
SECOND SUBSTITUTE HOUSE BILL 1286

State of Washington

54th Legislature

1995 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Buck, Pennington, Fuhrman, Pelesky, Johnson, McMorris, Sheldon, Cairnes, B. Thomas, Kessler, Stevens and Talcott)

Read first time 03/06/95.

1 AN ACT Relating to the regulation of forest practices; amending RCW
2 76.09.010, 76.09.020, 76.09.050, 76.09.080, and 76.09.090; adding new
3 sections to chapter 76.09 RCW; creating a new section; and declaring an
4 emergency.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 76.09 RCW
7 to read as follows:

8 The legislature finds and declares that:

9 (1) Failing to allow private forest landowners and state trust
10 lands to achieve an acceptable rate of return on their investments in
11 forest lands will result in the loss of revenues to schools and the
12 beneficiaries of other state trust lands and in the loss of working
13 forest lands throughout the state, and this loss will be harmful to the
14 general welfare of the people and the environment of the state. In
15 light of the long-term nature of forest investments, much greater
16 regulatory certainty than currently exists is required for private
17 forest landowners to remain viable in this state.

18 (2) Some of the current rules that restrict forest practices are
19 not compatible with the economic needs of private landowners and the

1 beneficiaries of state trust lands. Moreover, the process by which
2 these rules have been adopted and administered creates an unacceptable
3 level of regulatory uncertainty.

4 (3) It is in the best interest of the state that rules restricting
5 forest activities on private and state trust lands for endangered or
6 threatened species be adopted under the normal rule-making procedures
7 of the board, be directed toward ensuring the survival of the affected
8 species as a whole, and impose the burden for the recovery of the
9 species on public lands other than state trust lands.

10 **Sec. 2.** RCW 76.09.010 and 1993 c 443 s 1 are each amended to read
11 as follows:

12 (1) The legislature hereby finds and declares that the forest land
13 resources are among the most valuable of all resources in the state;
14 that a viable forest products industry is of prime importance to the
15 state's economy; that it is in the public interest for public and
16 private commercial forest lands to be managed consistent with sound
17 policies of natural resource protection; that ~~((coincident with
18 maintenance of a viable forest products industry))~~ it is important to
19 encourage economic and efficient forest practices to assure the
20 continuous growing and harvesting of timber as the primary use of
21 private forest lands and state trust lands and the maintenance of
22 forest lands for these purposes; and that, consistent with the policy
23 of assuring continuous growing and harvesting of timber, it is
24 important to afford protection to forest soils, fisheries, wildlife,
25 water quantity and quality, air quality, recreation, and scenic beauty.

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

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

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

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

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

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

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

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

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

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

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

20 (4) The legislature further finds and declares that it is in the
21 public interest that the applicants for state forest practice permits
22 should assist in paying for the cost of review and permitting necessary
23 for the environmental protection of these resources.

24 (5) The legislature further finds and declares that it is in the
25 public interest that the state implement the purposes and policies set
26 forth in subsection (2) of this section in a manner that is compatible
27 with the primary use of the forest lands of the state and the
28 maintenance of a viable forest products industry.

29 **Sec. 3.** RCW 76.09.020 and 1974 ex.s. c 137 s 2 are each amended to
30 read as follows:

31 For purposes of this chapter:

32 (1) "Appeals board" (~~shall~~) means the forest practices appeals
33 board created by RCW 76.09.210.

34 (2) "Commissioner" (~~shall~~) means the commissioner of public
35 lands.

36 (3) "Contiguous" (~~shall~~) means land adjoining or touching by
37 common corner or otherwise. Land having common ownership divided by a
38 road or other right of way shall be considered contiguous.

1 (4) "Conversion to a use other than commercial timber operation"
2 (~~shall~~) means a bona fide conversion to an active use which is
3 incompatible with timber growing and as may be defined by forest
4 practices regulations.

5 (5) "Department" (~~shall~~) means the department of natural
6 resources.

7 (6) "Forest land" (~~shall~~) means all land which is capable of
8 supporting a merchantable stand of timber and is not being actively
9 used for a use which is incompatible with timber growing.

