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**SUBSTITUTE SENATE BILL 5211**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** Senate Natural Resources & Marine Waters (originally sponsored by Senators Haugen, Swecker, Morton, Ranker, and Hargrove)

READ FIRST TIME 02/15/11.

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

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

5       **Sec. 1.** RCW 76.09.050 and 2010 c 210 s 20 are each amended to read  
6 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) Which require approvals under the provisions of the hydraulics  
11 act, RCW 77.55.021;

12 (c) Within "shorelines of the state" as defined in RCW 90.58.030;

13 (d) Excluded from Class II by the board; or

14 (e) Including timber harvesting or road construction within "urban  
15 growth areas," designated pursuant to chapter 36.70A RCW, which are  
16 Class IV;

17 Class III: Forest practices other than those contained in Class I,  
18 II, or IV. A Class III application must be approved or disapproved by  
19 the department within thirty calendar days from the date the department  
20 receives the application. However, the applicant may not begin work on  
21 that forest practice until all forest practice fees required under RCW  
22 76.09.065 have been received by the department;

23 Class IV: Forest practices other than those contained in Class I  
24 or II:

25 (a) On ~~((lands platted after January 1, 1960, as provided in~~  
26 ~~chapter 58.17 RCW, (b) on lands that have or are being converted to~~  
27 ~~another use, (c))~~ forest lands that are being converted to another  
28 use;

29 (b) On lands which, pursuant to RCW 76.09.070 as now or hereafter  
30 amended, are not to be reforested because of the likelihood of future  
31 conversion to urban development((τ));

32 ~~((d) involving))~~ (c) That involve timber harvesting or road  
33 construction on forest lands that are contained within "urban growth  
34 areas," designated pursuant to chapter 36.70A RCW, except where the  
35 forest landowner provides:

36 (i) A written statement of intent signed by the forest landowner  
37 not to convert to a use other than commercial forest product operations

1 for ten years, accompanied by either a written forest management plan  
2 acceptable to the department or documentation that the land is enrolled  
3 under the provisions of chapter 84.33 or 84.34 RCW; or

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

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

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

31 (2) Except for those forest practices being regulated by local  
32 governmental entities as provided elsewhere in this chapter, no Class  
33 II, Class III, or Class IV forest practice shall be commenced or  
34 continued after January 1, 1975, unless the department has received a  
35 notification with regard to a Class II forest practice or approved an  
36 application with regard to a Class III or Class IV forest practice  
37 containing all information required by RCW 76.09.060 as now or  
38 hereafter amended. However, in the event forest practices regulations

1 necessary for the scheduled implementation of this chapter and RCW  
2 90.48.420 have not been adopted in time to meet such schedules, the  
3 department shall have the authority to regulate forest practices and  
4 approve applications on such terms and conditions consistent with this  
5 chapter and RCW 90.48.420 and the purposes and policies of RCW  
6 76.09.010 until applicable forest practices regulations are in effect.

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

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

19 (5) Except for those forest practices being regulated by local  
20 governmental entities as provided elsewhere in this chapter, the  
21 department of natural resources shall notify the applicant in writing  
22 of either its approval of the application or its disapproval of the  
23 application and the specific manner in which the application fails to  
24 comply with the provisions of this section or with the forest practices  
25 regulations. Except as provided otherwise in this section, if the  
26 department fails to either approve or disapprove an application or any  
27 portion thereof within the applicable time limit, the application shall  
28 be deemed approved and the operation may be commenced: PROVIDED, That  
29 this provision shall not apply to applications which are neither  
30 approved nor disapproved pursuant to the provisions of subsection (7)  
31 of this section: PROVIDED, FURTHER, That if seasonal field conditions  
32 prevent the department from being able to properly evaluate the  
33 application, the department may issue an approval conditional upon  
34 further review within sixty days: PROVIDED, FURTHER, That the  
35 department shall have until April 1, 1975, to approve or disapprove an  
36 application involving forest practices allowed to continue to April 1,  
37 1975, under the provisions of subsection (2) of this section. Upon  
38 receipt of any notification or any satisfactorily completed application

1 the department shall in any event no later than two business days after  
2 such receipt transmit a copy to the departments of ecology and fish and  
3 wildlife, and to the county, city, or town in whose jurisdiction the  
4 forest practice is to be commenced. Any comments by such agencies  
5 shall be directed to the department of natural resources.

