
ENGROSSED SUBSTITUTE HOUSE BILL 2541

State of Washington

61st Legislature

2010 Regular Session

By House Agriculture & Natural Resources (originally sponsored by Representatives Takko, Orcutt, Kessler, Kretz, and Blake)

READ FIRST TIME 02/03/10.

1 AN ACT Relating to maximizing the ecosystem services provided by
2 forestry through the promotion of the economic success of the forest
3 products industry; amending RCW 76.09.010 and 76.09.040; reenacting and
4 amending RCW 76.09.020; creating new sections; and providing an
5 expiration date.

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

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

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

1 (3) The legislature further finds that maintaining sustainable
2 working forests is important for the quality of life of all
3 Washingtonians, and that sustainable forest practices can help to
4 maintain and restore the vitality of Washington's communities while
5 also helping to preserve Washington's natural landscapes and
6 ecosystems.

7 (4) The legislature further finds that it is necessary to assist
8 landowners in gaining access to additional sources of revenue, such as
9 emerging ecosystem services markets, and to help landowners diversify
10 their incomes, improve the ecological functions of their lands, and
11 pass their lands and the lands' associated benefits to future
12 generations.

13 (5) The legislature further finds that the conservation and
14 restoration of forest ecosystems provide services to the residents of
15 the state that help improve water and habitat quality, help avoid
16 carbon emissions, help address impacts associated with climate change,
17 and help natural resources adapt to these impacts.

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

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

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

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

31 (1) The legislature hereby finds and declares that the forest land
32 resources are among the most valuable of all resources in the state;
33 that a viable forest products industry is of prime importance to the
34 state's economy; that it is in the public interest for public and
35 private commercial forest lands to be managed consistent with sound
36 policies of natural resource protection; that coincident with

1 maintenance of a viable forest products industry, it is important to
2 afford protection to forest soils, fisheries, wildlife, water quantity
3 and quality, air quality, recreation, and scenic beauty.

4 (2) The legislature further finds and declares it to be in the
5 public interest of this state to create and maintain through the
6 adoption of this chapter a comprehensive statewide system of laws and
7 forest practices rules which will achieve the following purposes and
8 policies:

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

13 (b) Afford protection to forest soils and public resources by
14 utilizing all reasonable methods of technology in conducting forest
15 practices;

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

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

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

22 (f) Provide for interagency input and intergovernmental and tribal
23 coordination and cooperation;

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

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

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

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

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

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

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

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

11 (1)(a) Where necessary to accomplish the purposes and policies
12 stated in RCW 76.09.010, and to implement the provisions of this
13 chapter, the board shall adopt forest practices rules pursuant to
14 chapter 34.05 RCW and in accordance with the procedures enumerated in
15 this section that:

16 ~~((a))~~ (i) Establish minimum standards for forest practices;

17 ~~((b))~~ (ii) Provide procedures for the voluntary development of
18 resource management plans which may be adopted as an alternative to the
19 minimum standards in ~~(a)~~(i) of this subsection if the plan is
20 consistent with the purposes and policies stated in RCW 76.09.010 and
21 the plan meets or exceeds the objectives of the minimum standards;

22 ~~((c))~~ (iii) Set forth necessary administrative provisions;

23 ~~((d))~~ (iv) Establish procedures for the collection and
24 administration of forest practice fees as set forth by this chapter;
25 and

26 ~~((e))~~ (v) Allow for the development of watershed analyses.

27 (b) Forest practices rules pertaining to water quality protection
28 shall be adopted by the board after reaching agreement with the
29 director of the department of ecology or the director's designee on the
30 board with respect thereto. All other forest practices rules shall be
31 adopted by the board.

32 (c) Forest practices rules shall be administered and enforced by
33 either the department or the local governmental entity as provided in
34 this chapter. Such rules shall be adopted and administered so as to
35 give consideration to all purposes and policies set forth in RCW
36 76.09.010.

1 (2)(a) The board shall prepare proposed forest practices rules
2 consistent with this section and chapter 34.05 RCW. In addition to any
3 forest practices rules relating to water quality protection proposed by
4 the board, the department of ecology may submit to the board proposed
5 forest practices rules relating to water quality protection.