10 (7) "Forest land owner" (~~shall~~) means any person in actual
11 control of forest land, whether such control is based either on legal
12 or equitable title, or on any other interest entitling the holder to
13 sell or otherwise dispose of any or all of the timber on such land in
14 any manner: PROVIDED, That any lessee or other person in possession of
15 forest land without legal or equitable title to such land shall be
16 excluded from the definition of "forest land owner" unless such lessee
17 or other person has the right to sell or otherwise dispose of any or
18 all of the timber located on such forest land.

19 (8) "Forest practice" (~~shall~~) means any activity conducted on or
20 directly pertaining to forest land and relating to growing, harvesting,
21 or processing timber, including but not limited to:

- 22 (a) Road and trail construction;
- 23 (b) Harvesting, final and intermediate;
- 24 (c) Precommercial thinning;
- 25 (d) Reforestation;
- 26 (e) Fertilization;
- 27 (f) Prevention and suppression of diseases and insects;
- 28 (g) Salvage of trees; and
- 29 (h) Brush control.

30 "Forest practice" (~~shall~~) does not include preparatory work such as
31 tree marking, surveying and road flagging, and removal or harvesting of
32 incidental vegetation from forest lands such as berries, ferns,
33 greenery, mistletoe, herbs, mushrooms, and other products which cannot
34 normally be expected to result in damage to forest soils, timber, or
35 public resources.

36 (9) "Forest practices regulations" (~~shall~~) means any rules
37 promulgated pursuant to RCW 76.09.040.

38 (10) "Application" (~~shall~~) means the application required
39 pursuant to RCW 76.09.050.

1 (11) "Operator" (~~shall~~) means any person engaging in forest
2 practices except an employee with wages as his sole compensation.

3 (12) "Person" (~~shall~~) means any individual, partnership, private,
4 public, or municipal corporation, county, the department or other state
5 or local governmental entity, or association of individuals of whatever
6 nature.

7 (13) "Public lands" means lands administered by the federal
8 government, including, but not limited to, national parks, national
9 forests, national monuments, and lands administered by the bureau of
10 land management; and lands administered by the state, including, but
11 not limited to, state parks and state wildlife refuges, but does not
12 include state trust lands.

13 (14) "Public resources" (~~shall~~) means water, species of fish and
14 wildlife as distinct from individual members of species, and in
15 addition shall mean capital improvements of the state or its political
16 subdivisions.

17 (~~(14)~~) (15) "Timber" (~~shall~~) means forest trees, standing or
18 down, of a commercial species, including Christmas trees.

19 (~~(15)~~) (16) "Timber owner" (~~shall~~) means any person having all
20 or any part of the legal interest in timber. Where such timber is
21 subject to a contract of sale, "timber owner" (~~shall~~) means the
22 contract purchaser.

23 (~~(16)~~) (17) "Board" (~~shall~~) means the forest practices board
24 created in RCW 76.09.030.

25 (18) "Endangered species" means: (a) Any wildlife species native
26 to the state of Washington that is seriously threatened with extinction
27 and is lawfully designated as endangered by an authorized agency of the
28 state of Washington; or (b) any wildlife species designated as
29 endangered under the endangered species act.

30 (19) "Material damage" means actual damage that significantly
31 exceeds the ordinary impact of comparable forest practices and is long
32 term and of more than localized effect.

33 (20) "Recovery plan" means either: (a) A final federal recovery
34 plan issued under the endangered species act; or (b) a final state
35 recovery plan validly issued by an authorized state agency.

36 (21) "State trust lands" means lands held in trust by the state of
37 Washington for the common schools, the University of Washington, and
38 others pursuant to the Washington enabling act (25 Stat. 676) and lands

1 held in trust by the state of Washington for various counties pursuant
2 to RCW 76.12.030.

3 (22) "Threatened species" means: (a) Any wildlife species native
4 to the state of Washington that is likely to become an endangered
5 species within the foreseeable future without cooperative management or
6 removal of threats and is lawfully designated as threatened by an
7 authorized agency of the state of Washington; or (b) any wildlife
8 species designated as threatened under the endangered species act.