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

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

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

20 (b) The objections relate to ~~((lands either:~~  
21 ~~(i) Platted after January 1, 1960, as provided in chapter 58.17~~  
22 ~~RCW; or~~

23 ~~(ii) On))~~ forest lands that ~~((have or))~~ are being converted to  
24 another use.

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

37 (8) For those forest practices regulated by the board and the  
38 department, in addition to any rights under the above paragraph, the

1 county, city, or town may appeal any department approval of an  
2 application with respect to any lands within its jurisdiction. The  
3 appeals board may suspend the department's approval in whole or in part  
4 pending such appeal where there exists potential for immediate and  
5 material damage to a public resource.

6 (9) For those forest practices regulated by the board and the  
7 department, appeals under this section shall be made to the appeals  
8 board in the manner and time provided in RCW 76.09.205. In such  
9 appeals there shall be no presumption of correctness of either the  
10 county, city, or town or the department position.

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

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

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

25 **Sec. 2.** RCW 76.09.240 and 2010 c 219 s 1 are each amended to read  
26 as follows:

27 (1)(a) Counties planning under RCW 36.70A.040 with a population  
28 greater than one hundred thousand, and the cities and towns within  
29 those counties, where more than a total of twenty-five Class IV forest  
30 practices applications, as defined in RCW 76.09.050(1) Class IV (a)  
31 through (d), have been filed with the department between January 1,  
32 2003, and December 31, 2005, shall adopt and enforce ordinances or  
33 regulations as provided in subsection (2) of this section for the  
34 following:

35 (i) Forest practices classified as Class I, II, III, and IV that  
36 are within urban growth areas designated under RCW 36.70A.110, except  
37 for forest practices on ownerships of contiguous forest land equal to

1 or greater than twenty acres where the forest landowner provides, to  
2 the department and the county, city, or town, a written statement of  
3 intent, signed by the forest landowner, not to convert to a use other  
4 than growing commercial timber for ten years. This statement must be  
5 accompanied by either:

6 (A) A written forest management plan acceptable to the department;  
7 or

8 (B) Documentation that the land is enrolled as forest land of long-  
9 term commercial significance under the provisions of chapter 84.33 RCW;  
10 and

11 (ii) Forest practices classified as Class IV, outside urban growth  
12 areas designated under RCW 36.70A.110, involving either timber harvest  
13 or road construction, or both on:

14 (A) (~~Lands platted after January 1, 1960, as provided in chapter~~  
15 ~~58.17 RCW;~~

16 ~~(B))~~ Forest lands that (~~have or~~) are being converted to another  
17 use; or

18 ~~((C))~~ (B) Lands which, under RCW 76.09.070, are not to be  
19 reforested because of the likelihood of future conversion to urban  
20 development;

21 (b) Counties planning under RCW 36.70A.040, and the cities and  
22 towns within those counties, not included in (a) of this subsection,  
23 may adopt and enforce ordinances or regulations as provided in (a) of  
24 this subsection; and

25 (c) Counties not planning under RCW 36.70A.040, and the cities and  
26 towns within those counties, may adopt and enforce ordinances or  
27 regulations as provided in subsection (2) of this section for forest  
28 practices classified as Class IV involving either timber harvest or  
29 road construction, or both on:

30 (i) (~~Lands platted after January 1, 1960, as provided in chapter~~  
31 ~~58.17 RCW;~~

32 ~~(ii))~~ Forest lands that (~~have or~~) are being converted to another  
33 use; or

34 ~~((iii))~~ (ii) Lands which, under RCW 76.09.070, are not to be  
35 reforested because of the likelihood of future conversion to urban  
36 development.

