

SHB 2541 - H AMD

By Representative Takko

ADOPTED 02/15/2010

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that sustainably
4 managed commercial forestry produces jobs and revenue while also
5 providing clean water, clean air, renewable energy, wildlife habitat,
6 open space, and carbon storage, among other ecological values. For
7 these reasons, maintaining a base of forest lands that may be utilized
8 for sustainably managed commercial forestry is of utmost importance to
9 the state.

10 (2) The legislature finds that the promotion and fostering of the
11 economic success of the forest products industry with the goal of
12 keeping sustainably managed forestry as a priority land use, and
13 helping to secure the timber managing, growing, harvesting,
14 transporting, and manufacturing jobs is made possible by a vibrant
15 working forest land base.

16 (3) The legislature further finds that maintaining sustainable
17 working forests is important for the quality of life of all
18 Washingtonians, and that sustainable forest practices can help to
19 maintain and restore the vitality of Washington's communities while
20 also helping to preserve Washington's natural landscapes and
21 ecosystems.

22 (4) The legislature further finds that it is necessary to assist
23 landowners in gaining access to additional sources of revenue, such as
24 emerging ecosystem services markets, and to help landowners diversify
25 their incomes, improve the ecological functions of their lands, and
26 pass their lands and the lands' associated benefits to future
27 generations.

28 (5) The legislature further finds that the conservation and
29 restoration of forest ecosystems provide services to the residents of

1 the state that help improve water and habitat quality, help avoid
2 carbon emissions, help address impacts associated with climate change,
3 and help natural resources adapt to these impacts.

4 (6) The legislature further finds that ecosystem services markets
5 can lead to efficient, innovative, and effective conservation and
6 restoration actions and facilitate improved integration of public and
7 private investment.

8 (7) Therefore, it is the intent of the legislature to develop tools
9 to facilitate small and industrial forest landowners' access to market
10 capital from existing and emerging ecosystem services markets.

11 (8) The legislature further intends to enable forest landowners who
12 provide ecosystem services access to financing to protect, restore, and
13 maintain the ecological values provided by protection of public
14 resources.

15 **Sec. 2.** RCW 76.09.010 and 1999 sp.s. c 4 s 901 are each amended to
16 read as follows:

17 (1) The legislature hereby finds and declares that the forest land
18 resources are among the most valuable of all resources in the state;
19 that a viable forest products industry is of prime importance to the
20 state's economy; that it is in the public interest for public and
21 private commercial forest lands to be managed consistent with sound
22 policies of natural resource protection; that coincident with
23 maintenance of a viable forest products industry, it is important to
24 afford protection to forest soils, fisheries, wildlife, water quantity
25 and quality, air quality, recreation, and scenic beauty.

26 (2) The legislature further finds and declares it to be in the
27 public interest of this state to create and maintain through the
28 adoption of this chapter a comprehensive statewide system of laws and
29 forest practices rules which will achieve the following purposes and
30 policies:

31 (a) Afford protection to, promote, foster and encourage timber
32 growth, and require such minimum reforestation of commercial tree
33 species on forest lands as will reasonably utilize the timber growing
34 capacity of the soil following current timber harvest;

35 (b) Afford protection to forest soils and public resources by
36 utilizing all reasonable methods of technology in conducting forest
37 practices;

1 (c) Recognize both the public and private interest in the
2 profitable growing and harvesting of timber;

3 (d) Promote efficiency by permitting maximum operating freedom
4 consistent with the other purposes and policies stated herein;

5 (e) Provide for regulation of forest practices so as to avoid
6 unnecessary duplication in such rules;

7 (f) Provide for interagency input and intergovernmental and tribal
8 coordination and cooperation;

9 (g) Achieve compliance with all applicable requirements of federal
10 and state law with respect to nonpoint sources of water pollution from
11 forest practices;

12 (h) To consider reasonable land use planning goals and concepts
13 contained in local comprehensive plans and zoning regulations;

14 (i) Foster cooperation among managers of public resources, forest
15 landowners, Indian tribes and the citizens of the state; (~~and~~)

16 (j) Develop a watershed analysis system that addresses the
17 cumulative effect of forest practices on, at a minimum, the public
18 resources of fish, water, and public capital improvements of the state
19 and its political subdivisions; and

20 (k) Assist forest landowners in accessing market capital and
21 financing for the ecosystem services provided to the public as a result
22 of the protection of public resources.

23 (3) The legislature further finds and declares that it is also in
24 the public interest of the state to encourage forest landowners to
25 undertake corrective and remedial action to reduce the impact of mass
26 earth movements and fluvial processes.

