
SUBSTITUTE SENATE BILL 6641

State of Washington 61st Legislature 2010 Regular Session

By Senate Natural Resources, Ocean & Recreation (originally sponsored by Senator Jacobsen)

READ FIRST TIME 02/03/10.

1 AN ACT Relating to forest practices applications leading to
2 conversion of land for development purposes; amending RCW 76.09.050 and
3 43.21C.037; and reenacting and amending RCW 76.09.240.

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

5 **Sec. 1.** RCW 76.09.050 and 2005 c 146 s 1003 are each amended to
6 read as follows:

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

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

17 Class II: Forest practices which have a less than ordinary
18 potential for damaging a public resource that may be conducted without
19 submitting an application and may begin five calendar days, or such

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

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

10 (b) On forest lands located on lots, as the term "lot" is defined
11 in RCW 58.17.020, that are less than or equal to two and one-half
12 acres, unless a landowner:

13 (i) Owns adjacent lots, with common boundaries the length of which
14 are at least ten percent of the perimeter of the smaller of each two
15 lots with common boundaries, and with a combined total forest land
16 acreage of five acres or more from all of the lots; and

17 (ii) Provides to the department and the county, city, or town a
18 written statement of intent, signed by the forest landowner, not to
19 convert the forest land to a use other than growing commercial timber
20 for ten years;

21 ~~((b))~~ (c) Which require approvals under the provisions of the
22 hydraulics act, RCW 77.55.021;

23 ~~((e))~~ (d) Within "shorelines of the state" as defined in RCW
24 90.58.030;

25 ~~((d))~~ (e) Excluded from Class II by the board; or

26 ~~((e))~~ (f) Including timber harvesting or road construction within
27 "urban growth areas," designated pursuant to chapter 36.70A RCW, which
28 are Class IV;

29 Class III: Forest practices other than those contained in Class I,
30 II, or IV. A Class III application must be approved or disapproved by
31 the department within thirty calendar days from the date the department
32 receives the application. However, the applicant may not begin work on
33 that forest practice until all forest practice fees required under RCW
34 76.09.065 have been received by the department;

35 Class IV: Forest practices other than those contained in Class I
36 or II:

37 (a) On ~~((lands platted after January 1, 1960, as provided in~~

1 ~~chapter 58.17 RCW, (b) on lands that have or are being converted to~~
2 ~~another use,))~~ forest lands that are being converted to another use;

3 (b) On forest lands located on lots, as the term "lot" is defined
4 in RCW 58.17.020, that are less than or equal to two and one-half
5 acres, unless a landowner:

6 (i) Owns adjacent lots, with common boundaries the length of which
7 are at least ten percent of the perimeter of the smaller of each two
8 lots with common boundaries, and with a combined total forest land
9 acreage of five acres or more from all of the lots; and

10 (ii) Provides to the department and the county a written statement
11 of intent, signed by the forest landowner, not to convert the forest
12 land to a use other than growing commercial timber for ten years;

13 (c) On lands which, pursuant to RCW 76.09.070 as now or hereafter
14 amended, are not to be reforested because of the likelihood of future
15 conversion to urban development((~~7~~));

16 (d) ~~((involving))~~ Which involve timber harvesting or road
17 construction on forest lands that are contained within "urban growth
18 areas," designated pursuant to chapter 36.70A RCW, except where the
19 forest landowner provides:

20 (i) A written statement of intent signed by the forest landowner
21 not to convert to a use other than commercial forest product operations
22 for ten years, accompanied by either a written forest management plan
23 acceptable to the department or documentation that the land is enrolled
24 under the provisions of chapter 84.33 or 84.34 RCW; or

25 (ii) A conversion option harvest plan approved by the local
26 governmental entity and submitted to the department as part of the
27 application((~~7~~)); and/or

28 (e) Which have a potential for a substantial impact on the
29 environment and therefore require an evaluation by the department as to
30 whether or not a detailed statement must be prepared pursuant to the
31 state environmental policy act, chapter 43.21C RCW. Such evaluation
32 shall be made within ten days from the date the department receives the
33 application: PROVIDED, That nothing herein shall be construed to
34 prevent any local or regional governmental entity from determining that
35 a detailed statement must be prepared for an action pursuant to a Class
36 IV forest practice taken by that governmental entity concerning the
37 land on which forest practices will be conducted. A Class IV
38 application must be approved or disapproved by the department within

1 thirty calendar days from the date the department receives the
2 application, unless the department determines that a detailed statement
3 must be made, in which case the application must be approved or
4 disapproved by the department within sixty calendar days from the date
5 the department receives the application, unless the commissioner of
6 public lands, through the promulgation of a formal order, determines
7 that the process cannot be completed within such period. However, the
8 applicant may not begin work on that forest practice until all forest
9 practice fees required under RCW 76.09.065 have been received by the
10 department.

