
SUBSTITUTE SENATE BILL 6488

State of Washington

66th Legislature

2020 Regular Session

By Senate Agriculture, Water, Natural Resources & Parks (originally sponsored by Senators Rolfes, Saldaña, and Van De Wege)

READ FIRST TIME 02/07/20.

1 AN ACT Relating to aerial herbicides in forestlands; amending RCW
2 76.09.060; adding a new section to chapter 43.30 RCW; adding a new
3 section to chapter 76.09 RCW; creating new sections; providing
4 expiration dates; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** The legislature, through the enactment of
7 Substitute Senate Bill No. 5597 (chapter 355, Laws of 2019), created
8 the work group on aerial application of herbicides on state and
9 private forestlands and directed a report back to the legislature
10 with recommendations for any improvements to best management
11 practices in herbicide application and nonchemical alternatives in
12 vegetation management. The legislature intends by this act to adopt
13 several of those recommendations.

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.30
15 RCW under the subchapter heading "part 5 powers and duties - general"
16 to read as follows:

17 The department, subject to the availability of amounts
18 appropriated for this specific purpose, must evaluate and conduct
19 research trials of chemical and nonchemical forest vegetation
20 management strategies, in a manner that does not disadvantage the

1 trust beneficiaries, and collaborate with other forestland owners
2 through coordination with leading forestry research cooperatives and
3 universities in the Pacific Northwest.

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 76.09
5 RCW to read as follows:

6 (1) The board shall develop interpretive guidance in the forest
7 practices board manual to clarify the adjacent property buffer
8 requirements in the forest practices rules, including provisions for
9 the board manual that explain the buffer rules for the protection of
10 private property, including adjacent residential and agricultural
11 properties. The board must also use a stakeholder process to update
12 the forest practices board manual, as provided in WAC 222-12-090 as
13 it existed on January 1, 2020, to include best management practices
14 and technical guidance related to the aerial application of
15 herbicides consistent with forest practices rules including, but not
16 limited to, equipment, weather conditions, communicating best
17 management practices to neighbors, signage, and as appropriate,
18 information about alternatives to herbicides. The forest practices
19 board manual updates must be completed by November 1, 2021.

20 (2) The department must improve the aerial herbicide application
21 signage information included in the forest practices board manual and
22 forest practices illustrated document and provide a sign template
23 that satisfies the legal posting requirements. The department must
24 update the guidance to reflect that emergency contact information
25 must be included on the signage.

26 (3) The department must integrate evaluation of forest practices
27 aerial applications of herbicide into the 2021-2023 biennial forest
28 practices compliance monitoring sampling conducted pursuant to WAC
29 222-08-160, as it existed on the effective date of this section.

30 **Sec. 4.** RCW 76.09.060 and 2012 1st sp.s. c 1 s 206 are each
31 amended to read as follows:

32 (1) The department shall prescribe the form and contents of the
33 notification and application. The forest practices rules shall
34 specify by whom and under what conditions the notification and
35 application shall be signed or otherwise certified as acceptable.
36 Activities conducted by the department or a contractor under the
37 direction of the department under the provisions of RCW 76.04.660,
38 shall be exempt from the landowner signature requirement on any

1 forest practices application required to be filed. The application or
2 notification shall be delivered in person to the department, sent by
3 first-class mail to the department or electronically filed in a form
4 defined by the department. The form for electronic filing shall be
5 readily convertible to a paper copy, which shall be available to the
6 public pursuant to chapter 42.56 RCW, including through electronic
7 access in the form of a readily available link on the department's
8 web site. The information required may include, but is not limited
9 to:

10 (a) Name and address of the forestland owner, timber owner, and
11 operator;

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

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

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

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

23 (f) For an application or notification submitted on or after July
24 10, 2012, that includes a forest practices hydraulic project, plans
25 and specifications for the forest practices hydraulic project to
26 ensure the proper protection of fish life;

27 (g) Proposed plan for reforestation and for any revegetation
28 necessary to reduce erosion potential from roadsides and yarding
29 roads, as required by the forest practices rules;

30 (h) Soil, geological, and hydrological data with respect to
31 forest practices;

32 (i) The expected dates of commencement and completion of all
33 forest practices specified in the application;

34 (j) Provisions for continuing maintenance of roads and other
35 construction or other measures necessary to afford protection to
36 public resources;

37 (k) An affirmation that the statements contained in the
38 notification or application are true; and

39 (l) All necessary application or notification fees.

