

Title 76

FORESTS AND FOREST PRODUCTS

Chapters

- 76.04 Forest protection.**
- 76.06 Forest insect and disease control.**
- 76.09 Forest practices.**
- 76.10 Surface mining.**
- 76.13 Stewardship of nonindustrial forests and woodlands.**
- 76.14 Forest rehabilitation.**
- 76.15 Urban forest management.**
- 76.36 Marks and brands.**
- 76.42 Wood debris—Removal from navigable waters.**
- 76.44 Institute of forest resources.**
- 76.48 Specialized forest products.**
- 76.52 Cooperative forest management services act.**
- 76.56 Center for international trade in forest products.**

Access roads to public and state forestlands: Chapter 79.38 RCW.

County timber: Chapter 36.34 RCW.

Easements over public lands: Chapter 79.36 RCW.

Exchange of state lands to facilitate marketing of forest products or to consolidate state lands: RCW 79.17.010.

Excise tax on conveyance of standing timber: Chapter 82.45 RCW.

Forest management, major line at state universities: RCW 28B.10.115, 28B.20.060.

Forest roads, county: RCW 36.82.140.

Infractions: Chapter 7.84 RCW.

Lien for labor and services on timber and lumber: Chapter 60.24 RCW.

Limitation on liability of forestland owner for injuries to recreation users: RCW 4.24.210.

Logging railroads: Title 81 RCW.

Logging trucks, special permits for use of roads and highways: RCW 46.44.047.

Lots on county highways and bridges: RCW 36.86.090.

Measurement of timber and wood products, fraud, penalty: RCW 9.45.122 through 9.45.126.

Motor vehicle size, weight and load: Chapter 46.44 RCW.

National forests, jurisdiction: Chapter 37.08 RCW.

Pest control compact: Chapter 17.34 RCW.

Reservation of timber on sale of county tax-title lands: RCW 36.35.120.

Safety supervisor: RCW 43.22.040.

Sustained yield plan and cooperative agreements: Chapter 79.10 RCW.

Taxation and/or assessment of lands lying both within fire protection district and forest protection assessment area: RCW 52.16.170.

Transportation of forest products, applicability of public utility tax: RCW 82.16.020.

University demonstration forest and experiment station: RCW 79.17.030.

Chapter 76.04 RCW FOREST PROTECTION

Sections

ADMINISTRATION

76.04.005 Definitions.

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- 76.04.015 Fire protection powers and duties of department—Enforcement—Investigation—Administration.
- 76.04.016 Fire prevention and suppression capacity—Duties owed to public in general—Legislative intent.
- 76.04.021 Department must accommodate livestock owner's request to retrieve or care for animals at risk due to a wildfire—Liability.
- 76.04.025 Federal funds.
- 76.04.035 Wardens—Appointment—Duties.
- 76.04.045 Rangers—Appointment—Ex officio rangers—Compensation.
- 76.04.055 Service of notices.
- 76.04.065 Arrests without warrants.
- 76.04.075 Rules—Penalty.
- 76.04.085 Penalty for violations.
- 76.04.095 Cooperative protection.
- 76.04.105 Contracts for protection and development.
- 76.04.115 Articles of incorporation—Requirements.
- 76.04.125 Requisites of contract.
- 76.04.135 Cooperative agreements—Public agencies—Transfer of ownership of department-owned firefighting vehicle, procedure.
- 76.04.155 Firefighting—Employment—Assistance.
- 76.04.165 Legislative declaration—Forest protection zones.
- 76.04.167 Legislative declaration—Equitable sharing of forest fire protection costs—Coordinated forest fire protection and suppression.
- 76.04.175 Fire suppression equipment—Comparison of costs.
- 76.04.177 Fire suppression equipment—Requirement to utilize private equipment.
- 76.04.179 Wildland fire advisory committee.
- 76.04.181 Maximizing the utilization of local fire suppression assets—Department's duty.
- 76.04.183 Prescribed burn manager certification program—Rule-making authority.

PERMITS

- 76.04.205 Burning permits—Civil penalty.
- 76.04.215 Burning mill wood waste—Arresters.
- 76.04.235 Dumping mill waste, forest debris—Penalty.
- 76.04.246 Use of blasting fuse.

CLOSURES/SUSPENSIONS

- 76.04.305 Closed to entry—Designation.
- 76.04.315 Suspension of burning permits/privileges.
- 76.04.325 Closure of forest operations or forestlands.

FIRE PROTECTION REGULATION

- 76.04.405 Steam, internal combustion, or electrical engines and other spark-emitting equipment regulated.
- 76.04.415 Penalty for violations—Work stoppage notice.
- 76.04.425 Unauthorized entry into sealed fire tool box.
- 76.04.435 Deposit of fire or live coals.
- 76.04.445 Reports of fire.
- 76.04.455 Discarding lighted material or smoking flammable material—Discharge, release, or detonation of certain materials—Receptacles in conveyances—Posting a copy of this section.
- 76.04.465 Certain snags to be felled currently with logging.
- 76.04.475 Reimbursement for costs of suppression action.
- 76.04.486 Escaped slash burns—Obligations.
- 76.04.495 Negligent starting of fires or allowance of extreme fire hazard or debris—Liability—Recovery of reasonable expenses—Lien.

WILDFIRE RESPONSE, FOREST RESTORATION, AND COMMUNITY RESILIENCE

- 76.04.505 Finding—Intent.
- 76.04.511 Wildfire response, forest restoration, and community resilience account.
- 76.04.516 Report to the governor and legislature—Forest inventory—Forest growth and yield modeling—Sustainable harvest calculation—Review—Report.
- 76.04.521 Forest sector workforce development.
- 76.04.525 Wildland fire aviation support plan.

[Title 76 RCW—page 1]

ASSESSMENTS, OBLIGATIONS, FUNDS

- 76.04.600 Owners to protect forests.
 76.04.610 Forest fire protection assessment.
 76.04.620 State funds—Loans—Recovery of funds from the landowner contingency forest fire suppression account.
 76.04.630 Landowner contingency forest fire suppression account—Expenditures—Assessments.

