

NEW SECTION. Sec. 5. Section 286, chapter 249, Laws of 1909 and RCW 9.08.010 are each repealed.

NEW SECTION. Sec. 6. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate March 11, 1987.

Passed the House April 8, 1987.

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CHAPTER 95

[Second Substitute Senate Bill No. 5845]

FOREST PRACTICES

AN ACT Relating to forest practices; amending RCW 76.09.010, 76.09.040, 76.09.050, and 76.09.070; adding new sections to chapter 76.09 RCW; repealing RCW 76.09.950; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1, chapter 137, Laws of 1974 ex. sess. and RCW 76-.09.010 are each amended to read as follows:

(1) The legislature hereby finds and declares that the forest land resources are among the most valuable of all resources in the state; that a viable forest products industry is of prime importance to the state's economy; that it is in the public interest for public and private commercial forest lands to be managed consistent with sound policies of natural resource protection; that coincident with maintenance of a viable forest products industry, it is important to afford protection to forest soils, fisheries, wildlife, water quantity and quality, air quality, recreation, and scenic beauty.

(2) The legislature further finds and declares it to be in the public interest of this state to create and maintain through the adoption of this chapter a comprehensive state-wide system of laws and forest practices regulations which will achieve the following purposes and policies:

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

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

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

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

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

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

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

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

(i) Foster cooperation among managers of public resources, forest landowners, Indian tribes and the citizens of the state.

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

NEW SECTION. Sec. 2. (1) Mass earth movements and fluvial processes can endanger public resources and public safety. In some cases, action can be taken which has a probability of reducing the danger to public resources and public safety. In other cases it may be best to take no action. In order to determine where and what, if any, actions should be taken on forest lands, the department shall develop a program to correct hazardous conditions on identified sites associated with roads and railroad grades constructed on private and public forest lands prior to January 1, 1987. The first priority treatment shall be accorded to those roads and railroad grades constructed before the effective date of the forest practices act of 1974.

(2) This program shall be designed to accomplish the purposes and policies set forth in RCW 76.09.010. For each geographic area studied, the department shall produce a hazard-reduction plan which shall consist of the following elements:

(a) Identification of sites where the department determines that earth movements or fluvial processes pose a significant danger to public resources or public safety: **PROVIDED**, That no liability shall attach to the state of Washington or the department for failure to identify such sites;

(b) Recommendations for the implementation of any appropriate hazard-reduction measures on the identified sites, which minimize interference with natural processes and disturbance to the environment;

(c) Analysis of the costs and benefits of each of the hazard-reduction alternatives, including a no-action alternative.

(3) In developing these plans, it is intended that the department utilize appropriate scientific expertise including a geomorphologist, a forest hydrologist, and a forest engineer.

(4) In developing these plans, the department shall consult with affected tribes, landowners, governmental agencies, and interested parties.

(5) Unless requested by a forest landowner under section 6 of this act, the department shall study geographic areas for participation in the program only to the extent that funds have been appropriated for cost sharing of hazard-reduction measures under section 6 of this act.

NEW SECTION. Sec. 3. The forest practices board may, upon request of the department or at its own discretion, appoint an advisory committee consisting of not more than five members qualified by appropriate experience and training to review and comment upon such draft hazard reduction plans prepared by the department as the department submits for review.

If an advisory committee is established, and within ninety days following distribution of a draft plan, the advisory committee shall prepare a written report on each hazard reduction plan submitted to it. The report, which shall be kept on file by the department, shall address each of those elements described in section 2(2) of this act.

Final authority for each plan is vested in the department, and advisory committee comments and decisions shall be advisory only. The exercise by advisory committee members of their authority to review and comment shall not imply or create any liability on their part. Advisory committee members shall be compensated as provided for in RCW 43.03.250 and shall receive reimbursement for travel expenses as provided by RCW 43.03.050 and 43.03.060.

NEW SECTION. Sec. 4. (1) The department shall send a notice to all forest landowners, both public and private, within the geographic area selected for review, stating that the department intends to study the area as part of the hazard-reduction program.

(2) The department shall prepare a proposed plan for each geographic area studied. The department shall provide the proposed plan to affected landowners, Indian tribes, interested parties, and to the advisory committee, if established pursuant to section 3 of this act.

(3) Any aggrieved landowners, agencies, tribes, and other persons who object to any or all of the proposed hazard-reduction plan may, within thirty days of issuance of the plan, request the department in writing to schedule a conference. If so requested, the department shall schedule a conference on a date not more than thirty days after receiving such request.

