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**SENATE BILL 5401**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** Senators Morton, Jacobsen, Stevens, Ranker, Hatfield, Roach, and Kline

Read first time 01/21/09. Referred to Committee on Natural Resources, Ocean & Recreation.

1 AN ACT Relating to habitat open space; and amending RCW 76.09.040.

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

3 **Sec. 1.** RCW 76.09.040 and 2000 c 11 s 3 are each amended to read  
4 as follows:

5 (1) Where necessary to accomplish the purposes and policies stated  
6 in RCW 76.09.010, and to implement the provisions of this chapter, the  
7 board shall adopt forest practices rules pursuant to chapter 34.05 RCW  
8 and in accordance with the procedures enumerated in this section that:

9 (a) Establish minimum standards for forest practices;

10 (b) Provide procedures for the voluntary development of resource  
11 management plans which may be adopted as an alternative to the minimum  
12 standards in (a) of this subsection if the plan is consistent with the  
13 purposes and policies stated in RCW 76.09.010 and the plan meets or  
14 exceeds the objectives of the minimum standards;

15 (c) Set forth necessary administrative provisions;

16 (d) Establish procedures for the collection and administration of  
17 forest practice fees as set forth by this chapter; and

18 (e) Allow for the development of watershed analyses.

1 Forest practices rules pertaining to water quality protection shall  
2 be adopted by the board after reaching agreement with the director of  
3 the department of ecology or the director's designee on the board with  
4 respect thereto. All other forest practices rules shall be adopted by  
5 the board.

6 Forest practices rules shall be administered and enforced by either  
7 the department or the local governmental entity as provided in this  
8 chapter. Such rules shall be adopted and administered so as to give  
9 consideration to all purposes and policies set forth in RCW 76.09.010.

10 (2) The board shall prepare proposed forest practices rules. In  
11 addition to any forest practices rules relating to water quality  
12 protection proposed by the board, the department of ecology may submit  
13 to the board proposed forest practices rules relating to water quality  
14 protection.

15 Prior to initiating the rule-making process, the proposed rules  
16 shall be submitted for review and comments to the department of fish  
17 and wildlife and to the counties of the state. After receipt of the  
18 proposed forest practices rules, the department of fish and wildlife  
19 and the counties of the state shall have thirty days in which to review  
20 and submit comments to the board, and to the department of ecology with  
21 respect to its proposed rules relating to water quality protection.  
22 After the expiration of such thirty day period the board and the  
23 department of ecology shall jointly hold one or more hearings on the  
24 proposed rules pursuant to chapter 34.05 RCW. At such hearing(s) any  
25 county may propose specific forest practices rules relating to problems  
26 existing within such county. The board may adopt and the department of  
27 ecology may approve such proposals if they find the proposals are  
28 consistent with the purposes and policies of this chapter.

29 (3) The board shall establish by rule a program for the acquisition  
30 of riparian open space ((~~program that includes acquisition of a fee~~  
31 ~~interest in, or at the landowner's option, a conservation easement on)~~  
32 and habitat of federally listed species on private forest lands. At  
33 the landowner's option, acquisition may be of a fee interest or a  
34 conservation easement. Lands eligible for acquisition are forest lands  
35 within unconfined avulsing channel migration zones or containing  
36 habitat of species that are federally listed as threatened or  
37 endangered. Once acquired, these lands may be held and managed by the  
38 department, transferred to another state agency, transferred to an

1 appropriate local government agency, or transferred to a private  
2 nonprofit nature conservancy corporation, as defined in RCW 64.04.130,  
3 in fee or transfer of management obligation. The board shall adopt  
4 rules governing the acquisition by the state or donation to the state  
5 of such interest in lands including the right of refusal if the lands  
6 are subject to unacceptable liabilities. The rules shall include  
7 definitions of qualifying lands, priorities for acquisition, and  
8 provide for the opportunity to transfer such lands with limited  
9 warranties and with a description of boundaries that does not require  
10 full surveys where the cost of securing the surveys would be  
11 unreasonable in relation to the value of the lands conveyed. The rules  
12 shall provide for the management of the lands for ecological protection  
13 or fisheries enhancement. Because there are few, if any, comparable  
14 sales of forest land within unconfined avulsing channel migration zones  
15 or threatened and endangered species habitat, separate from the other  
16 lands or assets, these lands are likely to be extraordinarily difficult  
17 to appraise and the cost of a conventional appraisal often would be  
18 unreasonable in relation to the value of the land involved. Therefore,  
19 for the purposes of voluntary sales under this section, the legislature  
20 declares that these lands are presumed to have a value equal to: (a)  
21 The acreage in the sale multiplied by the average value of commercial  
22 forest land in the region under the land value tables used for property  
23 tax purposes under RCW ((84.33.120)) 84.33.140; plus (b) the cruised  
24 volume of any timber located within the channel migration zone or  
25 threatened and endangered species habitat multiplied by the appropriate  
26 quality code stumpage value for timber of the same species shown on the  
27 appropriate table used for timber harvest excise tax purposes under RCW  
28 84.33.091. For purposes of this section, there shall be an eastside  
29 region and a westside region as defined in the forests and fish report  
30 as defined in RCW 76.09.020.

31 (4) Subject to appropriations sufficient to cover the cost of such  
32 an acquisition program and the related costs of administering the  
33 program, the department is directed to purchase a fee interest or, at  
34 the owner's option, a conservation easement in land that an owner  
35 tenders for purchase; provided that such lands have been taxed as  
36 forest lands and are located within an unconfined avulsing channel  
37 migration zone or contain habitat of species that are federally listed

1 as threatened or endangered. Lands acquired under this section shall  
2 become riparian or habitat open space. These acquisitions shall not be  
3 deemed to trigger the compensating tax of chapters 84.33 and 84.34 RCW.

4 (5) Instead of offering to sell interests in qualifying lands,  
5 owners may elect to donate the interests to the state.

6 (6) Any acquired interest in qualifying lands by the state under  
7 this section shall be managed as riparian or habitat open space.

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