HAZARD ABATEMENT

- 76.04.650 Disposal of forest debris—Permission to allow trees to fall on another's land.
 76.04.660 Additional fire hazards—Extreme fire hazard areas—Abatement, isolation or reduction—Summary action—Recovery of costs—Inspection of property.

FIRE REGULATION

- 76.04.700 Failure to extinguish campfire.
 76.04.710 Wilful setting of fire.
 76.04.720 Removal of notices.
 76.04.730 Negligent fire—Spread.
 76.04.740 Reckless burning.
 76.04.750 Uncontrolled fire a public nuisance—Suppression—Duties—Summary action—Recovery of costs.
 76.04.760 Civil actions—Forested lands—Fire damage.
 76.04.770 Authorization to enter privately or publicly owned land to extinguish or control a wildland fire—Limitation of liability.
 76.04.780 Utility wildland fire prevention advisory committee—Duties—Report—Membership—Immunity.
 76.04.900 Captions—1986 c 100.

Burning permits within fire protection districts: RCW 52.12.101.

Excessive steam in boilers, penalty: RCW 70.54.080.

Steam boilers and pressure vessels, construction, installation, inspection, and certification: Chapter 70.79 RCW.

Treble damages for removal of trees: RCW 64.12.030 and 79.02.320.

ADMINISTRATION

76.04.005 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Additional fire hazard" means a condition existing on any land in the state:

(a) Covered wholly or in part by forest debris which is likely to further the spread of fire and thereby endanger life or property; or

(b) When, due to the effects of disturbance agents, broken, down, dead, or dying trees exist on forestland in sufficient quantity to be likely to further the spread of fire within areas covered by a forest health hazard warning or order issued by the commissioner of public lands under RCW 76.06.180. The term "additional fire hazard" does not include green trees or snags left standing in upland or riparian areas under the provisions of RCW 76.04.465 or chapter 76.09 RCW.

(2) "Closed season" means the period between April 15th and October 15th, unless the department designates different dates because of prevailing fire weather conditions.

(3) "Commissioner" means the commissioner of public lands.

(4) "Department" means the department of natural resources, or its authorized representatives, as defined in chapter 43.30 RCW.

(5) "Department protected lands" means all lands subject to the forest protection assessment under RCW 76.04.610 or covered under contract or agreement pursuant to RCW 76.04.135 by the department.

(6) "Disturbance agent" means those forces that damage or kill significant numbers of forest trees, such as insects, diseases, windstorms, ice storms, and fires.

(7) "Emergency fire costs" means those costs incurred or approved by the department for emergency forest fire suppression, including the employment of personnel, rental of equipment, and purchase of supplies over and above costs regularly budgeted and provided for nonemergency fire expenses for the biennium in which the costs occur.

(8) "Exploding target" means a device that is designed or marketed to ignite or explode when struck by firearm ammunition or other projectiles.

(9) "Forest debris" includes forest slash, chips, and any other vegetative residue resulting from activities on forestland.

(10) "Forest fire service" includes all wardens, rangers, and other persons employed especially for preventing or fighting forest fires.

(11) "Forestland" means any unimproved lands which have enough trees, standing or down, or flammable material, to constitute in the judgment of the department, a fire menace to life or property. Sagebrush and grass areas east of the summit of the Cascade mountains may be considered forestlands when such areas are adjacent to or intermingled with areas supporting tree growth. Forestland, for protection purposes, does not include structures.

(12) "Forestland owner," "owner of forestland," "landowner," or "owner" means the owner or the person in possession of any public or private forestland.

(13) "Forest material" means forest slash, chips, timber, standing or down, or other vegetation.

(14) "Incendiary ammunition" means ammunition that is designed to ignite or explode upon impact with or penetration of a target or designed to trace its course in the air with a trail of smoke, chemical incandescence, or fire.

(15) "Landowner operation" means every activity, and supporting activities, of a forestland owner and the landowner's agents, employees, or independent contractors or permittees in the management and use of forestland subject to the forest protection assessment under RCW 76.04.610 for the primary benefit of the owner. The term includes, but is not limited to, the growing and harvesting of forest products, the development of transportation systems, the utilization of minerals or other natural resources, and the clearing of land. The term does not include recreational and/or residential activities not associated with these enumerated activities.

(16) "Local fire suppression assets" means firefighting equipment that is located in close proximity to the wildland fire and that meets department standards and requirements.

(17) "Local wildland fire liaison" means the person appointed by the commissioner to serve as the local wildland fire liaison as provided in RCW 43.30.111.

(18) "Participating landowner" means an owner of forestland whose land is subject to the forest protection assessment under RCW 76.04.610.

(19) "Sky lantern" means an unmanned self-contained luminary device that uses heated air produced by an open flame or produced by another source to become or remain airborne.

(20) "Slash" means organic forest debris such as tree tops, limbs, brush, and other dead flammable material remaining on forestland as a result of a landowner operation.

(21) "Slash burning" means the planned and controlled burning of forest debris on forestlands by broadcast burning, underburning, pile burning, or other means, for the purposes of silviculture, hazard abatement, or reduction and prevention or elimination of a fire hazard.

(22) "Suppression" means all activities involved in the containment and control of forest fires, including the patrolling thereof until such fires are extinguished or considered by the department to pose no further threat to life or property.

(23) "Unimproved lands" means those lands that will support grass, brush and tree growth, or other flammable material when such lands are not cleared or cultivated and, in the opinion of the department, are a fire menace to life and property. [2015 c 182 § 7. Prior: 2014 c 90 § 1; 2007 c 480 § 12; 1992 c 52 § 24; 1986 c 100 § 1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

76.04.015 Fire protection powers and duties of department—Enforcement—Investigation—Administration. (1) The department may, at its discretion, appoint trained personnel possessing the necessary qualifications to carry out the duties and supporting functions of the department and may determine their respective salaries.

(2) The department shall have direct charge of and supervision of all matters pertaining to the forest fire service of the state.

(3) The department shall:

(a) Enforce all laws within this chapter;

(b) Be empowered to take charge of and, consistent with RCW 76.04.021, direct the work of suppressing forest fires;

(c)(i) Investigate the origin and cause of all forest fires to determine whether either a criminal act or negligence by any person, firm, or corporation caused the starting, spreading, or existence of the fire. In conducting investigations, the department shall work cooperatively, to the extent possible, with utilities, property owners, and other interested parties to identify and preserve evidence. Except as provided otherwise in this subsection, the department in conducting investigations is authorized, without court order, to take possession or control of relevant evidence found in plain view and belonging to any person, firm, or corporation. To the extent possible, the department shall notify the person, firm, or corporation of its intent to take possession or control of the evidence. The person, firm, or corporation shall be afforded reasonable opportunity to view the evidence and, before the department takes possession or control of the evidence, also shall be afforded reasonable opportunity to examine, document, and photograph it. If the person, firm, or corporation objects in writing to the department's taking possession or control of the evidence, the department must either return the evidence within seven days after the day on which the department is provided with the written objections or obtain a court order authorizing the continued possession or control.

(ii) Absent a court order authorizing otherwise, the department may not take possession or control of evidence over the objection of the owner of the evidence if the evi-

dence is used by the owner in conducting a business or in providing an electric utility service and the department's taking possession or control of the evidence would substantially and materially interfere with the operation of the business or provision of electric utility service.

(iii) Absent a court order authorizing otherwise, the department may not take possession or control of evidence over the objection of an electric utility when the evidence is not owned by the utility but has caused damage to property owned by the utility. However, this subsection (3)(c)(iii) does not apply if the department has notified the utility of its intent to take possession or control of the evidence and provided the utility with reasonable time to examine, document, and photograph the evidence.

(iv) Only personnel qualified to work on electrical equipment may take possession or control of evidence owned or controlled by an electric utility;

(d) Furnish notices or information to the public calling attention to forest fire dangers and the penalties for violation of this chapter;

(e) Be familiar with all timbered and cut-over areas of the state, areas where forest health treatments were undertaken on state, federal, or private land, public general transportation roads and public and private logging roads, water bodies, and other features on the landscape relevant in planning a fire response and include those features on a geographic information system for use by fire response personnel to assist in response decision making;

(f) Maximize the effective utilization of local fire suppression assets consistent with RCW 76.04.181; and

(g) Regulate and control the official actions of its employees, the wardens, and the rangers.

(4) The department may:

(a) Authorize all needful and proper expenditures for forest protection;

(b) Adopt rules consistent with this section for the prevention, control, and suppression of forest fires as it considers necessary including but not limited to: Fire equipment and materials; use of personnel; and fire prevention standards and operating conditions including a provision for reducing these conditions where justified by local factors such as location and weather;

(c) Remove at will the commission of any ranger or suspend the authority of any warden;

(d) Inquire into:

(i) The extent, kind, value, and condition of all timberlands within the state;

(ii) The extent to which timberlands are being destroyed by fire and the damage thereon;

(e) Provide fire detection, prevention, presuppression, or suppression services on nonforested public lands managed by the department or another state agency, but only to the extent that providing these services does not interfere with or detract from the obligations set forth in subsection (3) of this section. If the department provides fire detection, prevention, presuppression, or suppression services on nonforested public lands managed by another state agency, the department must be fully reimbursed for the work through a cooperative agreement as provided for in RCW 76.04.135(1).

(5) Any rules adopted under this section for the suppression of forest fires must include a mechanism by which a

local fire mobilization radio frequency, consistent with RCW 43.43.963, is identified and made available during the initial response to any forest fire that crosses jurisdictional lines so that all responders have access to communications during the response. Different initial response frequencies may be identified and used as appropriate in different geographic response areas. If the fire radio communication needs escalate beyond the capability of the identified local radio frequency, the use of other available designated interoperability radio frequencies may be used.

(6) When the department considers it to be in the best interest of the state, it may cooperate with any agency of another state, the United States or any agency thereof, the Dominion of Canada or any agency or province thereof, and any county, town, corporation, individual, or Indian tribe within the state of Washington in forest firefighting and patrol. [2019 c 305 § 2; 2016 c 109 § 1; 2015 c 182 § 5; 2012 c 38 § 1; 2010 c 38 § 1; 1993 c 196 § 3; 1986 c 100 § 2.]

76.04.016 Fire prevention and suppression capacity—Duties owed to public in general—Legislative intent. The department when acting, in good faith, in its statutory capacity as a fire prevention and suppression agency, is carrying out duties owed to the public in general and not to any individual person or class of persons separate and apart from the public. Nothing contained in this title, including but not limited to any provision dealing with payment or collection of forest protection or fire suppression assessments, may be construed to evidence a legislative intent that the duty to prevent and suppress forest fires is owed to any individual person or class of persons separate and apart from the public in general. This section does not alter the department's duties and responsibilities as a landowner. [1993 c 196 § 1.]

76.04.021 Department must accommodate livestock owner's request to retrieve or care for animals at risk due to a wildfire—Liability. (1)(a) The department must make every reasonable effort to accommodate a livestock owner's request to retrieve or care for animals in his or her charge that are at risk due to a wildfire.

(b) The department may only prohibit livestock owners, or the owner's employees or agents, from retrieving or caring for livestock that are lawfully present on the public lands during any fire suppression response if doing so is reasonably necessary to prevent interference with a direct, active fire response.

(2) The department must incorporate the implementation of this section into any prefire season training or coordination conducted in local communities that contain active grazing areas.

(3)(a) The owner of livestock lawfully present on public lands assumes full liability for any damages incurred to himself or herself, and any employees or agents in his or her charge, if public lands are accessed to retrieve or care for livestock during the time of a fire suppression response by the department affecting the public lands in question.

(b) No civil liability may be imposed by any court on the state, the department, or another political subdivision of the state for any direct or indirect adverse impacts, including injury or death, resulting from:

(i) The department's reasonable efforts under this section to accommodate a livestock owner, or the owner's employees or agents, to retrieve or care for animals in his or her charge that are at risk due to a wildfire; or

(ii) A livestock owner, or the owner's employees or agents, accessing public lands to retrieve or care for livestock during the time of a fire suppression response by the department affecting the public lands in question. [2016 c 109 § 2.]

76.04.025 Federal funds. The department shall receive and disburse any and all moneys contributed, allotted, or paid by the United States under the authority of any act of Congress for use in cooperation with the state of Washington in protecting and developing forests. [1986 c 100 § 3.]

76.04.035 Wardens—Appointment—Duties. (1) The department may appoint any of its employees as wardens, at the times and localities as it considers the public welfare demands, within any area of the state where there is forestland requiring protection.

(2) The duties of wardens shall be:

(a) To provide forest fire prevention and protection information to the public;

(b) To investigate discovered or reported fires on forestlands and take appropriate action;

(c) To patrol their areas as necessary;

(d) To visit all parts of their area, and frequented places and camps as far as possible, and warn campers or other users and visitors of fire hazards;

(e) To see that all locomotives and all steam, internal combustion, and other spark-emitting equipment are provided with spark arresters and adequate devices for preventing the escape of fire or sparks in accordance with the law;

(f) To see that operations or activities on forestland have all required fire prevention and suppression equipment or devices as required by law;

(g) To extinguish wildfires;

(h) To set back-fires to control fires;

(i) To summons, impress, and employ help in controlling wildfires;

(j) To see that all laws for the protection of forests are enforced;

(k) To investigate, arrest, and initiate prosecution of all offenders of this chapter or other chapters as allowed by law; and

(l) To perform all other duties as prescribed by law and as the department directs.

(3) All wardens and rangers shall render reports to the department on blanks or forms, or in the manner and at the times as may be ordered, giving a summary of how employed, the area visited, expenses incurred, and other information as required by the department.

(4) The department may suspend the authority of any warden who may be incompetent or unwilling to discharge properly the duties of the office.

(5) The department shall determine the placement of the wardens and, upon its request to the county commissioners of any county, the county commissioners shall designate and furnish the wardens with suitably equipped office quarters in the county courthouse.

(6) The authority of the wardens regarding the prevention, suppression, and control of forest fires, summoning, impressing, or employing help, or making arrests for violations of this chapter may extend to any part of the state. [1986 c 100 § 4.]

76.04.045 Rangers—Appointment—Ex officio rangers—Compensation. (1) All Washington state patrol officers, fish and wildlife officers, deputy state fire marshals, and state park rangers, while in their respective jurisdictions, shall be ex officio rangers.

(2) Employees of the United States forest service, when recommended by their forest supervisor, and citizens of the state advantageously located may, at the discretion of the department, be commissioned as rangers and vested with the certain powers and duties of wardens as specified in this chapter and as directed by the department.

(3) Rangers shall receive no compensation for their services except when employed in cooperation with the state and under the provisions of this chapter and shall not create any indebtedness or incur any liability on behalf of the state: PROVIDED, That rangers actually engaged in extinguishing or preventing the spread of fire on forestland or elsewhere that may endanger forestland shall, when their accounts for such service have been approved by the department, be entitled to receive compensation for such services at a rate to be fixed by the department.

(4) The department may cancel the commission of any ranger or authority granted to any ex officio ranger who may be incompetent or unwilling to discharge properly the duties of the office. [2001 c 253 § 9; 1986 c 100 § 5.]

76.04.055 Service of notices. Any notice required by law to be served by the department, warden, or ranger shall be sufficient if a written or printed copy thereof is delivered, mailed, telegraphed, or electronically transmitted by the department, warden, or ranger to the person to receive the notice or to his or her responsible agent. If the name or address of the person or agent is unknown and cannot be obtained by reasonable diligence, the notice may be served by posting the copy in a conspicuous place upon the premises concerned by the notice. [1986 c 100 § 6.]

76.04.065 Arrests without warrants. Department employees appointed as wardens, persons commissioned as rangers, and all police officers may arrest persons violating this chapter, without warrant, as prescribed by law. [1986 c 100 § 7.]

76.04.075 Rules—Penalty. Any person who violates any of the orders or rules adopted under this chapter for the protection of forests from fires is guilty of a misdemeanor and subject to the penalties for a misdemeanor under RCW 9A.20.021, unless another penalty is provided. [1986 c 100 § 8.]

76.04.085 Penalty for violations. Unless specified otherwise, violations of the provisions of this chapter shall be a misdemeanor and subject to the penalties for a misdemeanor under RCW 9A.20.021. [1986 c 100 § 9.]

76.04.095 Cooperative protection. When any responsible protective agency or agencies composed of timber owners other than the state agrees to undertake systematic forest protection in cooperation with the state and such cooperation appears to the department to be more advantageous to the state than the state-provided forest fire services, the department may designate suitable areas to be official cooperative districts and substitute cooperative services for the state-provided services. The department may cooperate in the compensation for expenses of preventing and controlling fire in cooperative districts to the extent it considers equitable on behalf of the state. [1986 c 100 § 10.]

76.04.105 Contracts for protection and development. The department may enter into contracts and undertakings with private corporations for the protection and development of the forestlands within the state, subject to the provisions of this chapter. [1986 c 100 § 11.]

76.04.115 Articles of incorporation—Requirements. Before any private corporation may enter into any contract under RCW 76.04.105, there shall be incorporated into the articles of incorporation or charter of such corporation a provision requiring that the corporation, out of its earnings or earned surplus, and in a manner satisfactory to the department, annually set apart funds to discharge any contract entered into between such corporation and the department. [1986 c 100 § 12.]

76.04.125 Requisites of contract. Any undertaking for the protection and development of the forestlands of the state under RCW 76.04.105 shall be regulated and controlled by a contract to be entered into between the private corporation and the department. The contract shall outline the lands involved and the conditions and details of the undertaking, including an exact specification of the amount of funds to be made available by the corporation and the time and manner of disbursement. Before entering into any such contract, the department shall be satisfied that the private corporation is financially solvent and will be able to carry out the project outlined in the contract. The department shall have charge of the project for the protection and development of the forestlands described in the contract, and any expense incurred by the department under any such contract shall be payable solely by the corporation from the funds provided by it for these purposes. The state of Washington shall not in any event be responsible to any person, firm, company, or corporation for any indebtedness created by any corporation under a contract pursuant to RCW 76.04.105. [1986 c 100 § 13.]

76.04.135 Cooperative agreements—Public agencies—Transfer of ownership of department-owned fire-fighting vehicle, procedure. (1) For the purpose of promoting and facilitating cooperation among fire protection agencies, including the department, and between the department and other agencies that manage lands owned by the state, and to more adequately protect life, property, and the natural resources of the state, the department may enter into a contract or agreement with a municipality, county, state, or federal agency to provide fire detection, prevention, presuppres-

sion, or suppression services on property which they are responsible to protect or manage.

(2) Contracts or agreements under subsection (1) of this section may contain provisions for the exchange of services on a cooperative basis or services in return for cash payment or other compensation.

(3) No charges may be made when the department determines that under a cooperative contract or agreement the assistance received from a municipality, county, or federal agency on state protected lands equals that provided by the state on municipal, county, or federal lands.

(4) The department may transfer ownership of depreciated firefighting vehicles and related equipment upon terms subject to mutual agreement to local fire districts in wildfire prone areas in all areas of the state, as determined by the department, and where the median household income is below the state average. These vehicle and equipment transfers are exempt from the requirements in RCW 43.19.1919(1). The department must notify the chairs and ranking members of the legislative committees with jurisdiction regarding these transfers at least ten days prior to transfer of the equipment. [2017 c 280 § 2; 2012 c 38 § 2; 1986 c 100 § 14.]

Effective date—2017 c 280: See note following RCW 43.30.575.

76.04.155 Firefighting—Employment—Assistance.

(1) The department may employ a sufficient number of persons to extinguish or prevent the spreading of any fire that may be in danger of damaging or destroying any timber or other property on department protected lands. The department may provide needed tools and supplies and may provide transportation when necessary for persons so employed.

(2) Every person so employed is entitled to compensation at a rate to be fixed by the department. The department shall, upon request, show the person the number of hours worked by that person and the rate established for payment. After approval of the department, that person is entitled to receive payment from the state.

(3) It is unlawful to fail to render assistance when called upon by the department to aid in guarding or extinguishing any fire. [1986 c 100 § 16.]

76.04.165 Legislative declaration—Forest protection zones. (1) The legislature finds and declares that forestlands within the state are increasingly being used for residential purposes; that the risk to life and property is increasing from forest fires which may destroy developed property; that, based on the primary missions for the respective fire control agencies established in this chapter, adjustment of the geographic areas of responsibility has not kept pace with the increasing use of forestlands for residential purposes; and that the department should work with the state's other fire control agencies to define geographic areas of responsibility that are more consistent with their respective primary missions.

(2) To accomplish the purposes of subsection (1) of this section, the department shall establish a procedure to clarify its geographic areas of responsibility. The areas of department protection shall be called forest protection zones. The forest protection zones shall include all forestland which the department is obligated to protect but shall not include forest-

land within rural fire districts or municipal fire districts which affected local fire control agencies agree, by mutual consent with the department, is not appropriate for department protection. Forestland not included within a forest protection zone established by mutual agreement of the department and a rural fire district or a municipal fire district shall not be assessed under RCW 76.04.610 or 76.04.630.

(3) After the department and any affected local fire protection agencies have agreed on the boundary of a forest protection zone, the department shall establish the boundary by rule under chapter 34.05 RCW.

(4) Except by agreement of the affected parties, the establishment of forest protection zones shall not alter any mutual aid agreement. [1995 c 151 § 2; 1988 c 273 § 2.]

76.04.167 Legislative declaration—Equitable sharing of forest fire protection costs—Coordinated forest fire protection and suppression. (1) The legislature hereby finds and declares that:

(a) Forest wildfires are a threat to public health and safety and can cause catastrophic damage to public and private resources, including clean air, clean water, fish and wildlife habitat, timber resources, forest soils, scenic beauty, recreational opportunities, economic and employment opportunities, structures, and other improvements;

(b) Forestland owners and the public have a shared interest in protecting forests and forest resources by preventing and suppressing forest wildfires;

(c) A recent independent analysis of the state fire program considered it imperative to restore a more equitable split between the general fund and forest protection assessments;

(d) Without a substantial increase in forest protection funds, the state's citizens will be paying much more money for emergency fire suppression; and

(e) It is therefore the intent of the legislature that the costs of fire protection be equitably shared between the forest protection assessment account and state contributions to ensure that there will be sufficient firefighters who are equipped and trained to respond quickly to fires in order to keep fires small and manage those large fires that do occur. In recognition of increases in landowner assessments, the legislature declares its intent that increases in the state's share for forest protection should be provided to stabilize the funding for the forest protection program, and that sufficient state funds should be committed to the forest protection program so that the recommendations contained in the 1997 tridata report can be implemented on an equitable basis.

(2) The legislature hereby finds and declares that it is in the public interest to establish and maintain a complete, cooperative, and coordinated forest fire protection and suppression program for the state; that, second only to saving lives, the primary mission of the department is protecting forest resources and suppressing forest wildfires; that a primary mission of rural fire districts and municipal fire departments is protecting improved property and suppressing structural fires; and that the most effective way to protect structures is for the department to focus its efforts and resources on aggressively suppressing forest wildfires.

(3) The legislature also acknowledges the natural role of fire in forest ecosystems, and finds and declares it in the pub-

lic interest to use fire under controlled conditions to prevent wildfires by maintaining healthy forests and eliminating sources of fuel. [2001 c 279 § 1; 1995 c 151 § 1.]

76.04.175 Fire suppression equipment—Comparison of costs. (1) The department shall, by June 1 of each year, establish a list of fire suppression equipment, such as portable showers, kitchens, water tanks, dozers, and hauling equipment, provided by the department so that the cost by unit or category can be determined and can be compared to the expense of utilizing private vendors.

(2) The department shall establish a roster of quotes by vendors who are able to provide equipment to respond to incidents involving wildfires on department-protected lands. The department shall use these quotes from private vendors to make a comparison with the costs established in subsection (1) of this section. The department shall utilize the most effective and efficient resource available for responding to wildfires. [1995 c 113 § 2.]

Finding—Intent—1995 c 113: "The legislature finds that it is frequently in the best interest of the state to utilize fire suppression equipment from private vendors whenever possible in responding to incidents involving wildfires on department-protected lands. It is the intent of the legislature to encourage the department of natural resources to utilize kitchen, shower, and other fire suppression equipment from private vendors as allowed in RCW 76.04.015(4)(b), when such utilization will be most effective and efficient." [1995 c 113 § 1.]

76.04.177 Fire suppression equipment—Requirement to utilize private equipment. Before constructing or purchasing any equipment listed in RCW 76.04.175(1) for wildfire suppression, the department shall compare the per use cost of the equipment to be purchased or constructed with the per use cost of utilizing private equipment. If utilizing private equipment is more effective and efficient, the department may not construct or purchase the equipment but shall utilize the equipment from the lowest responsive bidder. [1995 c 113 § 3.]

Finding—Intent—1995 c 113: See note following RCW 76.04.175.

76.04.179 Wildland fire advisory committee. (1) The commissioner must appoint and maintain a wildland fire advisory committee to generally advise the commissioner on all matters related to wildland firefighting in the state. This includes, but is not limited to, developing recommendations regarding department capital budget requests related to wildland firefighting and developing strategies to enhance the safe and effective use of private and public wildland firefighting resources.

(2) The commissioner may appoint members to the wildland fire advisory committee as the commissioner determines is the most helpful in the discharge of the commissioner's duties. However, at a minimum, the commissioner must invite the following:

(a) Two county commissioners, one from east of the crest of the Cascade mountains and one from west of the crest of the Cascade mountains;

(b) Two owners of industrial land, one an owner of timberland and one an owner of rangeland;

(c) The state fire marshal or a representative of the state fire marshal's office;

(d) Two individuals with the title of fire chief, one from a community located east of the crest of the Cascade mountains and one from a community located west of the crest of the Cascade mountains;

(e) An individual with the title of fire commissioner whose authority is pursuant to chapter 52.14 RCW;

(f) A representative of a federal wildland firefighting agency;

(g) A representative of a tribal nation;

(h) A representative of a statewide environmental organization;

(i) A representative of a state land trust beneficiary; and

(j) A small forestland owner.

(3) The local wildland fire liaison serves as the administrative chair for the wildland fire advisory committee.

(4) The department must provide staff support for all committee meetings.

(5) The wildland fire advisory committee must meet at the call of the administrative chair for any purpose that directly relates to the duties set forth in subsection (1) of this section or as is otherwise requested by the commissioner or the administrative chair.

(6) Each member of the wildland fire advisory committee serves without compensation but may be reimbursed for travel expenses as authorized in RCW 43.03.050 and 43.03.060.

(7) The members of the wildland fire advisory committee, or individuals acting on their behalf, are immune from civil liability for official acts performed in the course of their duties.

(8) All requirements in this section are subject to the availability of amounts appropriated for the specific purposes described. [2015 c 182 § 3.]

76.04.181 Maximizing the utilization of local fire suppression assets—Department's duty. (1) To maximize the effective utilization of local fire suppression assets, the department is required to:

(a) Actively engage in ongoing prefire season outreach and recruitment of qualified wildland fire suppression contractors and equipment owners who have valid incident qualifications for the type of contracted work to be performed and compile and annually update a master list of the qualified contractors. In order to be included on a master list of qualified wildland fire suppression contractors:

(i) Contractors providing fire engines, tenders, crews, or similar resources must have training and qualifications sufficient for federal wildland fire contractor eligibility, including possessing a valid incident qualification card, commonly called a red card; and

(ii) Contractors other than those identified in (a)(i) of this subsection must have training and qualifications evidenced by possession of a valid department qualification and safety document, commonly called a blue card, issued to people cooperating with the department pursuant to an agreement;

(b) Provide timely advance notification of the dates and locations of department blue card training to all potential wildland fire suppression contractors known to the department and make the training available in several locations that are reasonably convenient for contractors;

(c) Organize the lists of qualified wildland fire suppression contractors to identify the counties where the contractors are located and make the lists, and the availability status of the contractors on the list, available to emergency dispatchers, county legislative authorities, emergency management departments, and local fire districts;

(d) Cooperate with federal wildland firefighting agencies to prioritize, based on predicted need, the efficient use of local resources in close proximity to wildland fire incidents, including local private wildland suppression contractors;

(e) Enter into preemptive agreements with landowners and other contractors in possession of firefighting capability that may be utilized in wildland fire suppression efforts, including the use of bulldozers, fallers, fuel tenders, potable water tenders, water sprayers, wash trailers, refrigeration units, and buses; and

(f) Conduct outreach to provide basic incident command system and wildland fire safety training to landowners in possession of firefighting capability to help ensure that any wildland fire suppression actions taken by private landowners on their own land are accomplished safely and in coordination with any related incident command structure.

(2) The local wildland fire liaison may play an active role in the outreach and recruitment of wildland fire suppression contractors under subsection (1) of this section. This effort may include, but is not limited to, reaching out to local fire districts and collecting their knowledge to identify potential fire suppression contractors.

(3) Nothing in subsection (1) of this section prohibits the department from:

(a) Engaging, as needed, local private wildland fire suppression contractors not included on the master list or subject to a preemptive agreement; or

(b) Conducting safety training on the site of a wildland fire in order to utilize available contractors not included on a master list of qualified wildland fire suppression contractors.

(4) When entering into preemptive agreements with landowners and other contractors under this section, the department must:

(a) Ensure that all equipment and personnel satisfy department standards, including any applicable safety training certifications required by the department of labor and industries;

(b) Ensure that all contractors are, when engaged in fire suppression activities, under the supervision of recognized wildland fire personnel;

(c) Verify that the agreements have been finalized with an agreed upon standard operating rate identified before being included on the master list of qualified contractors; and

(d) Inspect, or verify the inspection of, any equipment included in the agreement to ensure that all safety and dependability standards are satisfied.

(5) The department may authorize operational field personnel to carry additional personal protection [protective] equipment in order to loan the equipment to private fire suppression contractors as needed.

(6) No civil liability may be imposed by any court on the state or its officers and employees for any adverse impacts resulting from training or personal protection [protective] equipment provided by the department or preemptive agreements entered into by the department under the provisions of

this section except upon proof of gross negligence or willful or wanton misconduct.

(5) [(7)] All requirements in this section are subject to the availability of amounts appropriated for the specific purposes described. [2017 c 104 § 1; 2015 c 182 § 6.]

Effective date—2017 c 104: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2017." [2017 c 104 § 4.]

76.04.183 Prescribed burn manager certification program—Rule-making authority.

(1) Subject to availability of amounts appropriated for this specific purpose, the department must create a prescribed burn manager certification program for those who practice prescribed burning in the state. The certification program must include training on all relevant aspects of prescribed fire in Washington including, but not limited to, the following: Legal requirements; safety; weather; fire behavior; smoke management; prescribed fire techniques; public relations; planning; and contingencies.

(2) The department may not require certification under the program created under subsection (1) of this section for burn permit approval under this chapter. Nothing in this section may be construed as creating a mandatory prescribed burn manager certification requirement to conduct prescribed burning in Washington.

(3) No civil or criminal liability may be imposed by any court, the state, or its officers and employees, on a prescribed burn manager certified under the program created under subsection (1) of this section, for any direct or proximate adverse impacts resulting from a prescribed fire conducted under the provisions of this chapter except upon proof of gross negligence or willful or wanton misconduct.

(4) The department may adopt rules to create the prescribed burn manager certification program and to set periodic renewal criteria. The rules should be developed in consultation with prescribed burn programs in other states. The department may also adopt rules to establish a decertification process for certified prescribed burn managers who commit a violation under this chapter or rules adopted under this chapter. The department may, in its own discretion, develop an equivalency test for experienced prescribed burn managers.

(5) Certified prescribed burn managers may be issued burn permits with modified requirements in recognition of their training and skills. In such cases, normal smoke management and fire risk parameters apply. [2018 c 172 § 1.]

PERMITS

76.04.205 Burning permits—Civil penalty. (1) Except in certain areas designated by the department or as permitted under rules adopted by the department, a person shall have a valid written burning permit obtained from the department to burn:

(a) Any flammable material on any lands under the protection of the department; or

(b) Refuse or waste forest material on forestlands protected by the department.

(2) To be valid a permit must be signed by both the department and the permittee. Conditions may be imposed in the permit for the protection of life, property, or air quality

and the department may suspend or revoke the permits when conditions warrant. A permit shall be effective only under the conditions and for the period stated therein. Signing of the permit shall indicate the permittee's agreement to and acceptance of the conditions of the permit.

(3) The department may inspect or cause to be inspected the area involved and may issue a burning permit if:

(a) All requirements relating to firefighting equipment, the work to be done, and precautions to be taken before commencing the burning have been met;

(b) No unreasonable danger will result; and

(c) Burning will be done in compliance with air quality standards established by chapter 70A.15 RCW.

(4) The department, authorized employees thereof, or any warden or ranger may refuse, revoke, or postpone the use of permits to burn when necessary for the safety of adjacent property or when necessary in their judgment to prevent air pollution as provided in chapter 70A.15 RCW.

(5) Any person who violates this section, any permit issued under this section, any rules that implement this section, or the silvicultural burning provisions set forth in chapter 70A.15 RCW, may incur a civil penalty pursuant to RCW 70A.15.3160. The department shall adopt a rule that establishes: (a) A framework for resolving conflicts that may arise related to this section, including the issuance of civil penalties pursuant to RCW 70A.15.3160 for violations of this section; and (b) the method by which penalties issued pursuant to RCW 70A.15.3160 for violations of this section will be calculated. The department shall conduct a public process to solicit input on the development of the rule. [2021 c 132 § 2; 2021 c 65 § 79; 1986 c 100 § 17.]

Reviser's note: This section was amended by 2021 c 65 § 79 and by 2021 c 132 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

76.04.215 Burning mill wood waste—Arresters. (1) It is unlawful for anyone manufacturing lumber or shingles, or other forest products, to destroy wood waste material by burning within one-fourth of one mile of any forest material without properly confining the place of the burning and without further safeguarding the surrounding property against danger from the burning by such additional devices as the department may require.

(2) It is unlawful for anyone to destroy any wood waste material by fire within any burner or destructor operated within one-fourth of one mile of any forest material, or to operate any power-producing plant using in connection therewith any smokestack, chimney, or other spark-emitting outlet, without installing and maintaining on such burner, or destructor, or on such smokestack, chimney, or other spark-emitting outlet, a safe and suitable device for arresting sparks. [1986 c 100 § 18.]

76.04.235 Dumping mill waste, forest debris—Penalty. (1) No person may dump mill waste from forest products, or forest debris of any kind, in quantities that the department declares to constitute a forest fire hazard on or threatening forestlands located in this state without first obtaining a

(2022 Ed.)

written permit issued by the department on such terms and conditions determined by the department pursuant to rules enacted to protect forestlands from fire. The permit is in addition to any other permit required by law.

(2) Any person who dumps such mill waste, or forest debris, without a permit, or in violation of a permit is guilty of a gross misdemeanor and subject to the penalties for a gross misdemeanor under RCW 9A.20.021 and may further be required to remove all materials dumped. [1986 c 100 § 19.]

76.04.246 Use of blasting fuse. It is unlawful to use fuse for blasting on any area of logging slash or area of actual logging operation without a permit during the closed season. Upon the issuance of a written permit by the department or warden or ranger, fuse may be used during the closed season under the conditions specified in the permit. [1986 c 100 § 20.]

CLOSURES/SUSPENSIONS

76.04.305 Closed to entry—Designation. (1) When, in the opinion of the department, any forestland is particularly exposed to fire danger, the department may designate such land as a region of extra fire hazard subject to closure, and the department shall adopt rules for the protection thereof.

(2) All such rules shall be published in such newspapers of general circulation in the counties wherein such region is situated and for such length of time as the department may determine.

(3) When in the opinion of the department it becomes necessary to close the region to entry, posters carrying the wording "Region of extra fire hazard-CLOSED TO ENTRY—except as provided by RCW 76.04.305" and indicating the beginning and ending dates of the closures shall be posted on the public highways entering the regions.

(4) The rules shall be in force from the time specified therein, but when in the opinion of the department such forest region continues to be exposed to fire danger, or ceases to be so exposed, the department may extend, suspend, or terminate the closure by proclamation.