(4) Within ten days after such a conference, the department shall either amend the proposed plan or respond in writing indicating why the objections were not incorporated into the plan.

(5) Within one hundred twenty days following the issuance of the proposed plan as provided in subsection (2) of this section, the department shall distribute a final hazard-reduction plan designating those sites for which hazard-reduction measures are recommended and those sites where no action is recommended. For each hazard-reduction measure recommended, a description of the work and cost estimate shall be provided.

(6) Any aggrieved landowners, agencies, tribes, and other persons are entitled to appeal the final hazard-reduction plan to the forest practices appeals board if, within thirty days of the issuance of the final plan, the party transmits a notice of appeal to the forest practices appeals board and to the department.

(7) A landowner's failure to object to the recommendations or to appeal the final hazard-reduction plan shall not be deemed an admission that the hazard-reduction recommendations are appropriate.

(8) The department shall provide a copy of the final hazard-reduction plan to the department of ecology and to each affected county.

NEW SECTION. Sec. 5. (1) When a forest landowner elects to implement the recommended hazard-reduction measures, the landowner shall notify the department and apply for cost-sharing funds. Upon completion, the department shall inspect the remedial measures undertaken by the forest landowner. If, in the department's opinion, the remedial measures have been properly implemented, the department shall promptly transmit a letter to the landowner stating that the landowner has complied with the hazard-reduction measures.

(2) Forest landowners, public and private, of hazard-reduction sites reviewed by the department and who have complied with the department's recommendations for sites which require action shall not be liable for any personal injuries or property damage, occurring on or off the property reviewed, arising from mass earth movements or fluvial processes associated with the hazard-reduction site reviewed. The limitation on liability contained in this subsection shall also cover personal injuries or property damage arising from mass earth movements or fluvial processes which are associated with those areas disturbed by activities required to acquire site access and to execute the plan when such activities are approved as part of a hazard-reduction plan. Notwithstanding the foregoing provisions of this subsection, a landowner may be liable when the landowner had actual knowledge of a dangerous artificial latent condition on the property that was not disclosed to the department.

(3) The exercise by the department of its authority, duties, and responsibilities provided for developing and implementing the hazard-reduction program and plans shall not imply or create any liability in the state of Washington or the department except that the department may be liable if the department is negligent in making a final hazard-reduction plan or in approving the implementation of specific hazard-reduction measures.

NEW SECTION. Sec. 6. (1) Subject to the availability of appropriated funds, the department shall pay fifty percent of the cost of implementing the hazard-reduction program, except as provided in subsection (2) of this section.

(2) In the event department funds described in subsection (1) of this section are not available for all or a portion of a forest landowner's property, the landowner may request application of the hazard-reduction program to the owner's lands, provided the landowner funds one hundred percent of the cost of implementation of the department's recommended actions on his property.

(3) No cost-sharing funds may be made available for sites where the department determines that the hazardous condition results from a violation of then-prevailing standards as established by statute or rule.

NEW SECTION. Sec. 7. The legislature hereby finds and declares that riparian ecosystems on forest lands in addition to containing valuable timber resources, provide benefits for wildlife, fish, and water quality. Forest landowners may be required to leave trees standing in riparian areas to benefit public resources. It is recognized that these trees may blow down or fall into streams. This is beneficial to riparian dependent species. The landowner shall not be held liable for damages resulting from the leave trees falling from natural causes in riparian areas.

Sec. 8. Section 4, chapter 137, Laws of 1974 ex. sess. and RCW 76.09.040 are each amended to read as follows:

(1) Where necessary to accomplish the purposes and policies stated in RCW 76.09.010, and to implement the provisions of this chapter, the board shall promulgate forest practices regulations (~~(establishing)~~) pursuant to chapter 34.04 RCW and in accordance with the procedures enumerated in this section and RCW 76.09.200 that:

(a) Establish minimum standards for forest practices (~~(and setting)~~);

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

(c) Set forth necessary administrative provisions (~~(, pursuant to chapter 34.04 RCW and in accordance with the procedures enumerated in this section and RCW 76.09.200)~~).

Forest practices regulations pertaining to water quality protection shall be promulgated individually by the board and by the department of ecology after they have reached agreement with respect thereto. All other forest practices regulations shall be promulgated by the board.