6 (b)(i) Prior to initiating the rule-making process, the proposed
7 rules shall be submitted for review and comments to the department of
8 fish and wildlife and to the counties of the state. After receipt of
9 the proposed forest practices rules, the department of fish and
10 wildlife and the counties of the state shall have thirty days in which
11 to review and submit comments to the board, and to the department of
12 ecology with respect to its proposed rules relating to water quality
13 protection.

14 (ii) After the expiration of (~~such~~) the thirty day period, the
15 board and the department of ecology shall jointly hold one or more
16 hearings on the proposed rules pursuant to chapter 34.05 RCW. (~~At~~
17 ~~such hearing(s)~~) Any county representative may propose specific forest
18 practices rules relating to problems existing within (~~such~~) the
19 county at the hearings.

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

23 (3)(a) The board shall establish by rule a program for the
24 acquisition of riparian open space and critical habitat for threatened
25 or endangered species as designated by the board. Acquisition must be
26 a conservation easement. Lands eligible for acquisition are forest
27 lands within unconfined channel migration zones or forest lands
28 containing critical habitat for threatened or endangered species as
29 designated by the board. Once acquired, these lands may be held and
30 managed by the department, transferred to another state agency,
31 transferred to an appropriate local government agency, or transferred
32 to a private nonprofit nature conservancy corporation, as defined in
33 RCW 64.04.130, in fee or transfer of management obligation. The board
34 shall adopt rules governing the acquisition by the state or donation to
35 the state of such interest in lands including the right of refusal if
36 the lands are subject to unacceptable liabilities. The rules shall
37 include definitions of qualifying lands, priorities for acquisition,
38 and provide for the opportunity to transfer such lands with limited

1 warranties and with a description of boundaries that does not require
2 full surveys where the cost of securing the surveys would be
3 unreasonable in relation to the value of the lands conveyed. The rules
4 shall provide for the management of the lands for ecological protection
5 or fisheries enhancement. For the purposes of conservation easements
6 entered into under this section, the following apply:

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

15 ~~((b))~~ (ii) For conveyances of a conservation easement in which
16 the landowner conveys interests in both land and trees, the
17 compensation must include the timber value component in (a)(i) of this
18 subsection plus such portion of the land value component as determined
19 just and equitable by the department. The land value component must be
20 the acreage of qualifying channel migration zone or critical habitat
21 for threatened or endangered species as determined by the board, to be
22 conveyed, multiplied by the average per acre value of all commercial
23 forest land in western Washington or the average for eastern
24 Washington, whichever average is applicable to the qualifying lands.
25 The department must determine the western and eastern Washington
26 averages based on the land value tables established by RCW 84.33.140
27 and revised annually by the department of revenue.

28 ~~((4))~~ (b) Subject to appropriations sufficient to cover the cost
29 of such an acquisition program and the related costs of administering
30 the program, the department must establish a conservation easement in
31 land that an owner tenders for purchase; provided that such lands have
32 been taxed as forest lands and are located within an unconfined channel
33 migration zone or contain critical habitat for threatened or endangered
34 species as designated by the board. Lands acquired under this section
35 shall become riparian or habitat open space. These acquisitions shall
36 not be deemed to trigger the compensating tax of chapters 84.33 and
37 84.34 RCW.

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

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

6 NEW SECTION. **Sec. 4.** (1) The department of natural resources
7 shall, to the degree that resources are available, develop, consistent
8 with this section, proposals for the development of appropriate
9 landowner conservation incentives that support forest landowners
10 maintaining their land in forestry. These incentives may include, but
11 are not limited to, incentives that are related to ecosystem service
12 markets, tax incentives, easements, technical assistance, and
13 recognition or certification.

14 (2) The department of natural resources shall consult with the
15 forest practices board, representatives of federal, state, and local
16 government, Indian tribes, small forest landowners, conservation
17 groups, industrial foresters, and other individuals deemed beneficial
18 by the department in implementing this section.

