
HOUSE BILL 2453

State of Washington 62nd Legislature 2012 Regular Session

By Representatives Kretz, Blake, Orcutt, and Overstreet

Read first time 01/13/12. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to denials of forest practices applications;
2 amending RCW 76.09.050; and adding a new section to chapter 76.09 RCW.

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

4 **Sec. 1.** RCW 76.09.050 and 2011 c 207 s 1 are each amended to read
5 as follows:

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

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

16 Class II: Forest practices which have a less than ordinary
17 potential for damaging a public resource that may be conducted without
18 submitting an application and may begin five calendar days, or such
19 lesser time as the department may determine, after written notification

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

- 6 (a) On forest lands that are being converted to another use;
- 7 (b) Which require approvals under the provisions of the hydraulics
8 act, RCW 77.55.021;
- 9 (c) Within "shorelines of the state" as defined in RCW 90.58.030;
- 10 (d) Excluded from Class II by the board; or
- 11 (e) Including timber harvesting or road construction within "urban
12 growth areas," designated pursuant to chapter 36.70A RCW, which are
13 Class IV;

14 Class III: Forest practices other than those contained in Class I,
15 II, or IV. A Class III application must be approved or disapproved by
16 the department within thirty calendar days from the date the department
17 receives the application. However, the applicant may not begin work on
18 that forest practice until all forest practice fees required under RCW
19 76.09.065 have been received by the department;

20 Class IV: Forest practices other than those contained in Class I
21 or II:

- 22 (a) On forest lands that are being converted to another use;
- 23 (b) On lands which, pursuant to RCW 76.09.070 as now or hereafter
24 amended, are not to be reforested because of the likelihood of future
25 conversion to urban development;

26 (c) That involve timber harvesting or road construction on forest
27 lands that are contained within "urban growth areas," designated
28 pursuant to chapter 36.70A RCW, except where the forest landowner
29 provides:

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

35 (ii) A conversion option harvest plan approved by the local
36 governmental entity and submitted to the department as part of the
37 application; and/or

1 (d) Which have a potential for a substantial impact on the
2 environment and therefore require an evaluation by the department as to
3 whether or not a detailed statement must be prepared pursuant to the
4 state environmental policy act, chapter 43.21C RCW. Such evaluation
5 shall be made within ten days from the date the department receives the
6 application: PROVIDED, That nothing herein shall be construed to
7 prevent any local or regional governmental entity from determining that
8 a detailed statement must be prepared for an action pursuant to a Class
9 IV forest practice taken by that governmental entity concerning the
10 land on which forest practices will be conducted. A Class IV
11 application must be approved or disapproved by the department within
12 thirty calendar days from the date the department receives the
13 application, unless the department determines that a detailed statement
14 must be made, in which case the application must be approved or
15 disapproved by the department within sixty calendar days from the date
16 the department receives the application, unless the commissioner of
17 public lands, through the promulgation of a formal order, determines
18 that the process cannot be completed within such period. However, the
19 applicant may not begin work on that forest practice until all forest
20 practice fees required under RCW 76.09.065 have been received by the
21 department.

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

25 (2)(a) Except for those forest practices being regulated by local
26 governmental entities as provided elsewhere in this chapter, no Class
27 II, Class III, or Class IV forest practice shall be commenced or
28 continued after January 1, 1975, unless the department has received a
29 notification with regard to a Class II forest practice or approved an
30 application with regard to a Class III or Class IV forest practice
31 containing all information required by RCW 76.09.060 (~~as now or~~
32 ~~hereafter amended. However,~~). Any application denials must be
33 consistent with RCW 76.09.140 or section 2 of this act.

34 (b) In the event forest practices regulations necessary for the
35 scheduled implementation of this chapter and RCW 90.48.420 have not
36 been adopted in time to meet such schedules, the department shall have
37 the authority to regulate forest practices and approve applications on

1 such terms and conditions consistent with this chapter and RCW
2 90.48.420 and the purposes and policies of RCW 76.09.010 until
3 applicable forest practices regulations are in effect.