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

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

28 (3) Except for those forest practices being regulated by local
29 governmental entities as provided elsewhere in this chapter, if a
30 notification or application is delivered in person to the department by
31 the operator or the operator's agent, the department shall immediately
32 provide a dated receipt thereof. In all other cases, the department
33 shall immediately mail a dated receipt to the operator.

34 (4) Except for those forest practices being regulated by local
35 governmental entities as provided elsewhere in this chapter, forest
36 practices shall be conducted in accordance with the forest practices
37 regulations, orders and directives as authorized by this chapter or the

1 forest practices regulations, and the terms and conditions of any
2 approved applications.

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

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

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

37 (a) The department receives written notice from the county, city,
38 or town of such objections within fourteen business days from the time

1 of transmittal of the application to the county, city, or town, or one
2 day before the department acts on the application, whichever is later;
3 and

4 (b) The objections relate to (~~lands~~) either:

5 (i) (~~Platted after January 1, 1960, as provided in chapter 58.17~~
6 ~~RCW; or~~

7 ~~(ii) On~~) Lands that (~~have or~~) are being converted to another
8 use; or

9 (ii) Forest lands located on lots, as the term "lot" is defined in
10 RCW 58.17.020, that are less than or equal to two and one-half acres,
11 unless a landowner:

12 (A) Owns adjacent lots, with common boundaries the length of which
13 are at least ten percent of the perimeter of the smaller of each two
14 lots with common boundaries, and with a combined total forest land
15 acreage of five acres or more from all of the lots; and

16 (B) Provides to the department and the county, city, or town a
17 written statement of intent, signed by the forest landowner, not to
18 convert the forest land to a use other than growing commercial timber
19 for ten years.

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

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

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

6 (10) For those forest practices regulated by the board and the
7 department, the department shall, within four business days notify the
8 county, city, or town of all notifications, approvals, and disapprovals
9 of an application affecting lands within the county, city, or town,
10 except to the extent the county, city, or town has waived its right to
11 such notice.

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

16 (12) Notwithstanding subsections (2) through (5) of this section,
17 forest practices applications or notifications are not required for
18 exotic insect and disease control operations conducted in accordance
19 with RCW 76.09.060(8) where eradication can reasonably be expected.

20 **Sec. 2.** RCW 76.09.240 and 2007 c 236 s 1 and 2007 c 106 s 6 are
21 each reenacted and amended to read as follows:

22 (1) On or before December 31, 2008:

23 (a) Counties planning under RCW 36.70A.040, and the cities and
24 towns within those counties, where more than a total of twenty-five
25 Class IV forest practices applications, as defined in RCW 76.09.050(1)
26 Class IV (a) through (d), have been filed with the department between
27 January 1, 2003, and December 31, 2005, shall adopt and enforce
28 ordinances or regulations as provided in subsection (2) of this section
29 for the following:

30 (i) Forest practices classified as Class I, II, III, and IV that
31 are within urban growth areas designated under RCW 36.70A.110, except
32 for forest practices on ownerships of contiguous forest land equal to
33 or greater than twenty acres where the forest landowner provides, to
34 the department and the county, city, or town a written statement of
35 intent, signed by the forest landowner, not to convert to a use other
36 than growing commercial timber for ten years. This statement must be
37 accompanied by 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)~~) Forest lands that ((have or)) are being converted to another
12 use;
13 (B) Forest lands located on lots, as the term "lot" is defined in
14 RCW 58.17.020, that are less than or equal to two and one-half acres,
15 unless a landowner:
16 (I) Owns adjacent lots, with common boundaries the length of which
17 are at least ten percent of the perimeter of the smaller of each two
18 lots with common boundaries, and with a combined total forest land
19 acreage of five acres or more from all of the lots; and
20 (II) Provides to the department and the county, city, or town a
21 written statement of intent, signed by the forest landowner, not to
22 convert the forest land to a use other than growing commercial timber
23 for ten years; or
24 (C) Lands which, under RCW 76.09.070, are not to be reforested
25 because of the likelihood of future conversion to urban development;
26 (b) Counties planning under RCW 36.70A.040, and the cities and
27 towns within those counties, not included in (a) of this subsection,
28 may adopt and enforce ordinances or regulations as provided in (a) of
29 this subsection; and
30 (c) Counties not planning under RCW 36.70A.040, and the cities and
31 towns within those counties, may adopt and enforce ordinances or
32 regulations as provided in subsection (2) of this section for forest
33 practices classified as Class IV involving either timber harvest or
34 road construction, or both on:
35 (i) (~~Lands platted after January 1, 1960, as provided in chapter~~
36 ~~58.17 RCW;~~
37 ~~(ii)~~) Lands that ((have or)) are being converted to another use;

1 (ii) Forest lands located on lots, as the term "lot" is defined in
2 RCW 58.17.020, that are less than or equal to two and one-half acres,
3 unless a landowner:

4 (A) Owns adjacent lots, with common boundaries the length of which
5 are at least ten percent of the perimeter of the smaller of each two
6 lots with common boundaries, and with a combined total forest land
7 acreage of five acres or more from all of the lots; and

8 (B) Provides to the department and the county, city, or town a
9 written statement of intent, signed by the forest landowner, not to
10 convert the forest land to a use other than growing commercial timber
11 for ten years; or

12 (iii) Lands which, under RCW 76.09.070, are not to be reforested
13 because of the likelihood of future conversion to urban development.

14 (2) Before a county, city, or town may regulate forest practices
15 under subsection (1) of this section, it shall ensure that its critical
16 areas and development regulations are in compliance with RCW 36.70A.130
17 and, if applicable, RCW 36.70A.215. The county, city, or town shall
18 notify the department and the department of ecology in writing sixty
19 days prior to adoption of the development regulations required in this
20 section. The transfer of jurisdiction shall not occur until the
21 county, city, or town has notified the department, the department of
22 revenue, and the department of ecology in writing of the effective date
23 of the regulations. Ordinances and regulations adopted under
24 subsection (1) of this section and this subsection must be consistent
25 with or supplement development regulations that protect critical areas
26 pursuant to RCW 36.70A.060, and shall at a minimum include:

27 (a) Provisions that require appropriate approvals for all phases of
28 the conversion of forest lands, including land clearing and grading;
29 and

30 (b) Procedures for the collection and administration of permit and
31 recording fees.

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

36 (4) The board shall continue to adopt rules and the department
37 shall continue to administer and enforce those rules in each county,
38 city, or town for all forest practices as provided in this chapter

1 until such a time as the county, city, or town has updated its
2 development regulations as required by RCW 36.70A.130 and, if
3 applicable, RCW 36.70A.215, and has adopted ordinances or regulations
4 under subsections (1) and (2) of this section. However, counties,
5 cities, and towns that have adopted ordinances or regulations regarding
6 forest practices prior to (~~July 22, 2007~~) June 10, 2010, are not
7 required to readopt their ordinances or regulations in order to satisfy
8 the requirements of this section except as necessary to ensure
9 consistency with Class IV forest practices as defined in RCW 76.09.050.

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

14 (6) For those forest practices over which the board and the
15 department maintain regulatory authority no county, city, municipality,
16 or other local or regional governmental entity shall adopt or enforce
17 any law, ordinance, or regulation pertaining to forest practices,
18 except that to the extent otherwise permitted by law, such entities may
19 exercise any:

20 (a) Land use planning or zoning authority: PROVIDED, That exercise
21 of such authority may regulate forest practices only: (i) Where the
22 application submitted under RCW 76.09.060 as now or hereafter amended
23 indicates that the lands (~~have been or will be~~) are being converted
24 to a use other than commercial forest product production; or (ii) on
25 (~~lands which have been platted after January 1, 1960, as provided in~~
26 ~~chapter 58.17 RCW~~) forest lands located on lots, as the term "lot" is
27 defined in RCW 58.17.020, that are less than or equal to two and one-
28 half acres, unless a landowner:

