulations as provided in (c) of  
36 this subsection.  
37 (2) Before a county, city, or town may regulate forest practices  
38 under subsection (1) of this section, it shall ensure that its critical

1 areas and development regulations are in compliance with RCW 36.70A.130  
2 and, if applicable, RCW 36.70A.215. The county, city, or town shall  
3 notify the department and the department of ecology in writing sixty  
4 days prior to adoption of the development regulations required in this  
5 section. The transfer of jurisdiction shall not occur until the  
6 county, city, or town has notified the department and the department of  
7 ecology in writing of the effective date of the regulations.  
8 Ordinances and regulations adopted under subsection (1) of this section  
9 and this subsection (2) shall include:

10 (a) Provisions that require appropriate approvals for all phases of  
11 the conversion of forest lands, including land clearing and grading;  
12 and

13 (b) Procedures for the collection and administration of permit and  
14 recording fees.

15 (3) Activities regulated by counties, cities, or towns as provided  
16 in subsections (1) and (2) of this section shall be administered and  
17 enforced by those counties, cities, or towns. The department shall not  
18 regulate these activities under this chapter.

19 (4) The board shall continue to adopt rules and the department  
20 shall continue to administer and enforce those rules in each county,  
21 city, or town for all forest practices as provided in this chapter  
22 until such a time as the county, city, or town has updated its  
23 development regulations as required by RCW 36.70A.130 and, if  
24 applicable, RCW 36.70A.215, and has adopted ordinances or regulations  
25 under subsections (1) and (2) of this section. However, counties,  
26 cities, and towns that have adopted ordinances or regulations regarding  
27 forest practices prior to the effective date of this section are not  
28 required to readopt their ordinances or regulations in order to satisfy  
29 the requirements of this section.

30 (5) Upon request, the department shall provide technical assistance  
31 to all counties, cities, and towns while they are in the process of  
32 adopting the regulations required by this section, and after the  
33 regulations become effective.

34 (6) For those forest practices over which the board and the  
35 department maintain regulatory authority no county, city, municipality,  
36 or other local or regional governmental entity shall adopt or enforce  
37 any law, ordinance, or regulation pertaining to forest practices,

1 except that to the extent otherwise permitted by law, such entities may  
2 exercise any:

3 (a) Land use planning or zoning authority: PROVIDED, That exercise  
4 of such authority may regulate forest practices only: (i) Where the  
5 application submitted under RCW 76.09.060 as now or hereafter amended  
6 indicates that the lands have been or will be converted to a use other  
7 than commercial forest product production; or (ii) on lands which have  
8 been platted after January 1, 1960, as provided in chapter 58.17 RCW:  
9 PROVIDED, That no permit system solely for forest practices shall be  
10 allowed; that any additional or more stringent regulations shall not be  
11 inconsistent with the forest practices regulations enacted under this  
12 chapter; and such local regulations shall not unreasonably prevent  
13 timber harvesting;

14 (b) Taxing powers;

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

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

18 **Sec. 2.** RCW 76.09.060 and 2003 c 314 s 5 are each amended to read  
19 as follows:

20 The following shall apply to those forest practices administered  
21 and enforced by the department and for which the board shall  
22 (~~promulgate regulations~~) adopt rules as provided in this chapter:

23 (1) The department shall prescribe the form and contents of the  
24 notification and application. The forest practices rules shall specify  
25 by whom and under what conditions the notification and application  
26 shall be signed or otherwise certified as acceptable. The application  
27 or notification shall be delivered in person to the department, sent by  
28 first class mail to the department or electronically filed in a form  
29 defined by the department. The form for electronic filing shall be  
30 readily convertible to a paper copy, which shall be available to the  
31 public pursuant to chapter 42.17 RCW. The information required may  
32 include, but is not limited to:

33 (a) Name and address of the forest landowner, timber owner, and  
34 operator;

35 (b) Description of the proposed forest practice or practices to be  
36 conducted;

1 (c) Legal description and tax parcel identification numbers of the  
2 land on which the forest practices are to be conducted;

3 (d) Planimetric and topographic maps showing location and size of  
4 all lakes and streams and other public waters in and immediately  
5 adjacent to the operating area and showing all existing and proposed  
6 roads and major tractor roads;

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

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

13 (g) Soil, geological, and hydrological data with respect to forest  
14 practices;

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

17 (i) Provisions for continuing maintenance of roads and other  
18 construction or other measures necessary to afford protection to public  
19 resources;

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

22 (k) All necessary application or notification fees.