Forest practices regulations shall be administered and enforced by the department except as otherwise provided in this chapter. Such regulations shall be promulgated and administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

(2) The board shall prepare proposed forest practices regulations. In addition to any forest practices regulations relating to water quality protection proposed by the board, the department of ecology shall prepare proposed forest practices regulations relating to water quality protection.

Prior to initiating the rule making process, the proposed regulations shall be submitted for review and comments to the department of fisheries, the department of game, and to the counties of the state. After receipt of the proposed forest practices regulations, the departments of fisheries and game and the counties of the state shall have thirty days in which to review and submit comments to the board, and to the department of ecology with respect to its proposed regulations relating to water quality protection. After the expiration of such thirty day period the board and the department of ecology shall jointly hold one or more hearings on the proposed regulations pursuant to chapter 34.04 RCW. At such hearing(s) any county may propose specific forest practices regulations relating to problems existing within such county. The board and the department of ecology may adopt such proposals if they find the proposals are consistent with the purposes and policies of this chapter.

Sec. 9. Section 5, chapter 137, Laws of 1974 ex. sess. as amended by section 2, chapter 200, Laws of 1975 1st ex. sess. and RCW 76.09.050 are each amended to read as follows:

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

Class I: Minimal or specific forest practices that have no direct potential for damaging a public resource that may be conducted without submitting an application or a notification;

Class II: Forest practices which have a less than ordinary potential for damaging a public resource that may be conducted without submitting an application and may begin five calendar days, or such lesser time as the department may determine, after written notification by the operator, in the manner, content, and form as prescribed by the department, is received by the department. Class II shall not include forest practices:

(a) On lands platted after January 1, 1960, or being converted to another use;

(b) Which require approvals under the provisions of the hydraulics act, RCW 75.20.100;

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

(d) Excluded from Class II by the board;

Class III: Forest practices other than those contained in Class I, II, or IV. A Class III application must be approved or disapproved by the department within (~~fourteen~~) thirty calendar days from the date the department receives the application;

Class IV: Forest practices other than those contained in Class I or II:
(a) On lands platted after January 1, 1960, (b) on lands being converted to

another use, (c) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, and/or (d) which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation shall be made within ten days from the date the department receives the application: PROVIDED, That nothing herein shall be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. A Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty calendar days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period.

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

(2) No Class II, Class III, or Class IV forest practice shall be commenced or continued after January 1, 1975, unless the department has received a notification with regard to a Class II forest practice or approved an application with regard to a Class III or Class IV forest practice containing all information required by RCW 76.09.060 as now or hereafter amended: PROVIDED, That any person commencing a forest practice during 1974 may continue such forest practice until April 1, 1975, if such person has submitted an application to the department prior to January 1, 1975: PROVIDED, FURTHER, That in the event forest practices regulations necessary for the scheduled implementation of this chapter and RCW 90.48.420 have not been adopted in time to meet such schedules, the department shall have the authority to regulate forest practices and approve applications on such terms and conditions consistent with this chapter and RCW 90.48.420 and the purposes and policies of RCW 76.09.010 until applicable forest practices regulations are in effect.

(3) If a notification or application is delivered in person to the department by the operator or his agent, the department shall immediately provide a dated receipt thereof. In all other cases, the department shall immediately mail a dated receipt to the operator.

(4) Forest practices shall be conducted in accordance with the forest practices regulations, orders and directives as authorized by this chapter or

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

(5) The department of natural resources shall notify the applicant in writing of either its approval of the application or its disapproval of the application and the specific manner in which the application fails to comply with the provisions of this section or with the forest practices regulations. Except as provided otherwise in this section, if the department fails to either approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the operation may be commenced: PROVIDED, That this provision shall not apply to applications which are neither approved nor disapproved pursuant to the provisions of subsection (7) of this section: PROVIDED, FURTHER, That if seasonal field conditions prevent the department from being able to properly evaluate the application, the department may issue an approval conditional upon further review within sixty days: PROVIDED, FURTHER, That the department shall have until April 1, 1975, to approve or disapprove an application involving forest practices allowed to continue to April 1, 1975, under the provisions of subsection (2) of this section. Upon receipt of any notification or any satisfactorily completed application the department shall in any event no later than two business days after such receipt transmit a copy to the departments of ecology, game, and fisheries, and to the county in which the forest practice is to be commenced. Any comments by such agencies shall be directed to the department of natural resources.

(6) If the county believes that an application is inconsistent with this chapter, the forest practices regulations, or any local authority consistent with RCW 76.09.240 as now or hereafter amended, it may so notify the department and the applicant, specifying its objections.