29 (A) Owns adjacent lots, with common boundaries the length of which
30 are at least ten percent of the perimeter of the smaller of each two
31 lots with common boundaries, and with a combined total forest land
32 acreage of five acres or more from all of the lots; and

33 (B) Provides to the department and the county, city, or town a
34 written statement of intent, signed by the forest landowner, not to
35 convert the forest land to a use other than growing commercial timber
36 for ten years: PROVIDED, That no permit system solely for forest
37 practices shall be allowed; that any additional or more stringent

1 regulations shall not be inconsistent with the forest practices
2 regulations enacted under this chapter; and such local regulations
3 shall not unreasonably prevent timber harvesting;

- 4 (b) Taxing powers;
- 5 (c) Regulatory authority with respect to public health; and
- 6 (d) Authority granted by chapter 90.58 RCW, the "Shoreline
7 Management Act of 1971."

8 (7) All counties and cities adopting or enforcing regulations or
9 ordinances under this section shall include in the regulation or
10 ordinance a requirement that a verification accompany every permit
11 issued for forest land by that county or city associated with the
12 conversion to a use other than commercial timber operation, as that
13 term is defined in RCW 76.09.020, that verifies that the land in
14 question is not or has not been subject to a notice of conversion to
15 nonforestry uses under RCW 76.09.060 during the six-year period prior
16 to the submission of a permit application.

17 (8) To improve the administration of the forest excise tax created
18 in chapter 84.33 RCW, a county, city, or town that regulates forest
19 practices under this section shall report permit information to the
20 department of revenue for all approved forest practices permits. The
21 permit information shall be reported to the department of revenue no
22 later than sixty days after the date the permit was approved and shall
23 be in a form and manner agreed to by the county, city, or town and the
24 department of revenue. Permit information includes the landowner's
25 legal name, address, telephone number, and parcel number.

26 **Sec. 3.** RCW 43.21C.037 and 1997 c 173 s 6 are each amended to read
27 as follows:

28 (1) Decisions pertaining to applications for Class I, II, and III
29 forest practices, as defined by rule of the forest practices board
30 under RCW 76.09.050, are not subject to the requirements of RCW
31 43.21C.030(2)(c) as now or hereafter amended.

32 (2) When the applicable county, city, or town requires a license in
33 connection with any proposal involving forest practices:

34 (a) ~~((on lands platted after January 1, 1960, as provided in
35 chapter 58.17 RCW, (b)))~~ On forest lands that ~~((have or))~~ are being
36 converted to another use~~((τ))~~i

1 (b) On forest lands located on lots, as the term "lots" is defined
2 in RCW 58.17.020, that are less than or equal to two and one-half
3 acres, unless a landowner:

4 (i) Owns adjacent lots, with common boundaries the length of which
5 are at least ten percent of the perimeter of the smaller of each two
6 lots with common boundaries, and with a combined total forest land
7 acreage of five acres or more from all of the lots; and

8 (ii) Provides to the department and the county, city, or town a
9 written statement of intent, signed by the forest landowner, not to
10 convert the forest land to a use other than growing commercial timber
11 for ten years; or

12 (c) On lands which, pursuant to RCW 76.09.070 as now or hereafter
13 amended, are not to be reforested because of the likelihood of future
14 conversion to urban development, then the local government, rather than
15 the department of natural resources, is responsible for any detailed
16 statement required under RCW 43.21C.030(2)(c).

17 (3) Those forest practices determined by rule of the forest
18 practices board to have a potential for a substantial impact on the
19 environment, and thus to be Class IV practices, require an evaluation
20 by the department of natural resources as to whether or not a detailed
21 statement must be prepared pursuant to this chapter. The evaluation
22 shall be made within ten days from the date the department receives the
23 application. A Class IV forest practice application must be approved
24 or disapproved by the department within thirty calendar days from the
25 date the department receives the application, unless the department
26 determines that a detailed statement must be made, in which case the
27 application must be approved or disapproved by the department within
28 sixty days from the date the department receives the application,
29 unless the commissioner of public lands, through the promulgation of a
30 formal order, determines that the process cannot be completed within
31 such period. This section shall not be construed to prevent any local
32 or regional governmental entity from determining that a detailed
33 statement must be prepared for an action regarding a Class IV forest
34 practice taken by that governmental entity concerning the land on which
35 forest practices will be conducted.

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