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

25 (3) The application for a forest practice or the notification of a  
26 Class II forest practice is subject to the three-year reforestation  
27 requirement.

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

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

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

1 (iii) The forest practices described in the application are subject  
2 to the regulations of the applicable county, city, town, ((and)) or  
3 regional governmental authority as permitted under RCW 76.09.240 ((as  
4 now or hereafter amended as well as)) if the forest practice described  
5 in the application is being regulated by the local government under RCW  
6 76.09.240. Forest practices that are not being regulated by a local  
7 government under RCW 76.09.240 are subject to the forest practices  
8 rules.

9 (b) Except as provided elsewhere in this section, if the  
10 application or notification does not state that any land covered by the  
11 application or notification will be or is intended to be so converted:

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

17 (A) The department shall submit to the local governmental entity a  
18 copy of the statement of a forest landowner's intention not to convert  
19 which shall represent a recognition by the landowner that the six-year  
20 moratorium shall be imposed and shall preclude the landowner's ability  
21 to obtain development permits while the moratorium is in place. This  
22 statement shall be filed by the local governmental entity with the  
23 county recording officer, who shall record the documents as provided in  
24 chapter 65.04 RCW, except that lands designated as forest lands of  
25 long-term commercial significance under chapter 36.70A RCW shall not be  
26 recorded due to the low likelihood of conversion. Not recording the  
27 statement of a forest landowner's conversion intention shall not be  
28 construed to mean the moratorium is not in effect.

29 (B) The department shall collect the recording fee and reimburse  
30 the local governmental entity for the cost of recording the  
31 application.

32 (C) When harvesting takes place without an application, the local  
33 governmental entity shall impose the six-year moratorium provided in  
34 (b)(i) of this subsection from the date the unpermitted harvesting was  
35 discovered by the department or the local governmental entity.

36 (D) The local governmental entity shall develop a process for  
37 lifting the six-year moratorium, which shall include public  
38 notification, and procedures for appeals and public hearings.

1 (E) The local governmental entity may develop an administrative  
2 process for lifting or waiving the six-year moratorium for the purposes  
3 of constructing a single-family residence or outbuildings, or both, on  
4 a legal lot and building site. Lifting or waiving of the six-year  
5 moratorium is subject to compliance with all local ordinances.

6 (F) The six-year moratorium shall not be imposed on a forest  
7 practices application that contains a conversion option harvest plan  
8 approved by the local governmental entity unless the forest practice  
9 was not in compliance with the approved forest practice permit. Where  
10 not in compliance with the conversion option harvest plan, the six-year  
11 moratorium shall be imposed from the date the application was approved  
12 by the department or the local governmental entity;

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

19 (iii) Conversion to a use other than commercial forest product  
20 operations within six years after approval of the forest practices  
21 without the consent of the county, city, or town shall constitute a  
22 violation of each of the county, municipal city, town, and regional  
23 authorities to which the forest practice operations would have been  
24 subject if the application had so stated.

25 (c) The application or notification shall be signed by the forest  
26 landowner and accompanied by a statement signed by the forest landowner  
27 indicating his or her intent with respect to conversion and  
28 acknowledging that he or she is familiar with the effects of this  
29 subsection.

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

36 (5) Before the operator commences any forest practice in a manner  
37 or to an extent significantly different from that described in a

1 previously approved application or notification, there shall be  
2 submitted to the department a new application or notification form in  
3 the manner set forth in this section.