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

3 (3) The application for a forest practice or the notification of
4 a forest practice is subject to the reforestation requirement of RCW
5 76.09.070.

6 (a) If the application states that any land will be or is
7 intended to be converted:

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

12 (ii) Completion of such forest practice operations shall be
13 deemed conversion of the lands to another use for purposes of
14 chapters 84.33 and 84.34 RCW unless the conversion is to a use
15 permitted under a current use tax agreement permitted under chapter
16 84.34 RCW;

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

21 (b) Except as provided elsewhere in this section, if the
22 landowner harvests without an approved application or notification or
23 the landowner does not state that any land covered by the application
24 or notification will be or is intended to be converted, and the
25 department or the county, city, town, or regional governmental entity
26 becomes aware of conversion activities to a use other than commercial
27 timber operations, as that term is defined in RCW 76.09.020, then the
28 department shall send to the department of ecology and the
29 appropriate county, city, town, and regional governmental entities
30 the following documents:

31 (i) A notice of a conversion to nonforestry use;

32 (ii) A copy of the applicable forest practices application or
33 notification, if any; and

34 (iii) Copies of any applicable outstanding final orders or
35 decisions issued by the department related to the forest practices
36 application or notification.

37 (c) Failure to comply with the reforestation requirements
38 contained in any final order or decision shall constitute a removal
39 of designation under the provisions of RCW 84.33.140, and a change of
40 use under the provisions of RCW 84.34.080, and, if applicable, shall

1 subject such lands to the payments and/or penalties resulting from
2 such removals or changes.

3 (d) Conversion to a use other than commercial forest product
4 operations within six years after approval of the forest practices
5 application or notification without the consent of the county, city,
6 or town shall constitute a violation of each of the county, municipal
7 city, town, and regional authorities to which the forest practice
8 operations would have been subject if the application had stated an
9 intent to convert.

10 (e) Land that is the subject of a notice of conversion to a
11 nonforestry use produced by the department and sent to the department
12 of ecology and a local government under this subsection is subject to
13 the development prohibition and conditions provided in RCW 76.09.460.

14 (f) Landowners who have not stated an intent to convert the land
15 covered by an application or notification and who decide to convert
16 the land to a nonforestry use within six years of receiving an
17 approved application or notification must do so in a manner
18 consistent with RCW 76.09.470.

19 (g) The application or notification must include a statement
20 requiring an acknowledgment by the forestland owner of his or her
21 intent with respect to conversion and acknowledging that he or she is
22 familiar with the effects of this subsection.

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

29 (5) Before the operator commences any forest practice in a manner
30 or to an extent significantly different from that described in a
31 previously approved application or notification, there shall be
32 submitted to the department a new application or notification form in
33 the manner set forth in this section.

34 (6) (a) Except as provided in RCW 76.09.350(4), the notification
35 to or the approval given by the department to an application to
36 conduct a forest practice shall be effective for a term of three
37 years from the date of approval or notification.

38 (b) A notification or application may be renewed for an
39 additional three-year term by the filing and approval of a
40 notification or application, as applicable, prior to the expiration

1 of the original application or notification. A renewal application or
2 notification is subject to the forest practices rules in effect at
3 the time the renewal application or notification is filed. Nothing in
4 this section precludes the applicant from applying for a new
5 application or notification after the renewal period has lapsed.

6 (c) At the option of the applicant, an application or
7 notification may be submitted to cover a single forest practice or a
8 number of forest practices within reasonable geographic or political
9 boundaries as specified by the department. An application or
10 notification that covers more than one forest practice may have an
11 effective term of more than three years.

12 (d) The board shall adopt rules that establish standards and
13 procedures for approving an application or notification that has an
14 effective term of more than three years. Such rules shall include
15 extended time periods for application or notification approval or
16 disapproval. The department may require the applicant to provide
17 advance notice before commencing operations on an approved
18 application or notification.