37 (2) Before a county, city, or town may regulate forest practices  
38 under subsection (1) of this section, it shall ensure that its critical

1 areas and development regulations are in compliance with RCW 36.70A.130  
2 and, if applicable, RCW 36.70A.215. The county, city, or town shall  
3 notify the department and the department of ecology in writing sixty  
4 days prior to adoption of the development regulations required in this  
5 section. The transfer of jurisdiction shall not occur until the  
6 county, city, or town has notified the department, the department of  
7 revenue, and the department of ecology in writing of the effective date  
8 of the regulations. Ordinances and regulations adopted under  
9 subsection (1) of this section and this subsection must be consistent  
10 with or supplement development regulations that protect critical areas  
11 pursuant to RCW 36.70A.060, and shall at a minimum include:

12 (a) Provisions that require appropriate approvals for all phases of  
13 the conversion of forest lands, including land clearing and grading;  
14 and

15 (b) Procedures for the collection and administration of permit and  
16 recording fees.

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

21 (4) The board shall continue to adopt rules and the department  
22 shall continue to administer and enforce those rules in each county,  
23 city, or town for all forest practices as provided in this chapter  
24 until such a time as the county, city, or town has updated its  
25 development regulations as required by RCW 36.70A.130 and, if  
26 applicable, RCW 36.70A.215, and has adopted ordinances or regulations  
27 under subsections (1) and (2) of this section. However, counties,  
28 cities, and towns that have adopted ordinances or regulations regarding  
29 forest practices prior to (~~July 22, 2007,~~) the effective date of this  
30 section are not required to readopt their ordinances or regulations in  
31 order to satisfy the requirements of this section except as necessary  
32 to ensure consistency with Class IV forest practices as defined in RCW  
33 76.09.050.

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



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

7 (a) Land use planning or zoning authority: PROVIDED, That exercise  
8 of such authority may regulate forest practices only(~~(i)~~) where  
9 the application submitted under RCW 76.09.060 as now or hereafter  
10 amended indicates that the lands (~~(have been or will be)~~) are being  
11 converted to a use other than commercial forest product production(~~(i~~  
12 ~~or (ii) on lands which have been platted after January 1, 1960, as~~  
13 ~~provided in chapter 58.17 RCW))~~): PROVIDED, That no permit system  
14 solely for forest practices shall be allowed; that any additional or  
15 more stringent regulations shall not be inconsistent with the forest  
16 practices regulations enacted under this chapter; and such local  
17 regulations shall not unreasonably prevent timber harvesting;

18 (b) Taxing powers;

19 (c) Regulatory authority with respect to public health; and

20 (d) Authority granted by chapter 90.58 RCW, the "Shoreline  
21 Management Act of 1971."

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

31 (8) To improve the administration of the forest excise tax created  
32 in chapter 84.33 RCW, a county, city, or town that regulates forest  
33 practices under this section shall report permit information to the  
34 department of revenue for all approved forest practices permits. The  
35 permit information shall be reported to the department of revenue no  
36 later than sixty days after the date the permit was approved and shall  
37 be in a form and manner agreed to by the county, city, or town and the

1 department of revenue. Permit information includes the landowner's  
2 legal name, address, telephone number, and parcel number.

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

5 (1) Decisions pertaining to applications for Class I, II, and III  
6 forest practices, as defined by rule of the forest practices board  
7 under RCW 76.09.050, are not subject to the requirements of RCW  
8 43.21C.030(2)(c) as now or hereafter amended.

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

11 (~~on lands platted after January 1, 1960, as provided in~~  
12 ~~chapter 58.17 RCW, (b))~~ On forest lands that (~~have or~~) are being  
13 converted to another use(~~(τ))~~); or

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

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

1 practice taken by that governmental entity concerning the land on which  
2 forest practices will be conducted.

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