19 (3) By December 31, 2011, the department of natural resources must
20 present their research and any proposed incentives to the governor, the
21 appropriate committees of the legislature, the commissioner of public
22 lands, and the forest practices board. The department of natural
23 resources shall also offer to present their findings and
24 recommendations to the Washington congressional delegation, local
25 governments, and any state or federal agency that has as a portion of
26 their mission the support of Washington's working land base and the
27 jobs, products, and ecological values that working lands provide.

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

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

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

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

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

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

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

10 (3) "Application" means the application required pursuant to RCW
11 76.09.050.

12 (4) "Aquatic resources" includes water quality, salmon, other
13 species of the vertebrate classes Cephalaspidomorphi and Osteichthyes
14 identified in the forests and fish report, the Columbia torrent
15 salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander
16 (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton*
17 *olympian*), the Dunn's salamander (*Plethodon dunnii*), the Van Dyke's
18 salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and
19 their respective habitats.

20 (5) "Board" means the forest practices board created in RCW
21 76.09.030.

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

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

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

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

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

32 (11) "Forest land" means all land which is capable of supporting a
33 merchantable stand of timber and is not being actively used for a use
34 which is incompatible with timber growing. Forest land does not
35 include agricultural land that is or was enrolled in the conservation
36 reserve enhancement program by contract if such agricultural land was
37 historically used for agricultural purposes and the landowner intends
38 to continue to use the land for agricultural purposes in the future.

1 As it applies to the operation of the road maintenance and abandonment
2 plan element of the forest practices rules on small forest landowners,
3 the term "forest land" excludes:

- 4 (a) Residential home sites, which may include up to five acres; and
- 5 (b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens,
6 and the land on which appurtenances necessary to the production,
7 preparation, or sale of crops, fruit, dairy products, fish, and
8 livestock exist.

9 (12) "Forest landowner" means any person in actual control of
10 forest land, whether such control is based either on legal or equitable
11 title, or on any other interest entitling the holder to sell or
12 otherwise dispose of any or all of the timber on such land in any
13 manner. However, any lessee or other person in possession of forest
14 land without legal or equitable title to such land shall be excluded
15 from the definition of "forest landowner" unless such lessee or other
16 person has the right to sell or otherwise dispose of any or all of the
17 timber located on such forest land.

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

- 21 (a) Road and trail construction;
- 22 (b) Harvesting, final and intermediate;
- 23 (c) Precommercial thinning;
- 24 (d) Reforestation;
- 25 (e) Fertilization;
- 26 (f) Prevention and suppression of diseases and insects;
- 27 (g) Salvage of trees; and
- 28 (h) Brush control.

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

35 (14) "Forest practices rules" means any rules adopted pursuant to
36 RCW 76.09.040.

37 (15) "Forest road," as it applies to the operation of the road
38 maintenance and abandonment plan element of the forest practices rules

1 on small forest landowners, means a road or road segment that crosses
2 land that meets the definition of forest land, but excludes residential
3 access roads.

4 (16) "Forest trees" does not include hardwood trees cultivated by
5 agricultural methods in growing cycles shorter than fifteen years if
6 the trees were planted on land that was not in forest use immediately
7 before the trees were planted and before the land was prepared for
8 planting the trees. "Forest trees" includes Christmas trees, but does
9 not include Christmas trees that are cultivated by agricultural
10 methods, as that term is defined in RCW 84.33.035.

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

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

15 (19) "Person" means any individual, partnership, private, public,
16 or municipal corporation, county, the department or other state or
17 local governmental entity, or association of individuals of whatever
18 nature.

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

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

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

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

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

36 (25) "Unconfined stream" means generally fifth order or larger
37 waters that experience abrupt shifts in channel location, creating a
38 complex floodplain characterized by extensive gravel bars, disturbance

1 species of vegetation of variable age, numerous side channels, wall-
2 based channels, oxbow lakes, and wetland complexes. Many of these
3 streams have dikes and levees that may temporarily or permanently
4 restrict channel movement.

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

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

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