27 (4) The legislature further finds and declares that it is in the
28 public interest that the applicants for state forest practices permits
29 should assist in paying for the cost of review and permitting necessary
30 for the environmental protection of these resources.

31 **Sec. 3.** RCW 76.09.040 and 2009 c 246 s 1 are each amended to read
32 as follows:

33 (1)(a) Where necessary to accomplish the purposes and policies
34 stated in RCW 76.09.010, and to implement the provisions of this
35 chapter, the board shall adopt forest practices rules pursuant to
36 chapter 34.05 RCW and in accordance with the procedures enumerated in
37 this section that:

1 ~~((a))~~ (i) Establish minimum standards for forest practices;
2 ~~((b))~~ (ii) Provide procedures for the voluntary development of
3 resource management plans which may be adopted as an alternative to the
4 minimum standards in ~~(a)~~(i) of this subsection if the plan is
5 consistent with the purposes and policies stated in RCW 76.09.010 and
6 the plan meets or exceeds the objectives of the minimum standards;
7 ~~((c))~~ (iii) Set forth necessary administrative provisions;
8 ~~((d))~~ (iv) Establish procedures for the collection and
9 administration of forest practice fees as set forth by this chapter;
10 and
11 ~~((e))~~ (v) Allow for the development of watershed analyses.
12 (b) Forest practices rules pertaining to water quality protection
13 shall be adopted by the board after reaching agreement with the
14 director of the department of ecology or the director's designee on the
15 board with respect thereto. All other forest practices rules shall be
16 adopted by the board.
17 (c) Forest practices rules shall be administered and enforced by
18 either the department or the local governmental entity as provided in
19 this chapter. Such rules shall be adopted and administered so as to
20 give consideration to all purposes and policies set forth in RCW
21 76.09.010.
22 (2)(a) The board shall prepare proposed forest practices rules
23 consistent with this section and chapter 34.05 RCW. In addition to any
24 forest practices rules relating to water quality protection proposed by
25 the board, the department of ecology may submit to the board proposed
26 forest practices rules relating to water quality protection.
27 (b)(i) Prior to initiating the rule-making process, the proposed
28 rules shall be submitted for review and comments to the department of
29 fish and wildlife and to the counties of the state. After receipt of
30 the proposed forest practices rules, the department of fish and
31 wildlife and the counties of the state shall have thirty days in which
32 to review and submit comments to the board, and to the department of
33 ecology with respect to its proposed rules relating to water quality
34 protection.
35 (ii) After the expiration of ~~((such))~~ the thirty day period, the
36 board and the department of ecology shall jointly hold one or more
37 hearings on the proposed rules pursuant to chapter 34.05 RCW. ~~((A~~

1 ~~such hearing(s))~~ Any county representative may propose specific forest
2 practices rules relating to problems existing within ~~((such))~~ the
3 county at the hearings.

4 (iii) The board may adopt and the department of ecology may approve
5 such proposals if they find the proposals are consistent with the
6 purposes and policies of this chapter.

7 (3)(a) The board shall establish by rule a program for the
8 acquisition of riparian open space and critical habitat for threatened
9 or endangered species as designated by the board. Acquisition must be
10 a conservation easement. Lands eligible for acquisition are forest
11 lands within unconfined channel migration zones or forest lands
12 containing critical habitat for threatened or endangered species as
13 designated by the board. Once acquired, these lands may be held and
14 managed by the department, transferred to another state agency,
15 transferred to an appropriate local government agency, or transferred
16 to a private nonprofit nature conservancy corporation, as defined in
17 RCW 64.04.130, in fee or transfer of management obligation. The board
18 shall adopt rules governing the acquisition by the state or donation to
19 the state of such interest in lands including the right of refusal if
20 the lands are subject to unacceptable liabilities. The rules shall
21 include definitions of qualifying lands, priorities for acquisition,
22 and provide for the opportunity to transfer such lands with limited
23 warranties and with a description of boundaries that does not require
24 full surveys where the cost of securing the surveys would be
25 unreasonable in relation to the value of the lands conveyed. The rules
26 shall provide for the management of the lands for ecological protection
27 or fisheries enhancement. For the purposes of conservation easements
28 entered into under this section, the following apply:

29 ~~((a))~~ (i) For conveyances of a conservation easement in which the
30 landowner conveys an interest in the trees only, the compensation must
31 include the timber value component, as determined by the cruised volume
32 of any timber located within the channel migration zone or critical
33 habitat for threatened or endangered species as designated by the
34 board, multiplied by the appropriate quality code stumpage value for
35 timber of the same species shown on the appropriate table used for
36 timber harvest excise tax purposes under RCW 84.33.091;

37 ~~((b))~~ (ii) For conveyances of a conservation easement in which
38 the landowner conveys interests in both land and trees, the

1 compensation must include the timber value component in (a)(i) of this
2 subsection plus such portion of the land value component as determined
3 just and equitable by the department. The land value component must be
4 the acreage of qualifying channel migration zone or critical habitat
5 for threatened or endangered species as determined by the board, to be
6 conveyed, multiplied by the average per acre value of all commercial
7 forest land in western Washington or the average for eastern
8 Washington, whichever average is applicable to the qualifying lands.
9 The department must determine the western and eastern Washington
10 averages based on the land value tables established by RCW 84.33.140
11 and revised annually by the department of revenue.