19 (7) Notwithstanding any other provision of this section, no prior
20 application or notification shall be required for any emergency
21 forest practice necessitated by fire, flood, windstorm, earthquake,
22 or other emergency as defined by the board, but the operator shall
23 submit an application or notification, whichever is applicable, to
24 the department within forty-eight hours after commencement of such
25 practice or as required by local regulations.

26 (8) Forest practices applications or notifications are not
27 required for forest practices conducted to control exotic forest
28 insect or disease outbreaks, when conducted by or under the direction
29 of the department of agriculture in carrying out an order of the
30 governor or director of the department of agriculture to implement
31 pest control measures as authorized under chapter 17.24 RCW, and are
32 not required when conducted by or under the direction of the
33 department in carrying out emergency measures under a forest health
34 emergency declaration by the commissioner of public lands as provided
35 in RCW 76.06.130.

36 (a) For the purposes of this subsection, exotic forest insect or
37 disease has the same meaning as defined in RCW 76.06.020.

38 (b) In order to minimize adverse impacts to public resources,
39 control measures must be based on integrated pest management, as
40 defined in RCW 17.15.010, and must follow forest practices rules

1 relating to road construction and maintenance, timber harvest, and
2 forest chemicals, to the extent possible without compromising control
3 objectives.

4 (c) Agencies conducting or directing control efforts must provide
5 advance notice to the appropriate regulatory staff of the department
6 of the operations that would be subject to exemption from forest
7 practices application or notification requirements.

8 (d) When the appropriate regulatory staff of the department are
9 notified under (c) of this subsection, they must consult with the
10 landowner, interested agencies, and affected tribes, and assist the
11 notifying agencies in the development of integrated pest management
12 plans that comply with forest practices rules as required under (b)
13 of this subsection.

14 (e) Nothing under this subsection relieves agencies conducting or
15 directing control efforts from requirements of the federal clean
16 water act as administered by the department of ecology under RCW
17 90.48.260.

18 (f) Forestlands where trees have been cut as part of an exotic
19 forest insect or disease control effort under this subsection are
20 subject to reforestation requirements under RCW 76.09.070.

21 (g) The exemption from obtaining approved forest practices
22 applications or notifications does not apply to forest practices
23 conducted after the governor, the director of the department of
24 agriculture, or the commissioner of public lands have declared that
25 an emergency no longer exists because control objectives have been
26 met, that there is no longer an imminent threat, or that there is no
27 longer a good likelihood of control.

28 NEW SECTION. **Sec. 5.** (1) Within existing resources, the
29 department of agriculture must work with the departments of natural
30 resources, labor and industries, health, and ecology, as well as
31 local health jurisdictions and the state poison center, and consult
32 with nongovernmental stakeholders including, but not limited to,
33 tribal and environmental representatives, to evaluate pesticide
34 investigation rules and processes. By November 1, 2021, the work
35 group must report back to the legislature with any recommended
36 changes, including how complaints should be reported and ensuring
37 that complaints are properly referred.

38 (2) This section expires June 30, 2021.

1 NEW SECTION. **Sec. 6.** By October 31, 2020, the departments of
2 agriculture and natural resources, in consultation with stakeholders,
3 shall review how the state environmental policy act is used for
4 aerial application of herbicides and provide recommendations to the
5 forest practices board and the appropriate committees of the senate
6 and house of representatives, including any recommendations for
7 revisions to statute, rule, or guidance.

8 NEW SECTION. **Sec. 7.** (1) The department of natural resources
9 must develop a proposal to be submitted to the governor and the
10 legislature for inclusion in the 2021-2022 omnibus operating
11 appropriations act to replace or upgrade the existing forest
12 practices application review system. The department of natural
13 resources must develop a proposed upgrade or replacement with an
14 external steering group composed of users of the existing system. One
15 outcome of an upgraded or replaced system must be an improved user
16 interface for review of applications with aerial herbicide
17 application as a component.

18 (2) This section expires June 30, 2021.

19 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
20 preservation of the public peace, health, or safety, or support of
21 the state government and its existing public institutions, and takes
22 effect immediately.

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