
HOUSE BILL 1223

State of Washington

63rd Legislature

2013 Regular Session

By Representatives Kretz, Blake, and Orcutt

Read first time 01/21/13. Referred to Committee on Community Development, Housing & Tribal Affairs.

1 AN ACT Relating to denials of forest practices applications;
2 amending RCW 76.09.050 and 76.09.050; adding a new section to chapter
3 76.09 RCW; providing a contingent effective date; and providing a
4 contingent expiration date.

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

6 **Sec. 1.** RCW 76.09.050 and 2011 c 207 s 1 are each amended to read
7 as follows:

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

10 Class I: Minimal or specific forest practices that have no direct
11 potential for damaging a public resource and that may be conducted
12 without submitting an application or a notification except that when
13 the regulating authority is transferred to a local governmental entity,
14 those Class I forest practices that involve timber harvesting or road
15 construction within "urban growth areas," designated pursuant to
16 chapter 36.70A RCW, are processed as Class IV forest practices, but are
17 not subject to environmental review under chapter 43.21C RCW;

18 Class II: Forest practices which have a less than ordinary
19 potential for damaging a public resource that may be conducted without

1 submitting an application and may begin five calendar days, or such
2 lesser time as the department may determine, after written notification
3 by the operator, in the manner, content, and form as prescribed by the
4 department, is received by the department. However, the work may not
5 begin until all forest practice fees required under RCW 76.09.065 have
6 been received by the department. Class II shall not include forest
7 practices:

8 (a) On forest lands that are being converted to another use;

9 (b) Which require approvals under the provisions of the hydraulics
10 act, RCW 77.55.021;

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

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

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

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

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

24 (a) On forest lands that are being converted to another use;

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

28 (c) That involve timber harvesting or road construction on forest
29 lands that are contained within "urban growth areas," designated
30 pursuant to chapter 36.70A RCW, except where the forest landowner
31 provides:

32 (i) A written statement of intent signed by the forest landowner
33 not to convert to a use other than commercial forest product operations
34 for ten years, accompanied by either a written forest management plan
35 acceptable to the department or documentation that the land is enrolled
36 under the provisions of chapter 84.33 or 84.34 RCW; or

37 (ii) A conversion option harvest plan approved by the local

1 governmental entity and submitted to the department as part of the
2 application; and/or

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

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

27 (2)(a) Except for those forest practices being regulated by local
28 governmental entities as provided elsewhere in this chapter, no Class
29 II, Class III, or Class IV forest practice shall be commenced or
30 continued after January 1, 1975, unless the department has received a
31 notification with regard to a Class II forest practice or approved an
32 application with regard to a Class III or Class IV forest practice
33 containing all information required by RCW 76.09.060 (~~as now or~~
34 ~~hereafter amended. However,~~). Any application denials must be
35 consistent with RCW 76.09.140 or section 3 of this act.

36 (b) In the event forest practices regulations necessary for the
37 scheduled implementation of this chapter and RCW 90.48.420 have not
38 been adopted in time to meet such schedules, the department shall have

1 the authority to regulate forest practices and approve applications on
2 such terms and conditions consistent with this chapter and RCW
3 90.48.420 and the purposes and policies of RCW 76.09.010 until
4 applicable forest practices regulations are in effect.

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

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

17 (5) Except for those forest practices being regulated by local
18 governmental entities as provided elsewhere in this chapter, the
19 department of natural resources shall notify the applicant in writing
20 of either its approval of the application or its disapproval of the
21 application and the specific manner in which the application fails to
22 comply with the provisions of this section or with the forest practices
23 regulations. Except as provided otherwise in this section, if the
24 department fails to either approve or disapprove an application or any
25 portion thereof within the applicable time limit, the application shall
26 be deemed approved and the operation may be commenced: PROVIDED, That
27 this provision shall not apply to applications which are neither
28 approved nor disapproved pursuant to the provisions of subsection (7)
29 of this section: PROVIDED, FURTHER, That if seasonal field conditions
30 prevent the department from being able to properly evaluate the
31 application, the department may issue an approval conditional upon
32 further review within sixty days: PROVIDED, FURTHER, That the
33 department shall have until April 1, 1975, to approve or disapprove an
34 application involving forest practices allowed to continue to April 1,
35 1975, under the provisions of subsection (2) of this section. Upon
36 receipt of any notification or any satisfactorily completed application
37 the department shall in any event no later than two business days after
38 such receipt transmit a copy to the departments of ecology and fish and

1 wildlife, and to the county, city, or town in whose jurisdiction the
2 forest practice is to be commenced. Any comments by such agencies
3 shall be directed to the department of natural resources.

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

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

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

18 (b) The objections relate to forest lands that are being converted
19 to another use.

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

32 (8) For those forest practices regulated by the board and the
33 department, in addition to any rights under the above paragraph, the
34 county, city, or town may appeal any department approval of an
35 application with respect to any lands within its jurisdiction. The
36 appeals board may suspend the department's approval in whole or in part
37 pending such appeal where there exists potential for immediate and
38 material damage to a public resource.

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

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

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

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

20 **Sec. 2.** RCW 76.09.050 and 2012 1st sp.s. c 1 s 205 are each
21 amended to read as follows:

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

24 Class I: Minimal or specific forest practices that have no direct
25 potential for damaging a public resource and that may be conducted
26 without submitting an application or a notification except that when
27 the regulating authority is transferred to a local governmental entity,
28 those Class I forest practices that involve timber harvesting or road
29 construction within "urban growth areas," designated pursuant to
30 chapter 36.70A RCW, are processed as Class IV forest practices, but are
31 not subject to environmental review under chapter 43.21C RCW;

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

1 begin until all forest practice fees required under RCW 76.09.065 have
2 been received by the department. Class II shall not include forest
3 practices:

- 4 (a) On forest lands that are being converted to another use;
- 5 (b) Within "shorelines of the state" as defined in RCW 90.58.030;
- 6 (c) Excluded from Class II by the board; or
- 7 (d) Including timber harvesting or road construction within "urban
8 growth areas," designated pursuant to chapter 36.70A RCW, which are
9 Class IV;

10 Class III: Forest practices other than those contained in Class I,
11 II, or IV. A Class III application must be approved or disapproved by
12 the department according to the following timelines; however, the
13 applicant may not begin work on the forest practice until all forest
14 practice fees required under RCW 76.09.065 have been received by the
15 department:

16 (a) Within thirty calendar days from the date the department
17 receives the application if the application is not subject to
18 concurrence review by the department of fish and wildlife under RCW
19 76.09.490; and

20 (b) Within thirty days of the completion of the concurrence review
21 by the department of fish and wildlife if the application is subject to
22 concurrence review by the department of fish and wildlife under RCW
23 76.09.490;

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

- 26 (a) On forest lands that are being converted to another use;
- 27 (b) On lands which, pursuant to RCW 76.09.070 as now or hereafter
28 amended, are not to be reforested because of the likelihood of future
29 conversion to urban development;

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

34 (i) A written statement of intent signed by the forest landowner
35 not to convert to a use other than commercial forest product operations
36 for ten years, accompanied by either a written forest management plan
37 acceptable to the department or documentation that the land is enrolled
38 under the provisions of chapter 84.33 or 84.34 RCW; or

1 (ii) A conversion option harvest plan approved by the local
2 governmental entity and submitted to the department as part of the
3 application; and/or

4 (d) Which have a potential for a substantial impact on the
5 environment and therefore require an evaluation by the department as to
6 whether or not a detailed statement must be prepared pursuant to the
7 state environmental policy act, chapter 43.21C RCW. Such evaluation
8 shall be made within the timelines established in RCW 43.21C.037;
9 however, nothing herein shall be construed to prevent any local or
10 regional governmental entity from determining that a detailed statement
11 must be prepared for an action pursuant to a Class IV forest practice
12 taken by that governmental entity concerning the land on which forest
13 practices will be conducted. Unless the application is subject to
14 concurrence review by the department of fish and wildlife under RCW
15 76.09.490, a Class IV application must be approved or disapproved by
16 the department within thirty calendar days from the date the department
17 receives the application. If a Class IV application is subject to
18 concurrence review by the department of fish and wildlife under RCW
19 76.09.490, then the application must be approved or disapproved by the
20 department within thirty calendar days from the completion of the
21 concurrence review by the department of fish and wildlife. However,
22 the department may extend the timelines applicable to the approval or
23 disapproval of the application an additional thirty calendar days if
24 the department determines that a detailed statement must be made,
25 unless the commissioner of public lands, through the promulgation of a
26 formal order, determines that the process cannot be completed within
27 such a period. However, the applicant may not begin work on that
28 forest practice until all forest practice fees required under RCW
29 76.09.065 have been received by the department.

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

33 (2)(a) Except for those forest practices being regulated by local
34 governmental entities as provided elsewhere in this chapter, no Class
35 II, Class III, or Class IV forest practice shall be commenced or
36 continued after January 1, 1975, unless the department has received a
37 notification with regard to a Class II forest practice or approved an
38 application with regard to a Class III or Class IV forest practice

1 containing all information required by RCW 76.09.060 (~~as now or~~
2 ~~hereafter amended. However,~~)). Any application denials must be
3 consistent with RCW 76.09.140 or section 3 of this act.

4 (b) In the event forest practices regulations necessary for the
5 scheduled implementation of this chapter and RCW 90.48.420 have not
6 been adopted in time to meet such schedules, the department shall have
7 the authority to regulate forest practices and approve applications on
8 such terms and conditions consistent with this chapter and RCW
9 90.48.420 and the purposes and policies of RCW 76.09.010 until
10 applicable forest practices regulations are in effect.

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

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

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

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

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

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

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

21 (b) The objections relate to forest lands that are being converted
22 to another use.

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

35 (8) For those forest practices regulated by the board and the
36 department, in addition to any rights under the above paragraph, the
37 county, city, or town may appeal any department approval of an
38 application with respect to any lands within its jurisdiction. The

1 appeals board may suspend the department's approval in whole or in part
2 pending such appeal where there exists potential for immediate and
3 material damage to a public resource.

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

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

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

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

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

25 (1) The department may not deny an application submitted under RCW
26 76.09.050 due to the presence of an archaeological object, as that term
27 is defined in RCW 27.53.030, unless an employee or contractor with
28 either the department or the department of archaeology and historic
29 preservation has physically inspected the proposed forest practice site
30 and confirmed the likely presence of an archaeological object or
31 objects. The inspection must occur on the actual land where the forest
32 practice is proposed at a time agreed upon by the applicant.

33 (2) If the department denies, or plans to deny, an application
34 submitted under RCW 76.09.050 due to the presence of an archaeological
35 object, then the department must:

36 (a) Provide to the applicant, concurrent with the denial, all

1 information available to the department concerning the archaeological
2 object or objects that will be, or are suspected to be, disturbed by
3 the forest practice; and

4 (b) Provide the applicant, at the applicant's discretion, with the
5 option of accepting an amended approval from the department, developed
6 in consultation with the department of archaeology and historic
7 preservation, that allows the proposed forest practice to be executed
8 in all areas of the affected parcel except for within a clearly
9 identified area that is to serve as a buffer to protect the identified
10 archaeological object or objects. The size and location of the buffer
11 area must be solely based on the information provided to the applicant
12 under (a) of this subsection and must be agreed to by the department
13 and the applicant.

14 (3) If an applicant accepts an amended approval under subsection
15 (2)(b) of this section, the original application must be considered
16 conditionally approved and all timelines applicable to the original
17 application remain in effect.

18 NEW SECTION. **Sec. 4.** Section 1 of this act expires on the date
19 the requirements set out in section 215, chapter 1, Laws of 2012 1st
20 sp. sess. are met.

21 NEW SECTION. **Sec. 5.** Section 2 of this act takes effect on the
22 date the requirements set out in section 215, chapter 1, Laws of 2012
23 1st sp. sess. are met.

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