9 (23) "Watershed analysis" means that process and report described
10 in chapter 222-22 WAC.

11 (24) "Endangered species act" means the federal endangered species
12 act, 87 Stat. 884, 16 U.S.C. 1531 et seq.

13 NEW SECTION. Sec. 4. A new section is added to chapter 76.09 RCW
14 to read as follows:

15 (1) The board may adopt regulations establishing planning processes
16 to address potential cumulative effects of forest practices likely to
17 be conducted by one or more forest landowners within a watershed or
18 other landscape planning area. Forest practices to be conducted in
19 accordance with such plans shall be excluded from the list of practices
20 adopted by the board under (d) of the Class IV forest practice
21 provisions of RCW 76.09.050(1), to the extent they would have been
22 included on such list by reason of environmental issues addressed in
23 plans approved by the department under those rules. To further
24 encourage landowners to participate in these planning processes, the
25 rules may provide other preferential treatment for forest practices
26 conducted in accordance with such plans. Adoption of such regulations
27 by the board may require preparation of a detailed statement under
28 chapter 43.21C RCW, but approval by the department of landowner plans
29 under such regulations does not.

30 (2) Except as may be provided by the board by rule, an incidental
31 take permit, incidental take statement, unlisted species agreement,
32 special rule relating to threatened species, or other written approval
33 by the United States fish and wildlife service or the national marine
34 fisheries service shall be considered equivalent to a plan approved by
35 the department pursuant to rules adopted under subsection (1) of this
36 section, with respect to the species of fish and wildlife covered by
37 such federal permit or approval.

1 **Sec. 5.** RCW 76.09.050 and 1994 c 264 s 49 are each amended to read
2 as follows:

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

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

8 (b) Class II: Forest practices which have a less than ordinary
9 potential for damaging a public resource that may be conducted without
10 submitting an application and may begin five calendar days, or such
11 lesser time as the department may determine, after written notification
12 by the operator, in the manner, content, and form as prescribed by the
13 department, is received by the department. However, the work may not
14 begin until all forest practice fees required under RCW 76.09.065 have
15 been received by the department. Class II shall not include forest
16 practices:

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

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

21 ~~((c))~~ (iii) Within "shorelines of the state" as defined in RCW
22 90.58.030; or

23 ~~((d))~~ (iv) Excluded from Class II by the board;

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

30 (d) Class IV: Forest practices other than those contained in Class
31 I or II: ~~((a))~~ (i) On lands platted after January 1, 1960, ~~((b))~~
32 (ii) on lands being converted to another use, ~~((c))~~ (iii) on lands
33 which, pursuant to RCW 76.09.070 as now or hereafter amended, are not
34 to be reforested because of the likelihood of future conversion to
35 urban development, and/or ~~((d))~~ (iv) which have a potential for a
36 substantial impact on the environment and therefore require an
37 evaluation by the department as to whether or not a detailed statement
38 must be prepared pursuant to the state environmental policy act,
39 chapter 43.21C RCW. Such evaluation shall be made within ten days from

1 the date the department receives the application: PROVIDED, That
2 nothing herein shall be construed to prevent any local or regional
3 governmental entity from determining that a detailed statement must be
4 prepared for an action pursuant to a Class IV forest practice taken by
5 that governmental entity concerning the land on which forest practices
6 will be conducted. A Class IV application must be approved or
7 disapproved by the department within thirty calendar days from the date
8 the department receives the application, unless the department
9 determines that a detailed statement must be made, in which case the
10 application must be approved or disapproved by the department within
11 sixty calendar days from the date the department receives the
12 application, unless the commissioner of public lands, through the
13 promulgation of a formal order, determines that the process cannot be
14 completed within such period. However, the applicant may not begin
15 work on that forest practice until all forest practice fees required
16 under RCW 76.09.065 have been received by the department.