12 ~~((+4))~~ (b) Subject to appropriations sufficient to cover the cost
13 of such an acquisition program and the related costs of administering
14 the program, the department must establish a conservation easement in
15 land that an owner tenders for purchase; provided that such lands have
16 been taxed as forest lands and are located within an unconfined channel
17 migration zone or contain critical habitat for threatened or endangered
18 species as designated by the board. Lands acquired under this section
19 shall become riparian or habitat open space. These acquisitions shall
20 not be deemed to trigger the compensating tax of chapters 84.33 and
21 84.34 RCW.

22 ~~((+5))~~ (c) Instead of offering to sell interests in qualifying
23 lands, owners may elect to donate the interests to the state.

24 ~~((+6))~~ (d) Any acquired interest in qualifying lands by the state
25 under this section shall be managed as riparian open space or critical
26 habitat.

27 NEW SECTION. **Sec. 4.** (1) The department of natural resources
28 shall, to the degree that resources are available, develop, consistent
29 with this section, proposals for the development of appropriate
30 landowner conservation incentives that support forest landowners
31 maintaining their land in forestry. These incentives may include, but
32 are not limited to, incentives that are related to ecosystem service
33 markets, tax incentives, easements, technical assistance, and
34 recognition or certification.

35 (2) The department of natural resources shall consult with the
36 forest practices board, representatives of federal, state, and local

1 government, Indian tribes, small forest landowners, conservation
2 groups, industrial foresters, and other individuals deemed beneficial
3 by the department in implementing this section.

4 (3) By December 31, 2011, the department of natural resources must
5 present their research and any proposed incentives to the governor, the
6 appropriate committees of the legislature, the commissioner of public
7 lands, and the forest practices board. The department of natural
8 resources shall also offer to present their findings and
9 recommendations to the Washington congressional delegation, local
10 governments, and any state or federal agency that has as a portion of
11 their mission the support of Washington's working land base and the
12 jobs, products, and ecological values that working lands provide.

13 (4) Neither the activities nor outcome of the department of natural
14 resources' actions or decisions under this section shall cause,
15 promote, or delay rule making by the forest practices board in the
16 execution of its applicable duties.

17 (5) The department of natural resources is authorized to seek
18 federal and private funds, and in-kind contributions to complete the
19 work in this act. At the discretion of the department of natural
20 resources, the department must comply with this act only to the degree
21 that existing or acquired nonstate resources permit.

22 (6) This section expires July 1, 2012.

23 **Sec. 5.** RCW 76.09.020 and 2009 c 354 s 5 and 2009 c 246 s 4 are
24 each reenacted and amended to read as follows:

25 The definitions in this section apply throughout this chapter
26 unless the context clearly requires otherwise.

27 (1) "Adaptive management" means reliance on scientific methods to
28 test the results of actions taken so that the management and related
29 policy can be changed promptly and appropriately.

30 (2) "Appeals board" means the forest practices appeals board
31 created by RCW 76.09.210.

32 (3) "Application" means the application required pursuant to RCW
33 76.09.050.

34 (4) "Aquatic resources" includes water quality, salmon, other
35 species of the vertebrate classes Cephalaspidomorphi and Osteichthyes
36 identified in the forests and fish report, the Columbia torrent
37 salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander

1 (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton*
2 *olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's
3 salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and
4 their respective habitats.

5 (5) "Board" means the forest practices board created in RCW
6 76.09.030.

7 (6) "Commissioner" means the commissioner of public lands.

8 (7) "Contiguous" means land adjoining or touching by common corner
9 or otherwise. Land having common ownership divided by a road or other
10 right-of-way shall be considered contiguous.

11 (8) "Conversion to a use other than commercial timber operation"
12 means a bona fide conversion to an active use which is incompatible
13 with timber growing and as may be defined by forest practices rules.

14 (9) "Department" means the department of natural resources.

15 (10) "Fish passage barrier" means any artificial instream structure
16 that impedes the free passage of fish.