4 (6) Except as provided in RCW 76.09.350(4), the notification to or  
5 the approval given by the department to an application to conduct a  
6 forest practice shall be effective for a term of two years from the  
7 date of approval or notification and shall not be renewed unless a new  
8 application is filed and approved or a new notification has been filed.  
9 At the option of the applicant, an application or notification may be  
10 submitted to cover a single forest practice or a number of forest  
11 practices within reasonable geographic or political boundaries as  
12 specified by the department. An application or notification that  
13 covers more than one forest practice may have an effective term of more  
14 than two years. The board shall adopt rules that establish standards  
15 and procedures for approving an application or notification that has an  
16 effective term of more than two years. Such rules shall include  
17 extended time periods for application or notification approval or  
18 disapproval. On an approved application with a term of more than two  
19 years, the applicant shall inform the department before commencing  
20 operations.

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

28 (8) Forest practices applications or notifications are not required  
29 for forest practices conducted to control exotic forest insect or  
30 disease outbreaks, when conducted by or under the direction of the  
31 department of agriculture in carrying out an order of the governor or  
32 director of the department of agriculture to implement pest control  
33 measures as authorized under chapter 17.24 RCW, and are not required  
34 when conducted by or under the direction of the department in carrying  
35 out emergency measures under a forest health emergency declaration by  
36 the commissioner of public lands as provided in RCW 76.06.130.

37 (a) For the purposes of this subsection, exotic forest insect or  
38 disease has the same meaning as defined in RCW 76.06.020.

1 (b) In order to minimize adverse impacts to public resources,  
2 control measures must be based on integrated pest management, as  
3 defined in RCW 17.15.010, and must follow forest practices rules  
4 relating to road construction and maintenance, timber harvest, and  
5 forest chemicals, to the extent possible without compromising control  
6 objectives.

7 (c) Agencies conducting or directing control efforts must provide  
8 advance notice to the appropriate regulatory staff of the department of  
9 the operations that would be subject to exemption from forest practices  
10 application or notification requirements.

11 (d) When the appropriate regulatory staff of the department are  
12 notified under (c) of this subsection, they must consult with the  
13 landowner, interested agencies, and affected tribes, and assist the  
14 notifying agencies in the development of integrated pest management  
15 plans that comply with forest practices rules as required under (b) of  
16 this subsection.

17 (e) Nothing under this subsection relieves agencies conducting or  
18 directing control efforts from requirements of the federal clean water  
19 act as administered by the department of ecology under RCW 90.48.260.

20 (f) Forest lands where trees have been cut as part of an exotic  
21 forest insect or disease control effort under this subsection are  
22 subject to reforestation requirements under RCW 76.09.070.

23 (g) The exemption from obtaining approved forest practices  
24 applications or notifications does not apply to forest practices  
25 conducted after the governor, the director of the department of  
26 agriculture, or the commissioner of public lands have declared that an  
27 emergency no longer exists because control objectives have been met,  
28 that there is no longer an imminent threat, or that there is no longer  
29 a good likelihood of control.

30 NEW SECTION. **Sec. 3.** A new section is added to chapter 36.70A RCW  
31 to read as follows:

32 (1) Each county, city, and town assuming regulation of forest  
33 practices as provided in RCW 76.09.240 (1) and (2) shall adopt  
34 development regulations that:

35 (a) Protect public resources, as defined in RCW 76.09.020, from  
36 material damage or the potential for material damage;

1 (b) Require appropriate approvals for all phases of the conversion  
2 of forest lands, including clearing and grading; and

3 (c) Are guided by the planning goals in RCW 36.70A.020 and by the  
4 purposes and policies of the forest practices act as set forth in RCW  
5 76.09.010.

6 (2) If necessary, each county, city, or town that assumes  
7 regulation of forest practices under RCW 76.09.240 shall amend its  
8 comprehensive plan to ensure consistency between its comprehensive plan  
9 and development regulations.

10 (3) Before a county, city, or town may regulate forest practices  
11 under RCW 76.09.240 (1) and (2), it shall update its development  
12 regulations as required by RCW 36.70A.130 and, if applicable, RCW  
13 36.70A.215. Forest practices regulations adopted under RCW 76.09.240  
14 (1) and (2) may be adopted as part of the legislative action taken  
15 under RCW 36.70A.130 or 36.70A.215.

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