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

20 (2) No Class II, Class III, or Class IV forest practice shall be
21 commenced or continued after January 1, 1975, unless the department has
22 received a notification with regard to a Class II forest practice or
23 approved an application with regard to a Class III or Class IV forest
24 practice containing all information required by RCW 76.09.060 as now or
25 hereafter amended: PROVIDED, That any person commencing a forest
26 practice during 1974 may continue such forest practice until April 1,
27 1975, if such person has submitted an application to the department
28 prior to January 1, 1975: PROVIDED, FURTHER, That in the event forest
29 practices regulations necessary for the scheduled implementation of
30 this chapter and RCW 90.48.420 have not been adopted in time to meet
31 such schedules, the department shall have the authority to regulate
32 forest practices and approve applications on such terms and conditions
33 consistent with this chapter and RCW 90.48.420 and the purposes and
34 policies of RCW 76.09.010 until applicable forest practices regulations
35 are in effect.

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

1 (4) Forest practices shall be conducted in accordance with the
2 forest practices regulations, orders and directives as authorized by
3 this chapter or the forest practices regulations, and the terms and
4 conditions of any approved applications. The department may impose a
5 condition on an application only after it has concluded that the
6 condition is necessary to prevent material damage to a public resource.
7 The department must also determine that there is no less restrictive or
8 less costly measure reasonably likely to prevent the material damage.
9 Before imposing the condition, the department must prepare a written
10 decision document, which it shall attach to the approved application.
11 The decision document shall:

12 (a) Outline the reasons for the department's conclusion that
13 material damage to public resources will occur unless the condition is
14 imposed;

15 (b) Identify the information relied upon by the department,
16 including the names of any department personnel or others whose
17 observations were relied upon. If the department relies on any site-
18 specific research or monitoring, the results shall be either attached
19 to the decision document or summarized in it and provided to the
20 applicant as soon as is practical; and

21 (c) Identify the alternative conditions, if any, which were
22 considered and rejected and the reasons such alternatives were not
23 accepted.

24 In an appeal of a condition imposed by the department, the
25 department shall bear the burden of proving that the condition is
26 necessary to prevent material damage to public resources, and that no
27 less restrictive or costly condition is reasonably likely to prevent
28 the material damage. Unless the applicant should otherwise agree, the
29 department shall be limited in the appeal to presenting evidence which
30 supports the basis, as identified in the decision document, for the
31 department's conclusion that material damage would occur unless the
32 condition is imposed.

33 (5) The department of natural resources shall notify the applicant
34 in writing of either its approval of the application or its disapproval
35 of the application and the specific manner in which the application
36 fails to comply with the provisions of this section or with the forest
37 practices regulations. Except as provided otherwise in this section,
38 if the department fails to either approve or disapprove an application
39 or any portion thereof within the applicable time limit, the

1 application shall be deemed approved and the operation may be
2 commenced: PROVIDED, That this provision shall not apply to
3 applications which are neither approved nor disapproved pursuant to the
4 provisions of subsection (7) of this section: PROVIDED, FURTHER, That
5 if seasonal field conditions prevent the department from being able to
6 properly evaluate the application, the department may issue an approval
7 conditional upon further review within sixty days: PROVIDED, FURTHER,
8 That the department shall have until April 1, 1975, to approve or
9 disapprove an application involving forest practices allowed to
10 continue to April 1, 1975, under the provisions of subsection (2) of
11 this section. Upon receipt of any notification or any satisfactorily
12 completed application the department shall in any event no later than
13 two business days after such receipt transmit a copy to the departments
14 of ecology and fish and wildlife, and to the county, city, or town in
15 whose jurisdiction the forest practice is to be commenced. Any
16 comments by such agencies shall be directed to the department of
17 natural resources.

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

23 (7) The department shall not approve portions of applications to
24 which a county, city, or town objects if:

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

30 (b) The objections relate to lands either:

31 (i) Platted after January 1, 1960; or

32 (ii) Being converted to another use.

33 The department shall either disapprove those portions of such
34 application or appeal the county, city, or town objections to the
35 appeals board. If the objections related to subparagraphs (b) (i) and
36 (ii) of this subsection are based on local authority consistent with
37 RCW 76.09.240 as now or hereafter amended, the department shall
38 disapprove the application until such time as the county, city, or town
39 consents to its approval or such disapproval is reversed on appeal.