(7) The department shall not approve portions of applications to which a county objects if:

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

(b) The objections relate to lands either:

(i) Platted after January 1, 1960; or

(ii) Being converted to another use.

The department shall either disapprove those portions of such application or appeal the county objections to the appeals board. If the objections related to subparagraphs (b) (i) and (ii) of this subsection are based on local authority consistent with RCW 76.09.240 as now or hereafter amended, the department shall disapprove the application until such time as the county consents to its approval or such disapproval is reversed on appeal. The applicant shall be a party to all department appeals of county objections. Unless the county either consents or has waived its rights under this

subsection, the department shall not approve portions of an application affecting such lands until the minimum time for county objections has expired.

(8) In addition to any rights under the above paragraph, the county may appeal any department approval of an application with respect to any lands within its jurisdiction. The appeals board may suspend the department's approval in whole or in part pending such appeal where there exists potential for immediate and material damage to a public resource.

(9) Appeals under this section shall be made to the appeals board in the manner and time provided in RCW 76.09.220(9). In such appeals there shall be no presumption of correctness of either the county or the department position.

(10) The department shall, within four business days notify the county of all notifications, approvals, and disapprovals of an application affecting lands within the county, except to the extent the county has waived its right to such notice.

(11) A county may waive in whole or in part its rights under this section, and may withdraw or modify any such waiver, at any time by written notice to the department.

Sec. 10. Section 7, chapter 137, Laws of 1974 ex. sess. as last amended by section 1, chapter 173, Laws of 1982 and RCW 76.09.070 are each amended to read as follows:

After the completion of a logging operation, satisfactory reforestation as defined by the rules and regulations promulgated by the board shall be completed within three years: PROVIDED, That: (1) A longer period may be authorized if seed or seedlings are not available~~(~~PROVIDED FURTHER, That~~)~~; (2) a period of up to five years may be allowed where a natural regeneration plan is approved by the department; and (3) the department may identify low-productivity lands on which it may allow for a period of up to ten years for natural regeneration. Upon the completion of a reforestation operation a report on such operation shall be filed with the department of natural resources. Within twelve months of receipt of such a report the department shall inspect the reforestation operation, and shall determine either that the reforestation operation has been properly completed or that further reforestation and inspection is necessary.

Satisfactory reforestation is the obligation of the owner of the land as defined by forest practices regulations, except the owner of perpetual rights to cut timber owned separately from the land is responsible for satisfactory reforestation. The reforestation obligation shall become the obligation of a new owner if the land or perpetual timber rights are sold or otherwise transferred.

Prior to the sale or transfer of land or perpetual timber rights subject to a reforestation obligation, the seller shall notify the buyer of the existence

and nature of the obligation and the buyer shall sign a notice of reforestation obligation indicating the buyer's knowledge thereof. The notice shall be on a form prepared by the department and shall be sent to the department by the seller at the time of sale or transfer of the land or perpetual timber rights. If the seller fails to notify the buyer about the reforestation obligation, the seller shall pay the buyer's costs related to reforestation, including all legal costs which include reasonable attorneys' fees, incurred by the buyer in enforcing the reforestation obligation against the seller. Failure by the seller to send the required notice to the department at the time of sale shall be prima facie evidence, in an action by the buyer against the seller for costs related to reforestation, that the seller did not notify the buyer of the reforestation obligation prior to sale.

The forest practices regulations may provide alternatives to or limitations on the applicability of reforestation requirements with respect to forest lands being converted in whole or in part to another use which is compatible with timber growing. The forest practices regulations may identify classifications and/or areas of forest land that have the likelihood of future conversion to urban development within a ten year period. The reforestation requirements may be modified or eliminated on such lands: **PROVIDED**, That such identification and/or such conversion to urban development must be consistent with any local or regional land use plans or ordinances.

NEW SECTION. Sec. 11. Sections 2 through 7 of this act are each added to chapter 76.09 RCW.

NEW SECTION. Sec. 12. Section 1, chapter 118, Laws of 1981 and RCW 76.09.950 are each repealed.

NEW SECTION. Sec. 13. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate March 13, 1987.

Passed the House April 9, 1987.

Approved by the Governor April 20, 1987.

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CHAPTER 96

[Senate Bill No. 5712]

HIGHER EDUCATION TUITION AND FEES—NONRESIDENT STUDENT REDEFINED

AN ACT Relating to tuition and fees at institutions of higher education; and amending RCW 28B.15.012.

Be it enacted by the Legislature of the State of Washington: