

HOUSE BILL 1281

State of Washington

56th Legislature

1999 Regular Session

By Representatives Regala, Anderson, Doumit, Haigh, Rockefeller, Eickmeyer, Hatfield, O'Brien, Kessler, Kenney and Lantz; by request of Commissioner of Public Lands

Read first time 01/20/1999. Referred to Committee on Natural Resources.

1 AN ACT Relating to providing incentives for nonindustrial private
2 forest landowners with landscape planning, technical assistance, carbon
3 storage markets, and rural design assistance; amending RCW 76.09.020,
4 75.20.100, 84.34.210, and 84.34.220; reenacting and amending RCW
5 76.09.060 and 76.09.220; adding new sections to chapter 76.09 RCW;
6 creating new sections; and making appropriations.

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

8 NEW SECTION. **Sec. 1.** This act may be known and cited as the
9 family forestry support act.

10 PART 1

11 NONINDUSTRIAL LANDOWNER LANDSCAPE MANAGEMENT PLANS

12 NEW SECTION. **Sec. 101.** The legislature finds that approximately
13 one-third of Washington's forested land base is managed by individuals
14 who own less than five thousand acres of forest land. These forest
15 lands often are located on the edges of urban areas. Current economic
16 factors are encouraging the conversion of these timber lands to uses
17 such as roads, residential areas, shopping malls, and other uses

1 incompatible with providing timber and other natural resources. Once
2 these lands have been converted, the land base available for growing
3 timber is permanently reduced. The loss of productive forest land
4 reduces the supply of commodities and the associated jobs in timber
5 production. It also causes the loss of habitat, wetlands, and open
6 space, all of which are essential to our quality of life in this state.

7 The legislature recognizes the importance of these nonindustrial
8 forest lands for providing the land base for timber production and
9 habitat, particularly riparian, wetland, and other habitat for assuring
10 the long-term sustainability of fish and wildlife. The legislature
11 recognizes that nonindustrial private forest landowners play a critical
12 role in managing and conserving forest land.

13 The legislature recognizes that with current economic factors many
14 nonindustrial private forest landowners will need incentives to help
15 them remain in forestry for the long term. These incentives and
16 assistance programs include: Enhanced forest stewardship programs;
17 long-term landscape planning and associated permits; purchase of
18 conservation easements and development rights; marketing credits for
19 using forests for carbon storage; and demonstrating different ways of
20 keeping lands in production while allowing low-impact development.

21 **Sec. 102.** RCW 76.09.020 and 1974 ex.s. c 137 s 2 are each amended
22 to read as follows:

23 For purposes of this chapter:

24 (1) "Appeals board" shall mean the forest practices appeals board
25 created by RCW 76.09.210.

26 (2) "Commissioner" shall mean the commissioner of public lands.

27 (3) "Contiguous" shall mean land adjoining or touching by common
28 corner or otherwise. Land having common ownership divided by a road or
29 other right of way shall be considered contiguous.

30 (4) "Conversion to a use other than commercial timber operation"
31 shall mean a bona fide conversion to an active use which is
32 incompatible with timber growing and as may be defined by forest
33 practices regulations.

34 (5) "Department" shall mean the department of natural resources.

35 (6) "Forest land" shall mean all land which is capable of
36 supporting a merchantable stand of timber and is not being actively
37 used for a use which is incompatible with timber growing.

1 (7) "Forest land owner" shall mean any person in actual control of
2 forest land, whether such control is based either on legal or equitable
3 title, or on any other interest entitling the holder to sell or
4 otherwise dispose of any or all of the timber on such land in any
5 manner: PROVIDED, That any lessee or other person in possession of
6 forest land without legal or equitable title to such land shall be
7 excluded from the definition of "forest land owner" unless such lessee
8 or other person has the right to sell or otherwise dispose of any or
9 all of the timber located on such forest land.

10 (8) "Forest practice" shall mean any activity conducted on or
11 directly pertaining to forest land and relating to growing, harvesting,
12 or processing timber, including but not limited to:

- 13 (a) Road and trail construction;
- 14 (b) Harvesting, final and intermediate;
- 15 (c) Precommercial thinning;
- 16 (d) Reforestation;
- 17 (e) Fertilization;
- 18 (f) Prevention and suppression of diseases and insects;
- 19 (g) Salvage of trees; and
- 20 (h) Brush control.

21 "Forest practice" shall not include preparatory work such as tree
22 marking, surveying and road flagging, and removal or harvesting of
23 incidental vegetation from forest lands such as berries, ferns,
24 greenery, mistletoe, herbs, mushrooms, and other products which cannot
25 normally be expected to result in damage to forest soils, timber, or
26 public resources.

27 (9) "Forest practices regulations" shall mean any rules promulgated
28 pursuant to RCW 76.09.040.

29 (10) "Application" shall mean the application required pursuant to
30 RCW 76.09.050.

31 (11) "Operator" shall mean any person engaging in forest practices
32 except an employee with wages as his sole compensation.

33 (12) "Person" shall mean any individual, partnership, private,
34 public, or municipal corporation, county, the department or other state
35 or local governmental entity, or association of individuals of whatever
36 nature.

37 (13) "Public resources" shall mean water, fish and wildlife, and in
38 addition shall mean capital improvements of the state or its political
39 subdivisions.

1 (14) "Timber" shall mean forest trees, standing or down, of a
2 commercial species, including Christmas trees.

3 (15) "Timber owner" shall mean any person having all or any part of
4 the legal interest in timber. Where such timber is subject to a
5 contract of sale, "timber owner" shall mean the contract purchaser.

6 (16) "Board" shall mean the forest practices board created in RCW
7 76.09.030.

8 (17) "Landowner landscape plan" means an individual landowner plan
9 prepared under section 103 of this act and approved by the department.

10 (18) "Landscape level permit" means a single forest practices
11 permit issued upon approval of a landowner landscape plan for a term
12 not to exceed twenty-five years.

13 (19) "Nonindustrial private forest landowner" means a nonindustrial
14 private forest landowner owning fifteen thousand acres or less of
15 forest land in Washington state and does not own or operate a forest
16 products manufacturing facility.

17 NEW SECTION. Sec. 103. A new section is added to chapter 76.09
18 RCW to read as follows:

19 (1) A landowner landscape plan will help each nonindustrial private
20 forest landowner incorporate best available science into his or her
21 long-term forest management objectives. This planning system is
22 intended to be a voluntary approach to providing protection for public
23 resources and capital improvements of the state, while providing
24 landowners longer term certainty for timber harvest.

25 (2) Sections 103, 104, and 108 of this act and RCW 76.09.060,
26 76.09.220, and 75.20.100 establish a pilot project to evaluate using
27 landscape plans and long-term permits as an incentive to keep
28 nonindustrial private forest landowners from converting their forest
29 lands to other incompatible uses.

30 (3) The department is granted authority to select up to twenty
31 nonindustrial landowners for the purpose of a pilot project to develop
32 individual landscape management plans.

33 (a) Pilot project participants must be selected by the department
34 in consultation with the departments of fish and wildlife and ecology
35 by December 31, 1999.

36 (b) Pilot project participants shall be selected on the basis of
37 size (less than fifteen thousand acres total ownership), risk to the
38 habitat and species, variety and importance of species and habitats in

1 the planning area, geographic distribution, surrounding ownership,
2 other ongoing landscape and watershed planning activities in the area,
3 potential benefits to water quantity and quality, financial and
4 staffing capabilities of participants, and other factors that will
5 contribute to the creation of a nonindustrial forest landowner
6 multispecies landscape planning system.

7 (c) The department shall, subject to available funding, assist
8 landowners in the development of the pilot landscape management plans.

9 (d) Each pilot landscape management plan shall contain the
10 following:

11 (i) A termination date not to exceed twenty-five years;

12 (ii) Short and long-term management objectives for the property;

13 (iii) Assessment of the current habitat conditions;

14 (iv) Management strategies in the following areas:

15 (A) Forest health;

16 (B) Timber and wood production;

17 (C) Soils;

18 (D) Water quality, riparian, and wetland areas;

19 (E) Fish and wildlife habitat;

20 (F) Threatened and endangered species;

21 (G) Aesthetics and recreation; and

22 (H) Road maintenance and abandonment;

23 (v) Maps delineating:

24 (A) Ownership, including the specific location covered by the
25 landowner landscape plan;

26 (B) Vegetative types including forest stands;

27 (C) Streams, ponds, wetlands, roads, structures;

28 (D) Soil types; and

29 (E) Other significant elements of the environment in need of
30 protection;

31 (vi) Reporting requirements and a schedule for review of the
32 landowner's performance under the plan;

33 (vii) Conditions under which the plan may be terminated. No plan
34 shall permit forest land covered by its terms to be withdrawn from
35 coverage, whether by sale, exchange, or other means, nor to be
36 converted to nonforestry uses except to the extent that such withdrawal
37 or conversion would not measurably impair the achievement of the plan's
38 stated public resource objectives;

1 (viii) Conditions under which the plan may be modified, such as
2 sale or transfer of land, exchanges, or catastrophic events; and

3 (ix) Conditions for modifying the plan in response to changes in
4 best available science and adaptive management.

5 (4) Until December 31, 2002, the department, in consultation with
6 the departments of fish and wildlife and ecology, shall approve a
7 landscape management plan when in the view of the department, the plan:

8 (a) Contains all the provisions required under chapter . . . , Laws
9 of 1999 (this act), and in the view of the department, meets the
10 standards and objectives of these provisions;

11 (b) Provides better protection than current state law for the
12 ecological functions expected to be provided by the landscape,
13 including but not limited to upland wildlife habitat, riparian habitat,
14 and water quality;

15 (c) Does not result in poorer habitat conditions over the life of
16 the plan for any species listed as threatened or endangered under
17 federal law;

18 (d) Measurably improves habitat conditions for the majority of
19 species that would be expected to be found within the planning area;

20 (e) Provides an opportunity for affected Indian tribes and
21 interested parties to review and comment on the plan prior to approval;
22 and

23 (f) Has undergone the environmental review process of chapter
24 43.21C RCW.

25 (5) If the department receives from the department of fish and
26 wildlife or the department of ecology a recommendation that is not
27 adopted, the department shall provide a written explanation of the
28 reasons for not adopting the recommendation.

29 (6) After a nonindustrial forest landowner landscape plan is
30 adopted:

31 (a) The department shall issue a single forest practices permit
32 valid for the term of the plan and the landowner landscape plan shall
33 supersede any current or future rule that specifically covers the
34 specific elements of the environment being protected under the plan.
35 This permit shall not impose additional conditions beyond those agreed
36 to in the plan;

37 (b) The plan shall serve as the hydraulic project approval for the
38 life of the plan, in compliance with RCW 75.20.100; and

1 (c) Nothing in this section impairs the department's conditioning
2 and enforcement authority.

3 (7) Landowners receiving a landscape level permit shall meet
4 annually with the department and the departments of fish and wildlife
5 and ecology to review the specific forest practices activities planned
6 for the next twelve months and to determine whether these activities
7 are in compliance with the plan. The departments will consult with the
8 affected Indian tribes and other interested parties who have expressed
9 an interest in a particular landscape plan.

10 (8) The landowner shall provide ten calendar days' written notice
11 to the department prior to the commencement of any forest practices
12 authorized under the landscape level permit. The department shall
13 forward the landowner's notice to the department of revenue.

14 (9) Except as otherwise provided in a plan, the agreement
15 implementing the landscape management plan is an agreement that runs
16 with the property covered by the approved landscape management plan.
17 The department shall record notice of the plan in the real property
18 records of the counties in which the affected properties are located.
19 If a participant transfers all or part of its interest in the property,
20 the terms of the plan still apply to the new landowner for the plan's
21 stated duration unless the plan is terminated under its terms or unless
22 the plan specifies the conditions under which the terms of the plan do
23 not apply to the new landowner.

24 NEW SECTION. **Sec. 104.** A new section is added to chapter 76.09
25 RCW to read as follows:

26 The department is directed to provide to the forest practices
27 board, no later than December 31, 2002, and every two years thereafter,
28 an evaluation of the pilot projects created in chapter . . . , Laws of
29 1999 (this act). The department shall recommend to the forest
30 practices board whether a permanent landscape planning process should
31 be established along with a discussion of what legislative and rule
32 modifications are necessary.

33 **Sec. 105.** RCW 76.09.060 and 1997 c 290 s 3 and 1997 c 173 s 3 are
34 each reenacted and amended to read as follows:

35 The following shall apply to those forest practices administered
36 and enforced by the department and for which the board shall promulgate
37 regulations as provided in this chapter:

1 (1) The department shall prescribe the form and contents of the
2 notification and application. The forest practices rules shall specify
3 by whom and under what conditions the notification and application
4 shall be signed or otherwise certified as acceptable. The application
5 or notification shall be delivered in person to the department, sent by
6 first class mail to the department or electronically filed in a form
7 defined by the department. The form for electronic filing shall be
8 readily convertible to a paper copy, which shall be available to the
9 public pursuant to chapter 42.17 RCW. The information required may
10 include, but is not limited to:

11 (a) Name and address of the forest landowner, timber owner, and
12 operator;

13 (b) Description of the proposed forest practice or practices to be
14 conducted;

15 (c) Legal description and tax parcel identification numbers of the
16 land on which the forest practices are to be conducted;

17 (d) Planimetric and topographic maps showing location and size of
18 all lakes and streams and other public waters in and immediately
19 adjacent to the operating area and showing all existing and proposed
20 roads and major tractor roads;

21 (e) Description of the silvicultural, harvesting, or other forest
22 practice methods to be used, including the type of equipment to be used
23 and materials to be applied;

24 (f) Proposed plan for reforestation and for any revegetation
25 necessary to reduce erosion potential from roadsides and yarding roads,
26 as required by the forest practices rules;

27 (g) Soil, geological, and hydrological data with respect to forest
28 practices;

29 (h) The expected dates of commencement and completion of all forest
30 practices specified in the application;

31 (i) Provisions for continuing maintenance of roads and other
32 construction or other measures necessary to afford protection to public
33 resources;

34 (j) An affirmation that the statements contained in the
35 notification or application are true; and

36 (k) All necessary application or notification fees.

37 (2) Long range plans may be submitted to the department for review
38 and consultation.

1 (3) The application for a forest practice or the notification of a
2 Class II forest practice is subject to the three-year reforestation
3 requirement.

4 (a) If the application states that any such land will be or is
5 intended to be so converted:

6 (i) The reforestation requirements of this chapter and of the
7 forest practices rules shall not apply if the land is in fact so
8 converted unless applicable alternatives or limitations are provided in
9 forest practices rules issued under RCW 76.09.070 as now or hereafter
10 amended;

11 (ii) Completion of such forest practice operations shall be deemed
12 conversion of the lands to another use for purposes of chapters 84.33
13 and 84.34 RCW unless the conversion is to a use permitted under a
14 current use tax agreement permitted under chapter 84.34 RCW;

15 (iii) The forest practices described in the application are subject
16 to applicable county, city, town, and regional governmental authority
17 permitted under RCW 76.09.240 as now or hereafter amended as well as
18 the forest practices rules.

19 (b) Except as provided elsewhere in this section, if the
20 application or notification does not state that any land covered by the
21 application or notification will be or is intended to be so converted:

22 (i) For six years after the date of the application the county,
23 city, town, and regional governmental entities shall deny any or all
24 applications for permits or approvals, including building permits and
25 subdivision approvals, relating to nonforestry uses of land subject to
26 the application;

27 (A) The department shall submit to the local governmental entity a
28 copy of the statement of a forest landowner's intention not to convert
29 which shall represent a recognition by the landowner that the six-year
30 moratorium shall be imposed and shall preclude the landowner's ability
31 to obtain development permits while the moratorium is in place. This
32 statement shall be filed by the local governmental entity with the
33 county recording officer, who shall record the documents as provided in
34 chapter 65.04 RCW, except that lands designated as forest lands of
35 long-term commercial significance under chapter 36.70A RCW shall not be
36 recorded due to the low likelihood of conversion. Not recording the
37 statement of a forest landowner's conversion intention shall not be
38 construed to mean the moratorium is not in effect.

1 (B) The department shall collect the recording fee and reimburse
2 the local governmental entity for the cost of recording the
3 application.

4 (C) When harvesting takes place without an application, the local
5 governmental entity shall impose the six-year moratorium provided in
6 (b)(i) of this subsection from the date the unpermitted harvesting was
7 discovered by the department or the local governmental entity.

8 (D) The local governmental entity shall develop a process for
9 lifting the six-year moratorium, which shall include public
10 notification, and procedures for appeals and public hearings.

11 (E) The local governmental entity may develop an administrative
12 process for lifting or waiving the six-year moratorium for the purposes
13 of constructing a single-family residence or outbuildings, or both, on
14 a legal lot and building site. Lifting or waiving of the six-year
15 moratorium is subject to compliance with all local ordinances.

16 (F) The six-year moratorium shall not be imposed on a forest
17 practices application that contains a conversion option harvest plan
18 approved by the local governmental entity unless the forest practice
19 was not in compliance with the approved forest practice permit. Where
20 not in compliance with the conversion option harvest plan, the six-year
21 moratorium shall be imposed from the date the application was approved
22 by the department or the local governmental entity;

23 (ii) Failure to comply with the reforestation requirements
24 contained in any final order or decision shall constitute a removal of
25 designation under the provisions of RCW 84.33.140, and a change of use
26 under the provisions of RCW 84.34.080, and, if applicable, shall
27 subject such lands to the payments and/or penalties resulting from such
28 removals or changes; and

29 (iii) Conversion to a use other than commercial forest product
30 operations within six years after approval of the forest practices
31 without the consent of the county, city, or town shall constitute a
32 violation of each of the county, municipal city, town, and regional
33 authorities to which the forest practice operations would have been
34 subject if the application had so stated.

35 (c) The application or notification shall be signed by the forest
36 landowner and accompanied by a statement signed by the forest landowner
37 indicating his or her intent with respect to conversion and
38 acknowledging that he or she is familiar with the effects of this
39 subsection.

1 (4) Whenever an approved application authorizes a forest practice
2 which, because of soil condition, proximity to a water course or other
3 unusual factor, has a potential for causing material damage to a public
4 resource, as determined by the department, the applicant shall, when
5 requested on the approved application, notify the department two days
6 before the commencement of actual operations.

7 (5) Before the operator commences any forest practice in a manner
8 or to an extent significantly different from that described in a
9 previously approved application or notification, there shall be
10 submitted to the department a new application or notification form in
11 the manner set forth in this section.

12 (6) Except as provided in RCW 76.09.350(4) or section 103(6)(a) of
13 this act, the notification to or the approval given by the department
14 to an application to conduct a forest practice shall be effective for
15 a term of two years from the date of approval or notification and shall
16 not be renewed unless a new application is filed and approved or a new
17 notification has been filed. At the option of the applicant, an
18 application or notification may be submitted to cover a single forest
19 practice or a number of forest practices within reasonable geographic
20 or political boundaries as specified by the department. An application
21 or notification that covers more than one forest practice may have an
22 effective term of more than two years. The board shall adopt rules
23 that establish standards and procedures for approving an application or
24 notification that has an effective term of more than two years. Such
25 rules shall include extended time periods for application or
26 notification approval or disapproval. On an approved application with
27 a term of more than two years, the applicant shall inform the
28 department before commencing operations.

29 (7) Notwithstanding any other provision of this section, no prior
30 application or notification shall be required for any emergency forest
31 practice necessitated by fire, flood, windstorm, earthquake, or other
32 emergency as defined by the board, but the operator shall submit an
33 application or notification, whichever is applicable, to the department
34 within forty-eight hours after commencement of such practice or as
35 required by local regulations.

36 **Sec. 106.** RCW 76.09.220 and 1997 c 290 s 5 and 1997 c 423 s 2 are
37 each reenacted and amended to read as follows:

1 (1) The appeals board shall operate on either a part-time or a
2 full-time basis, as determined by the governor. If it is determined
3 that the appeals board shall operate on a full-time basis, each member
4 shall receive an annual salary to be determined by the governor. If it
5 is determined that the appeals board shall operate on a part-time
6 basis, each member shall be compensated in accordance with RCW(~~(-~~
7 ~~However, such~~)) 43.03.250. The director of the environmental hearings
8 office shall make the determination, required under RCW 43.03.250, as
9 to what statutorily prescribed duties, in addition to attendance at a
10 hearing or meeting of the board, shall merit compensation. This
11 compensation shall not exceed ten thousand dollars in a fiscal year.
12 Each member shall receive reimbursement for travel expenses incurred in
13 the discharge of his duties in accordance with the provisions of RCW
14 43.03.050 and 43.03.060.

15 (2) The appeals board shall as soon as practicable after the
16 initial appointment of the members thereof, meet and elect from among
17 its members a chair, and shall at least biennially thereafter meet and
18 elect or reelect a chair.

19 (3) The principal office of the appeals board shall be at the state
20 capital, but it may sit or hold hearings at any other place in the
21 state. A majority of the appeals board shall constitute a quorum for
22 making orders or decisions, promulgating rules and regulations
23 necessary for the conduct of its powers and duties, or transacting
24 other official business, and may act though one position on the board
25 be vacant. One or more members may hold hearings and take testimony to
26 be reported for action by the board when authorized by rule or order of
27 the board. The appeals board shall perform all the powers and duties
28 granted to it in this chapter or as otherwise provided by law.

29 (4) The appeals board shall make findings of fact and prepare a
30 written decision in each case decided by it, and such findings and
31 decision shall be effective upon being signed by two or more members
32 and upon being filed at the appeals board's principal office, and shall
33 be open to public inspection at all reasonable times.

34 (5) The appeals board shall either publish at its expense or make
35 arrangements with a publishing firm for the publication of those of its
36 findings and decisions which are of general public interest, in such
37 form as to assure reasonable distribution thereof.

38 (6) The appeals board shall maintain at its principal office a
39 journal which shall contain all official actions of the appeals board,

1 with the exception of findings and decisions, together with the vote of
2 each member on such actions. The journal shall be available for public
3 inspection at the principal office of the appeals board at all
4 reasonable times.

5 (7) The forest practices appeals board shall have exclusive
6 jurisdiction to hear appeals arising from an action or determination by
7 the department, and the department of fish and wildlife, and the
8 department of ecology with respect to management plans provided for
9 under RCW 76.09.350 and provisions of section 103 (4) and (6)(a) of
10 this act.

11 (8)(a) Any person aggrieved by the approval or disapproval of an
12 application to conduct a forest practice or the approval or disapproval
13 of any landscape plan or permit may seek review from the appeals board
14 by filing a request for the same within thirty days of the approval or
15 disapproval. Concurrently with the filing of any request for review
16 with the board as provided in this section, the requestor shall file a
17 copy of his or her request with the department and the attorney
18 general. The attorney general may intervene to protect the public
19 interest and ensure that the provisions of this chapter are complied
20 with.

21 (b) The review proceedings authorized in (a) of this subsection are
22 subject to the provisions of chapter 34.05 RCW pertaining to procedures
23 in adjudicative proceedings.

24 **Sec. 107.** RCW 75.20.100 and 1998 c 190 s 87 are each amended to
25 read as follows:

26 (1) In the event that any person or government agency desires to
27 construct any form of hydraulic project or perform other work that will
28 use, divert, obstruct, or change the natural flow or bed of any of the
29 salt or fresh waters of the state, such person or government agency
30 shall, before commencing construction or work thereon and to ensure the
31 proper protection of fish life, secure the approval of the department
32 as to the adequacy of the means proposed for the protection of fish
33 life. This approval shall not be unreasonably withheld.

34 (2)(a) Except as provided in RCW 75.20.1001, the department shall
35 grant or deny approval of a standard permit within forty-five calendar
36 days of the receipt of a complete application and notice of compliance
37 with any applicable requirements of the state environmental policy act,
38 made in the manner prescribed in this section.

1 (b) The applicant may document receipt of application by filing in
2 person or by registered mail. A complete application for approval
3 shall contain general plans for the overall project, complete plans and
4 specifications of the proposed construction or work within the mean
5 higher high water line in salt water or within the ordinary high water
6 line in fresh water, and complete plans and specifications for the
7 proper protection of fish life.

8 (c) The forty-five day requirement shall be suspended if:

9 (i) After ten working days of receipt of the application, the
10 applicant remains unavailable or unable to arrange for a timely field
11 evaluation of the proposed project;

12 (ii) The site is physically inaccessible for inspection; or

13 (iii) The applicant requests delay. Immediately upon determination
14 that the forty-five day period is suspended, the department shall
15 notify the applicant in writing of the reasons for the delay.

16 (d) For purposes of this section, "standard permit" means a written
17 permit issued by the department when the conditions under subsections
18 (3) and (5)(b) of this section are not met.

19 (3)(a) The department may issue an expedited written permit in
20 those instances where normal permit processing would result in
21 significant hardship for the applicant or unacceptable damage to the
22 environment. In cases of imminent danger, the department shall issue
23 an expedited written permit, upon request, for work to repair existing
24 structures, move obstructions, restore banks, protect property, or
25 protect fish resources. Expedited permit requests require a complete
26 written application as provided in subsection (2)(b) of this section
27 and shall be issued within fifteen calendar days of the receipt of a
28 complete written application. Approval of an expedited permit is valid
29 for up to sixty days from the date of issuance.

30 (b) For the purposes of this subsection, "imminent danger" means a
31 threat by weather, water flow, or other natural conditions that is
32 likely to occur within sixty days of a request for a permit
33 application.

34 (c) The department may not require the provisions of the state
35 environmental policy act, chapter 43.21C RCW, to be met as a condition
36 of issuing a permit under this subsection.

37 (d) The department or the county legislative authority may
38 determine if an imminent danger exists. The county legislative

1 authority shall notify the department, in writing, if it determines
2 that an imminent danger exists.

3 (4) Approval of a standard permit is valid for a period of up to
4 five years from date of issuance. The permittee must demonstrate
5 substantial progress on construction of that portion of the project
6 relating to the approval within two years of the date of issuance. If
7 the department denies approval, the department shall provide the
8 applicant, in writing, a statement of the specific reasons why and how
9 the proposed project would adversely affect fish life. Protection of
10 fish life shall be the only ground upon which approval may be denied or
11 conditioned. Chapter 34.05 RCW applies to any denial of project
12 approval, conditional approval, or requirements for project
13 modification upon which approval may be contingent.

14 (5)(a) In case of an emergency arising from weather or stream flow
15 conditions or other natural conditions, the department, through its
16 authorized representatives, shall issue immediately, upon request, oral
17 approval for removing any obstructions, repairing existing structures,
18 restoring stream banks, or to protect property threatened by the stream
19 or a change in the stream flow without the necessity of obtaining a
20 written approval prior to commencing work. Conditions of an oral
21 approval to protect fish life shall be established by the department
22 and reduced to writing within thirty days and complied with as provided
23 for in this section. Oral approval shall be granted immediately, upon
24 request, for a stream crossing during an emergency situation.

25 (b) For purposes of this section and RCW 75.20.103, "emergency"
26 means an immediate threat to life, the public, property, or of
27 environmental degradation.

28 (c) The department or the county legislative authority may declare
29 and continue an emergency when one or more of the criteria under (b) of
30 this subsection are met. The county legislative authority shall
31 immediately notify the department if it declares an emergency under
32 this subsection.

33 (6) The department shall, at the request of a county, develop five-
34 year maintenance approval agreements, consistent with comprehensive
35 flood control management plans adopted under the authority of RCW
36 86.12.200, or other watershed plan approved by a county legislative
37 authority, to allow for work on public and private property for bank
38 stabilization, bridge repair, removal of sand bars and debris, channel
39 maintenance, and other flood damage repair and reduction activity under

1 agreed-upon conditions and times without obtaining permits for specific
2 projects.

3 (7) This section shall not apply to the construction of any form of
4 hydraulic project or other work which diverts water for agricultural
5 irrigation or stock watering purposes authorized under or recognized as
6 being valid by the state's water codes, or when such hydraulic project
7 or other work is associated with streambank stabilization to protect
8 farm and agricultural land as defined in RCW 84.34.020. These
9 irrigation or stock watering diversion and streambank stabilization
10 projects shall be governed by RCW 75.20.103.

11 A landscape management plan approved by the department and the
12 department of natural resources under RCW 76.09.350(2), shall serve as
13 a hydraulic project approval for the life of the plan if fish are
14 selected as one of the public resources for coverage under such a plan.

15 A landscape management plan approved by the department of natural
16 resources under section 103(4) of this act shall serve as a hydraulic
17 project approval for the life of the plan.

18 (8) For the purposes of this section and RCW 75.20.103, "bed" means
19 the land below the ordinary high water lines of state waters. This
20 definition does not include irrigation ditches, canals, storm water
21 run-off devices, or other artificial watercourses except where they
22 exist in a natural watercourse that has been altered by man.

23 (9) The phrase "to construct any form of hydraulic project or
24 perform other work" does not include the act of driving across an
25 established ford. Driving across streams or on wetted stream beds at
26 areas other than established fords requires approval. Work within the
27 ordinary high water line of state waters to construct or repair a ford
28 or crossing requires approval.

29 NEW SECTION. Sec. 108. (1) The implementation of sections 103
30 through 107 of this act, and providing assistance to nonindustrial
31 private forest landowners in the development of landscape plans, will
32 require wildlife biologists, foresters, and cartographers to develop
33 and review the plans and will require funding to implement tracking and
34 recording systems.

35 (2) The sum of three hundred thirty thousand five hundred dollars,
36 or as much thereof as may be necessary, is appropriated for the fiscal
37 year ending June 30, 2000, from the general fund to the department of

1 natural resources for the purposes of this section and sections 103
2 through 107 of this act.

3 (3) The sum of three hundred thirty thousand five hundred dollars,
4 or as much thereof as may be necessary, is appropriated for the fiscal
5 year ending June 30, 2001, from the general fund to the department of
6 natural resources for the purposes of this section and sections 103
7 through 107 of this act.

8 **PART 2**

9 **STEWARDSHIP TECHNICAL ASSISTANCE**

10 NEW SECTION. **Sec. 201.** (1) The legislature finds that providing
11 for long-term stewardship of private nonindustrial forest lands in
12 rural areas is an important factor in maintaining Washington's rural
13 character and quality of life. The department of natural resources
14 currently provides stewardship technical assistance to nonindustrial
15 forest landowners. Funding for this program currently comes primarily
16 from federal sources. Those funds have been dwindling over the past
17 several biennia. The legislature finds that additional resources are
18 needed by the department of natural resources to provide an enhanced
19 level of stewardship technical assistance to nonindustrial forest
20 landowners. The enhanced stewardship program will allow the department
21 to expand the current program to cover more nonindustrial forest lands
22 and in additional counties. Funding will cover the development of
23 stewardship plans, planting of trees and shrubs, forest stand
24 improvement, riparian and wetland establishment or enhancement, and
25 prevention and control of sedimentation.

26 (2) The sum of nine hundred forty-three thousand five hundred
27 dollars, or as much thereof as may be necessary, is appropriated for
28 the fiscal year ending June 30, 2000, from the general fund to the
29 department of natural resources for the purposes of enhanced forest
30 land stewardship programs.

31 (3) The sum of nine hundred forty-three thousand five hundred
32 dollars, or as much thereof as may be necessary, is appropriated for
33 the fiscal year ending June 30, 2001, from the general fund to the
34 department of natural resources for the purposes of enhanced forest
35 land stewardship programs.

PART 3

CARBON STORAGE

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NEW SECTION. **Sec. 301.** The legislature finds that some private sector companies that generate carbon dioxide emissions or manufacture products emitting carbon dioxide, have begun purchasing carbon credits from landowners and other companies that have invested in energy efficiency retrofits. The companies that are purchasing these credits recognize that the development of a market or trading program for these credits would be beneficial. Forests are one of the most effective long-term resources able to absorb carbon dioxide. These forests provide carbon storage and are often referred to as "carbon sinks." Because Washington contains some of the most productive forests worldwide, nonindustrial private forest landowners could greatly benefit from the establishment of a formally recognized carbon storage trading program. Marketing forest land for carbon storage could provide additional revenue to nonindustrial forest landowners and this could act as an incentive to maintaining the land base in long-term forest production.

NEW SECTION. **Sec. 302.** The department of natural resources shall evaluate and submit to the legislature a report recommending the most feasible methods and credible technologies for developing and implementing a carbon storage trading market. The report shall also evaluate which state agencies can best facilitate a carbon storage market and the associated registration, verification, monitoring, and technical assistance.

NEW SECTION. **Sec. 303.** (1) The sum of fifty thousand dollars, or as much thereof as may be necessary, is appropriated for the fiscal year ending June 30, 2000, from the general fund to the department of natural resources for the purpose of preparing the report on developing and implementing a carbon storage market.

(2) The sum of fifty thousand dollars, or as much thereof as may necessary, is appropriated for the fiscal year ending June 30, 2001, from the general fund to the department of natural resources for the purpose of preparing the report on developing and implementing a carbon storage market.

1 PART 4

2 RURAL DESIGN DEMONSTRATION

3 NEW SECTION. **Sec. 401.** Between 1970 and 1997, two million three
4 hundred thousand acres of forest land were converted to other uses.
5 Economics provide the main driver for the conversion of forest lands in
6 the state of Washington. Development often presents higher and more
7 immediate value to the landowner. Most of the acres converted have
8 been owned by nonindustrial forest landowners. Most of those acres
9 were converted for urban expansion. The loss of these productive
10 forest lands reduces the jobs and products they could produce as well
11 as reducing important habitat for fish and wildlife.

12 Despite local governments' efforts to maintain rural areas,
13 conserve natural resource lands, and preserve fish and wildlife
14 habitat, development of Washington's rural landscape is still causing
15 the loss of these resources. Several strategies have been and continue
16 to be used to control the conversion of forest land. These strategies
17 include density controls, critical area protections, development
18 regulations, and development clustering. Each of these strategies is,
19 however, carried out independently, which makes it difficult to
20 integrate resource and habitat protection with a rural human settlement
21 strategy.

22 A program is needed that encourages each of these independent
23 strategies to be used together. That program should encourage
24 landowners and developers to design for rural development, including
25 assuring that rural settlement patterns are structured in a way to
26 assure the conservation of natural resources.

27 The program should encourage the integration of land use planning
28 with conservation principles, including landscape architecture, to
29 produce a more balanced pattern of development and conservation. This
30 should occur in a way that respects the rights of landowners who would
31 continue to realize densities allowed under the applicable zoning code
32 while designing their development around an open space framework that
33 includes meadows, fields, woodlots, riparian corridors, and other
34 features of the natural environment.

35 This program is intended to demonstrate a means to achieve a better
36 balance between development and the conservation of the natural
37 environment.

1 NEW SECTION. **Sec. 402.** (1) The department of natural resources,
2 in coordination with the department of community, trade, and economic
3 development, shall develop and implement a rural design demonstration.
4 The rural design demonstration will include defining design principles,
5 assessing compatibility with existing county plans, and developing
6 rural design standards for rural land. It shall be developed in such
7 a way that it can be used as a model for conserving natural resources
8 and preserving rural landscapes while maintaining existing development
9 densities. The rural design demonstration must involve nonindustrial
10 private forests that are zoned residential. The rural design
11 demonstration would be a design for a proposed development that would
12 ensure that the development proceed on no more than forty percent of
13 the site, be designed for maximum salmonid habitat protection, and
14 protect in perpetuity, such as through an easement or covenant on the
15 land, the practice of forestry on a majority of the site. The rural
16 design demonstration must specify when the development project will
17 begin and end.

18 (2) The sum of three hundred thousand dollars, or as much thereof
19 as may be necessary, is appropriated for the fiscal year ending June
20 30, 2000, from the general fund to the department of natural resources
21 for the purpose of a rural design pilot grant program.

22 (3) The sum of three hundred thousand dollars, or as much thereof
23 as may be necessary, is appropriated for the fiscal year ending June
24 30, 2001, from the general fund to the department of natural resources
25 for the purpose of a rural design pilot grant program.

26 **PART 5**
27 **CONSERVATION EASEMENTS**

28 NEW SECTION. **Sec. 501.** (1) The goal of restoring salmon to our
29 watersheds requires a commitment to protecting existing habitat that is
30 in good condition. In western Washington, three hundred twenty-two
31 thousand acres of forest land were converted during the 1980's from
32 forest to another use, predominantly urban development. The challenge
33 to reverse or slow this trend of habitat loss, given the population
34 projections, is to provide incentives to landowners to keep their land
35 in a forested condition.

1 (2) Maintaining the land in a forested condition along riparian
2 areas provides shade, cool temperatures, large woody debris, and
3 sediment filtration, which in turn provides key habitat functions for
4 fish and other wildlife.

5 (3) The purchase of conservation easements, also known as
6 "conservation futures," provides the strongest possible incentive to
7 nonindustrial, private forest landowners to prevent the conversion of
8 their forest land to a use incompatible with forestry.

9 (4) The sum of three million dollars, or as much thereof as may be
10 necessary, is appropriated for the biennium ending June 30, 2001, from
11 the state building construction account to the department of natural
12 resources to acquire less than fee simple conservation easements in
13 riparian areas from nonindustrial private forest landowners.

14 **Sec. 502.** RCW 84.34.210 and 1993 c 248 s 1 are each amended to
15 read as follows:

16 Any state agency, county, city, town, metropolitan park district,
17 metropolitan municipal corporation, nonprofit historic preservation
18 corporation as defined in RCW 64.04.130, or nonprofit nature
19 conservancy corporation or association, as such are defined in RCW
20 84.34.250, may acquire by purchase, gift, grant, bequest, devise,
21 lease, or otherwise, except by eminent domain, the fee simple or any
22 lesser interest, development right, easement, covenant, or other
23 contractual right necessary to protect, preserve, maintain, improve,
24 restore, limit the future use of, or otherwise conserve, selected open
25 space land, farm and agricultural land, and timber land as such are
26 defined in chapter 84.34 RCW for public use or enjoyment. Among
27 interests that may be so acquired are mineral rights. Any state
28 agency, county, city, town, metropolitan park district, metropolitan
29 municipal corporation, nonprofit historic preservation corporation as
30 defined in RCW 64.04.130, or nonprofit nature conservancy corporation
31 or association, as such are defined in RCW 84.34.250, may acquire such
32 property for the purpose of conveying or leasing the property back to
33 its original owner or other person under such covenants or other
34 contractual arrangements as will limit the future use of the property
35 in accordance with the purposes of chapter 243, Laws of 1971 ex. sess.

36 **Sec. 503.** RCW 84.34.220 and 1993 c 248 s 2 are each amended to
37 read as follows:

1 In accordance with the authority granted in RCW 84.34.210, a state
2 agency, county, city, town, metropolitan park district, metropolitan
3 municipal corporation, nonprofit historic preservation corporation as
4 defined in RCW 64.04.130, or nonprofit nature conservancy corporation
5 or association, as such are defined in RCW 84.34.250, may specifically
6 purchase or otherwise acquire, except by eminent domain, rights in
7 perpetuity to future development of any open space land, farm and
8 agricultural land, and timber land which are so designated under the
9 provisions of chapter 84.34 RCW and taxed at current use assessment as
10 provided by that chapter. For the purposes of chapter 243, Laws of
11 1971 ex. sess., such developmental rights shall be termed "conservation
12 futures". The private owner may retain the right to continue any
13 existing open space use of the land, and to develop any other open
14 space use, but, under the terms of purchase of conservation futures,
15 the state agency, county, city, town, metropolitan park district,
16 metropolitan municipal corporation, nonprofit historic preservation
17 corporation as defined in RCW 64.04.130, or nonprofit nature
18 conservancy corporation or association, as such are defined in RCW
19 84.34.250, may forbid or restrict building thereon, or may require that
20 improvements cannot be made without state agency, county, city, town,
21 metropolitan park district, metropolitan municipal corporation,
22 nonprofit historic preservation corporation as defined in RCW
23 64.04.130, or nonprofit nature conservancy corporation or association,
24 as such are defined in RCW 84.34.250, permission. The land may be
25 alienated or sold and used as formerly by the new owner, subject to the
26 terms of the agreement made by the state agency, county, city, town,
27 metropolitan park district, metropolitan municipal corporation,
28 nonprofit historic preservation corporation as defined in RCW
29 64.04.130, or nonprofit nature conservancy corporation or association,
30 as such are defined in RCW 84.34.250, with the original owner.

31 **PART 6**

32 **MISCELLANEOUS**

33 NEW SECTION. **Sec. 601.** If specific funding for the purposes of
34 this act, referencing this act by bill or chapter number, is not
35 provided by June 30, 2001, in the omnibus appropriations act, this act
36 is null and void.

1 NEW SECTION. **Sec. 602.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 603.** Part headings used in this act are not any
6 part of the law.

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