1 The applicant shall be a party to all department appeals of county,
2 city, or town objections. Unless the county, city, or town either
3 consents or has waived its rights under this subsection, the department
4 shall not approve portions of an application affecting such lands until
5 the minimum time for county, city, or town objections has expired.

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

12 (9) Appeals under this section shall be made to the appeals board
13 in the manner and time provided in RCW 76.09.220(8). In such appeals
14 there shall be no presumption of correctness of either the county,
15 city, or town or the department position.

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

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

24 **Sec. 6.** RCW 76.09.080 and 1989 c 175 s 163 are each amended to
25 read as follows:

26 (1) The department shall have the authority to serve upon an
27 operator a stop work order which shall be a final order of the
28 department if:

29 (a) There is any violation of the provisions of this chapter or the
30 forest practices regulations; or

31 (b) There is a deviation from the approved application; or

32 (c) Immediate action is necessary to prevent continuation of or to
33 avoid material damage to a public resource.

34 In cases where the department issues a stop work order under (c) of
35 this subsection, the department shall, within two business days
36 following the service of the stop work order on the operator, prepare
37 and mail to the operator and landowner a written decision document
38 which shall:

1 (i) Outline the reasons for the department's conclusion that
2 material damage to public resources will occur unless the stop work
3 order is issued;

4 (ii) Identify the information relied upon by the department,
5 including the names of any departmental personnel or others whose
6 observations were relied upon. If the department relies on any site-
7 specific research or monitoring, the results shall be attached to the
8 decision document or summarized and provided to the applicant as soon
9 as is practical; and

10 (iii) Identify the reasonable alternative actions, if any, which
11 were considered and rejected, and discuss the reasons why the
12 alternatives were not accepted.

13 (2) The stop work order shall set forth:

14 (a) The specific nature, extent, and time of the violation,
15 deviation, damage, or potential damage;

16 (b) An order to stop all work connected with the violation,
17 deviation, damage, or potential damage;

18 (c) The specific course of action needed to correct such violation
19 or deviation or to prevent damage and to correct and/or compensate for
20 damage to public resources which has resulted from any violation,
21 unauthorized deviation, or willful or negligent disregard for potential
22 damage to a public resource; and/or those courses of action necessary
23 to prevent continuing damage to public resources where the damage is
24 resulting from the forest practice activities but has not resulted from
25 any violation, unauthorized deviation, or negligence; ((and))

26 (d) The right of the operator to a hearing before the appeals
27 board; and

28 (e) Whether a written decision document is required under this
29 section.

30 (3) The department shall immediately file a copy of ((such)) the
31 stop work order with the appeals board and mail a copy thereof to the
32 timber owner and forest land owner at the addresses shown on the
33 application. The operator, timber owner, or forest land owner may
34 commence an appeal to the appeals board within fifteen days after
35 service upon the operator. If such appeal is commenced, a hearing
36 shall be held not more than twenty days after copies of the notice of
37 appeal were filed with the appeals board. Such proceeding shall be an
38 adjudicative proceeding within the meaning of chapter 34.05 RCW, the
39 Administrative Procedure Act, except that in cases where a written

1 decision document is required under subsection (1)(c) of this section
2 the department shall bear the burden of proving that the stop work
3 order is necessary to prevent the continuation of or to avoid material
4 damage to public resources and that no less restrictive or less costly
5 measures are reasonably likely to accomplish the same. Unless the
6 operator and landowner should otherwise agree, the department shall be
7 limited in the appeal to presenting evidence which supports the basis,
8 as identified in the decision document, for the department's conclusion
9 that material damage would occur unless the stop work order was issued.
10 The operator shall comply with the order of the department immediately
11 upon being served, but the appeals board if requested shall have
12 authority to continue or discontinue in whole or in part the order of
13 the department under such conditions as it may impose pending the
14 outcome of the proceeding.