17 (11) "Forest land" means all land which is capable of supporting a
18 merchantable stand of timber and is not being actively used for a use
19 which is incompatible with timber growing. Forest land does not
20 include agricultural land that is or was enrolled in the conservation
21 reserve enhancement program by contract if such agricultural land was
22 historically used for agricultural purposes and the landowner intends
23 to continue to use the land for agricultural purposes in the future.
24 As it applies to the operation of the road maintenance and abandonment
25 plan element of the forest practices rules on small forest landowners,
26 the term "forest land" excludes:

27 (a) Residential home sites, which may include up to five acres; and

28 (b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens,
29 and the land on which appurtenances necessary to the production,
30 preparation, or sale of crops, fruit, dairy products, fish, and
31 livestock exist.

32 (12) "Forest landowner" means any person in actual control of
33 forest land, whether such control is based either on legal or equitable
34 title, or on any other interest entitling the holder to sell or
35 otherwise dispose of any or all of the timber on such land in any
36 manner. However, any lessee or other person in possession of forest
37 land without legal or equitable title to such land shall be excluded

1 from the definition of "forest landowner" unless such lessee or other
2 person has the right to sell or otherwise dispose of any or all of the
3 timber located on such forest land.

4 (13) "Forest practice" means any activity conducted on or directly
5 pertaining to forest land and relating to growing, harvesting, or
6 processing timber, including but not limited to:

7 (a) Road and trail construction;

8 (b) Harvesting, final and intermediate;

9 (c) Precommercial thinning;

10 (d) Reforestation;

11 (e) Fertilization;

12 (f) Prevention and suppression of diseases and insects;

13 (g) Salvage of trees; and

14 (h) Brush control.

15 "Forest practice" shall not include preparatory work such as tree
16 marking, surveying and road flagging, and removal or harvesting of
17 incidental vegetation from forest lands such as berries, ferns,
18 greenery, mistletoe, herbs, mushrooms, and other products which cannot
19 normally be expected to result in damage to forest soils, timber, or
20 public resources.

21 (14) "Forest practices rules" means any rules adopted pursuant to
22 RCW 76.09.040.

23 (15) "Forest road," as it applies to the operation of the road
24 maintenance and abandonment plan element of the forest practices rules
25 on small forest landowners, means a road or road segment that crosses
26 land that meets the definition of forest land, but excludes residential
27 access roads.

28 (16) "Forest trees" does not include hardwood trees cultivated by
29 agricultural methods in growing cycles shorter than fifteen years if
30 the trees were planted on land that was not in forest use immediately
31 before the trees were planted and before the land was prepared for
32 planting the trees. "Forest trees" includes Christmas trees, but does
33 not include Christmas trees that are cultivated by agricultural
34 methods, as that term is defined in RCW 84.33.035.

35 (17) "Forests and fish report" means the forests and fish report to
36 the board dated April 29, 1999.

37 (18) "Operator" means any person engaging in forest practices
38 except an employee with wages as his or her sole compensation.

1 (19) "Person" means any individual, partnership, private, public,
2 or municipal corporation, county, the department or other state or
3 local governmental entity, or association of individuals of whatever
4 nature.

5 (20) "Public resources" means water, fish and wildlife, and in
6 addition shall mean capital improvements of the state or its political
7 subdivisions.

8 (21) "Small forest landowner" has the same meaning as defined in
9 RCW 76.09.450.

10 (22) "Timber" means forest trees, standing or down, of a commercial
11 species, including Christmas trees. However, "timber" does not include
12 Christmas trees that are cultivated by agricultural methods, as that
13 term is defined in RCW 84.33.035.

14 (23) "Timber owner" means any person having all or any part of the
15 legal interest in timber. Where such timber is subject to a contract
16 of sale, "timber owner" shall mean the contract purchaser.

17 (24) "Unconfined channel migration zone" means the area within
18 which the active channel of an unconfined stream is prone to move and
19 where the movement would result in a potential near-term loss of
20 riparian forest adjacent to the stream. Sizeable islands with
21 productive timber may exist within the zone.

22 (25) "Unconfined stream" means generally fifth order or larger
23 waters that experience abrupt shifts in channel location, creating a
24 complex floodplain characterized by extensive gravel bars, disturbance
25 species of vegetation of variable age, numerous side channels, wall-
26 based channels, oxbow lakes, and wetland complexes. Many of these
27 streams have dikes and levees that may temporarily or permanently
28 restrict channel movement.

29 (26) "Ecosystem services" means the benefits that the public enjoys
30 as a result of natural processes and biological diversity.

31 (27) "Ecosystem services market" means a system in which providers
32 of ecosystem services can access financing or market capital to
33 protect, restore, and maintain ecological values, including the full
34 spectrum of regulatory, quasiregulatory, and voluntary markets."

35 Correct the title.

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