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

10 (4) Except for those forest practices being regulated by local
11 governmental entities as provided elsewhere in this chapter, forest
12 practices shall be conducted in accordance with the forest practices
13 regulations, orders and directives as authorized by this chapter or the
14 forest practices regulations, and the terms and conditions of any
15 approved applications.

16 (5) Except for those forest practices being regulated by local
17 governmental entities as provided elsewhere in this chapter, the
18 department of natural resources shall notify the applicant in writing
19 of either its approval of the application or its disapproval of the
20 application and the specific manner in which the application fails to
21 comply with the provisions of this section or with the forest practices
22 regulations. Except as provided otherwise in this section, if the
23 department fails to either approve or disapprove an application or any
24 portion thereof within the applicable time limit, the application shall
25 be deemed approved and the operation may be commenced: PROVIDED, That
26 this provision shall not apply to applications which are neither
27 approved nor disapproved pursuant to the provisions of subsection (7)
28 of this section: PROVIDED, FURTHER, That if seasonal field conditions
29 prevent the department from being able to properly evaluate the
30 application, the department may issue an approval conditional upon
31 further review within sixty days: PROVIDED, FURTHER, That the
32 department shall have until April 1, 1975, to approve or disapprove an
33 application involving forest practices allowed to continue to April 1,
34 1975, under the provisions of subsection (2) of this section. Upon
35 receipt of any notification or any satisfactorily completed application
36 the department shall in any event no later than two business days after
37 such receipt transmit a copy to the departments of ecology and fish and

1 wildlife, and to the county, city, or town in whose jurisdiction the
2 forest practice is to be commenced. Any comments by such agencies
3 shall be directed to the department of natural resources.

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

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

13 (a) The department receives written notice from the county, city,
14 or town of such objections within fourteen business days from the time
15 of transmittal of the application to the county, city, or town, or one
16 day before the department acts on the application, whichever is later;
17 and

18 (b) The objections relate to forest lands that are being converted
19 to another use.

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 (b) of this subsection are
23 based on local authority consistent with RCW 76.09.240 as now or
24 hereafter amended, the department shall disapprove the application
25 until such time as the county, city, or town consents to its approval
26 or such disapproval is reversed on appeal. The applicant shall be a
27 party to all department appeals of county, city, or town objections.
28 Unless the county, city, or town either consents or has waived its
29 rights under this subsection, the department shall not approve portions
30 of an application affecting such lands until the minimum time for
31 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 76.09.205. 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 NEW SECTION. **Sec. 2.** A new section is added to chapter 76.09 RCW
21 to read as follows:

22 (1) The department may not deny an application submitted under RCW
23 76.09.050 due to the presence of an archaeological object, as that term
24 is defined in RCW 27.53.030, unless an employee or contractor with
25 either the department or the department of archaeology and historic
26 preservation has physically inspected the proposed forest practice site
27 and confirmed the likely presence of an archaeological object or
28 objects. The inspection must occur on the actual land where the forest
29 practice is proposed at a time agreed upon by the applicant.

30 (2) If the department denies, or plans to deny, an application
31 submitted under RCW 76.09.050 due to the presence of an archaeological
32 object, then the department must:

33 (a) Provide to the applicant, concurrent with the denial, all
34 information available to the department concerning the archaeological
35 object or objects that will be, or are suspected to be, disturbed by
36 the forest practice; and

1 (b) Provide the applicant, at the applicant's discretion, with the
2 option of accepting an amended approval from the department, developed
3 in consultation with the department of archaeology and historic
4 preservation, that allows the proposed forest practice to be executed
5 in all areas of the affected parcel except for within a clearly
6 identified area that is to serve as a buffer to protect the identified
7 archaeological object or objects. The size and location of the buffer
8 area must be solely based on the information provided to the applicant
9 under (a) of this subsection and must be agreed to by the department
10 and the applicant.

11 (3) If an applicant accepts an amended approval under subsection
12 (2)(b) of this section, the original application must be considered
13 conditionally approved and all timelines applicable to the original
14 application remain in effect.

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