15 **Sec. 7.** RCW 76.09.090 and 1975 1st ex.s. c 200 s 6 are each
16 amended to read as follows:

17 If a violation, a deviation, material damage or potential for
18 material damage to a public resource has occurred and the department
19 determines that a stop work order is unnecessary, then the department
20 shall issue and serve upon the operator or land owner a notice(~~(, which~~
21 ~~shall clearly set forth)) to comply.~~

22 (1) A notice to comply shall clearly set forth:

23 ~~((+1))~~(a) The specific nature, extent, and time of failure to
24 comply with the approved application; or identifying the damage or
25 potential damage; and/or ~~((+b))~~ the relevant provisions of this
26 chapter or of the forest practice regulations relating thereto;

27 ~~((+2))~~ (b) The right of the operator or land owner to a hearing
28 before the department; and

29 ~~((+3))~~ (c) The specific course of action ordered by the department
30 to be followed by the operator to correct such failure to comply and to
31 prevent, correct and/or compensate for material damage to public
32 resources which resulted from any violation, unauthorized deviation, or
33 wilful or negligent disregard for potential damage to a public
34 resource; and/or those courses of action necessary to prevent
35 continuing damage to public resources where the damage is resulting
36 from the forest practice activities but has not resulted from any
37 violation, unauthorized deviation, or negligence.

1 (2) Prior to issuing a notice to comply other than one solely
2 involving claimed violations or deviations from the forest practices
3 act, forest practices regulations, or the terms and conditions of an
4 approved application, the department shall prepare a written decision
5 document and attach it to the notice. The decision document shall:

6 (a) Outline the reasons for the department's conclusion that
7 material damage to public resources will occur unless the notice to
8 comply is issued;

9 (b) Identify the information relied upon by the department,
10 including the names of department personnel or others which
11 observations were relied upon. If the department relies on any site-
12 specific research or monitoring, the results shall be attached to the
13 decision document or summarized and provided to the applicant as soon
14 as is practical; and

15 (c) Identify any alternative conditions which were considered and
16 rejected and the reasons such alternatives were not accepted.

17 (3) In an appeal of a notice to comply, the department shall bear
18 the burden of proving that the notice to comply was necessary, and in
19 cases covered by subsection (2) of this section, the department shall
20 be limited in the appeal to presenting evidence which supports the
21 basis, as identified in the decision document, for the department's
22 conclusion that material damage would occur unless the notice to comply
23 was issued.

24 (4) The department shall mail a copy (~~thereof~~) of the notice, and
25 decision document, if applicable, to the forest land owner and the
26 timber owner at the addresses shown on the application, showing the
27 date of service upon the operator. Such notice to comply shall become
28 a final order of the department(~~(: PROVIDED, That no direct appeal to~~
29 ~~the appeals board will be allowed from such final order)~~). Such
30 operator shall undertake the course of action so ordered by the
31 department unless, within fifteen days after the date of service of
32 such notice to comply, the operator, forest land owner, or timber
33 owner, (~~shall~~) requests the department in writing to schedule a
34 hearing or files an appeal to the appeals board. If (~~so requested,~~)
35 a hearing before the department is requested, the department shall
36 schedule a hearing on a date not more than twenty days after receiving
37 such request. Within ten days after such hearing, the department shall
38 issue a final order either withdrawing its notice to comply or clearly
39 setting forth the specific course of action to be followed by such

1 operator. Such operator shall undertake the course of action so
2 ordered by the department unless within thirty days after the date of
3 such final order, the operator, forest land owner, or timber owner
4 appeals such final order to the appeals board.

5 No person shall be under any obligation under this section to
6 prevent, correct, or compensate for any damage to public resources
7 which occurs more than one year after the date of completion of the
8 forest practices operations involved exclusive of reforestation, unless
9 such forest practices were not conducted in accordance with forest
10 practices rules and regulations: PROVIDED, That this provision shall
11 not relieve the forest land owner from any obligation to comply with
12 forest practices rules and regulations pertaining to providing
13 continuing road maintenance. No action to recover damages shall be
14 taken under this section more than two years after the date the damage
15 involved occurs.

16 NEW SECTION. **Sec. 8.** A new section is added to chapter 76.09 RCW
17 to read as follows:

18 (1) The board shall not adopt permanent rules for the protection of
19 endangered or threatened species of fish or wildlife, under RCW
20 76.09.040 or 76.09.050 or other authority, until a final recovery plan
21 has been issued for the species.

22 (2) The board shall not adopt an emergency rule, under RCW
23 76.09.040 or 76.09.050 or other authority, to protect fish and wildlife
24 unless:

25 (a) The species is an endangered species; and

26 (b) The board finds that in the absence of such an emergency rule,
27 forest practices on nonpublic lands that are to be regulated by the
28 proposed emergency rule would cause a material further decline in the
29 species as a whole.

30 NEW SECTION. **Sec. 9.** A new section is added to chapter 76.09 RCW
31 to read as follows:

32 (1) The board shall not adopt any rule that would materially limit
33 commercial forest management of forest lands unless the board expressly
34 finds that:

35 (a) The proposed rule fully assesses the feasibility of available
36 alternatives to direct regulation, including providing economic
37 incentives to encourage the desired behavior;

1 (b) The proposed rule is based on the best reasonably obtainable
2 scientific, technical, economic, and other information concerning the
3 need for and consequences of adopting such a rule;

4 (c) The restrictions on forest practices on nonpublic forest lands
5 set forth in the proposed rule are reasonable and capable of being
6 accomplished on nonpublic lands and comply with the regulatory fairness
7 act, chapter 19.85 RCW;

8 (d) The restrictions on forest practices on nonpublic forest lands
9 set forth in the proposed rule are not likely significantly to reduce
10 private investments in the acquisition and retention of forest lands in
11 the state or in silvicultural activities in the state, or to cause
12 conversion of significant amounts of forest lands to nonforest uses;

13 (e) Based on its review of applicable law, including, but not
14 limited to, the most recent advisory memorandum of the state attorney
15 general issued under RCW 36.70A.370, the restrictions on forest
16 practices on nonpublic forest lands set forth in the proposed rule will
17 not result in a taking of private property without compensation; and

18 (f) The proposed rule includes a variance procedure for use by
19 owners of parcels of land which are disproportionately affected by the
20 rule as applied.

21 (2) In addition to the limitations set forth in subsection (1) of
22 this section, the board shall not adopt any rule to protect fish and
23 wildlife that would materially limit commercial forest management of
24 forest lands unless the board expressly finds that:

25 (a) Protection of the species on public lands is inadequate;

26 (b) The proposed rule takes fully into account the protection of
27 the species provided by:

28 (i) The other rules adopted by the board;

29 (ii) Cooperative plans protecting wildlife including, but not
30 limited to, resource management plans and habitat conservation plans;
31 and

32 (iii) Predictable forest land management practices that the board
33 can reasonably anticipate will be carried out on the land involved
34 based on historic practices, published resource management plans, and
35 credible studies of expected future practices;

36 (c) The proposed rule has clearly identified specific life
37 requisites of the affected species which cannot reasonably be met
38 without regulation of forest practices on nonpublic lands; and

1 (d) The restrictions on forest practices on nonpublic forest lands
2 set forth in the proposed rule are the least costly means of meeting
3 the life requisites of the species.

4 (3) The board shall not adopt any rule requiring surveys of habitat
5 to determine occupancy or nonoccupancy, or permitting or authorizing
6 the department to reject applications or notifications as incomplete if
7 they do not include survey information of fish and wildlife to
8 determine occupancy or nonoccupancy. Any rules adopted by the board to
9 protect fish or wildlife shall protect only known sites, as documented
10 by the department of fish and wildlife in accordance with published
11 protocols.

12 NEW SECTION. **Sec. 10.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 11.** Any rule adopted by the forest practices
17 board after January 1, 1995, will be invalid unless readopted within
18 one hundred eighty days from the effective date of this act by the
19 board in accordance with the terms of this act. Any rule adopted by
20 the board before January 1, 1995, which classifies one or more forest
21 practices as Class IV - Special due to federal designation of critical
22 habitat shall be invalid to the extent that such federal designation
23 occurs after January 1, 1995, unless readopted within one hundred
24 eighty days from the effective date of this act by the board in
25 accordance with the terms of this act.

26 NEW SECTION. **Sec. 12.** This act is necessary for the immediate
27 preservation of the public peace, health, or safety, or support of the
28 state government and its existing public institutions, and shall take
29 effect immediately.

--- END ---