(5) This section does not authorize the department to prohibit the conduct of industrial operations, public work, or access of permanent residents to their own property within the closed area, but no one legally entering the region of extra fire hazard may use the area for recreational purposes which are prohibited to the general public under the terms of this section. [1986 c 100 § 21.]

76.04.315 Suspension of burning permits/privileges. In times and localities of unusual fire danger, the department may issue an order suspending any or all burning permits or privileges authorized by RCW 76.04.205 and may prohibit absolutely the use of fire in such locations. [1986 c 100 § 22.]

76.04.325 Closure of forest operations or forestlands. (1) When in the opinion of the department weather conditions arise which present an extreme fire hazard, whereby life and property may be endangered, the department may issue an order shutting down all logging, land clearing, or other industrial operations which may cause a fire to start. The shutdown

shall be for the periods and regions designated in the order. During shutdowns, all persons are excluded from logging operating areas and areas of logging slash, except those present in the interest of fire protection.

(2) When in the opinion of the department extreme fire weather exists, whereby forestlands may be endangered, the department may issue an order restricting access to and activities on forestlands. The order shall describe the regions and extent of restrictions necessary to protect forestlands. During the period in which the order is in effect, all persons may be excluded from the regions described, except those persons present in the interest of fire protection.

(3) Each day's violation of an order under this section shall constitute a separate offense. [1986 c 100 § 23.]

FIRE PROTECTION REGULATION

76.04.405 Steam, internal combustion, or electrical engines and other spark-emitting equipment regulated. It is unlawful during the closed season for any person to operate any steam, internal combustion, or electric engine, or any other spark-emitting equipment or device, on any forestland or in any place where, in the opinion of the department, fire could spread to forestland, without first complying with the requirements as may be established by the department by rule pursuant to this chapter. [1986 c 100 § 24.]

76.04.415 Penalty for violations—Work stoppage notice. (1) Every person upon receipt of written notice issued by the department that such person has or is violating any of the provisions of RCW 76.04.215, 76.04.305, 76.04.405, or 76.04.650 or any rule adopted by the department concerning fire prevention and fire suppression preparedness shall cease operations until compliance with the provisions of the sections or rules specified in such notice.

(2) The department may specify in the notice of violation the special conditions and precautions under which the operation would be allowed to continue until the end of that working day. [1986 c 100 § 25.]

76.04.425 Unauthorized entry into sealed fire tool box. It is unlawful to enter into a sealed fire tool box without authorization. [1986 c 100 § 26.]

76.04.435 Deposit of fire or live coals. No person operating a railroad may permit to be deposited by any employee, and no one may deposit fire or live coals, upon the right-of-way within one-fourth of one mile of any forest material, during the closed season, unless the fire or live coals are immediately extinguished. [1986 c 100 § 27.]

76.04.445 Reports of fire. (1) Any person engaged in any activity on forestlands shall immediately report to the department, in person or by radio, telephone, or telegraph, any fires on forestlands.

(2) Railroad companies and other public carriers operating on or through forestlands shall immediately report to the department, in person or by radio, telephone, or telegraph, any fires on or adjacent to their right-of-way or route. [1986 c 100 § 28.]

76.04.455 Discarding lighted material or smoking flammable material—Discharge, release, or detonation of certain materials—Receptacles in conveyances—Posting a copy of this section. (1)(a) Except as otherwise provided in this subsection, it is unlawful for any person to, during the closed season:

(i) Discard any lighted tobacco, cigars, cigarettes, matches, fireworks, charcoal, or other lighted material, discharge any incendiary ammunition, release a sky lantern, or detonate an exploding target on or over any forest, brush, range, or grain areas; or

(ii) Smoke any flammable material when in forest or brush areas except on roads, cleared landings, gravel pits, or any similar area free of flammable material.

(b) The prohibitions contained in this subsection do not apply to the detonation of nonflammable exploding targets on any forest, brush, range, or grain areas if the person detonating the nonflammable exploding target:

(i) Has lawful possession and control of the land in question; or

(ii) Has prior written permission for the activity from the person who owns or has lawful possession and control of the land in question.

(c) The prohibitions contained in this subsection do not apply to suppression actions authorized or conducted by the department under the authority of this chapter.

(2)(a) Except as otherwise provided in this subsection, it is unlawful for any person to, during any time outside of the closed season, discharge any incendiary ammunition, release a sky lantern, or detonate an exploding target on or over any forest, brush, range, or grain areas.

(b) The prohibitions contained in this subsection do not apply if the person conducting the otherwise prohibited action:

(i) Has lawful possession and control of the land in question; or

(ii) Has prior written permission for the activity from the person who owns or has lawful possession and control of the land in question.

(3) Every conveyance operated through or above forest, range, brush, or grain areas must be equipped in each compartment with a suitable receptacle for the disposition of lighted tobacco, cigars, cigarettes, matches, or other flammable material.

(4) Every person operating a public conveyance through or above forest, range, brush, or grain areas shall post a copy of this section in a conspicuous place within the smoking compartment of the conveyance; and every person operating a saw mill or a logging camp in any such areas shall post a copy of this section in a conspicuous place upon the ground or buildings of the milling or logging operation. [2014 c 90 § 2; 1986 c 100 § 29.]

76.04.465 Certain snags to be felled currently with logging. Standing dead trees constitute a substantial deterrent to effective fire control action in forest areas, but are also an important and essential habitat for many species of wildlife. To insure continued existence of these wildlife species and continued forest growth while minimizing the risk of destruction by conflagration, only certain snags must be felled currently with the logging. The department shall adopt

rules relating to effective fire control action to require that only certain snags be felled, taking into consideration the need to protect the wildlife habitat. [1986 c 100 § 30.]

76.04.475 Reimbursement for costs of suppression action. Any person, firm, or corporation, public or private, obligated to take suppression action on any forest fire is entitled to reimbursement for reasonable costs incurred, subject to the following:

(1) No reimbursement is allowed under this section to a person, firm, or corporation whose negligence is responsible for the starting or existence of any fire for which costs may be recoverable pursuant to law. Reimbursement for fires resulting from slash burns are subject to RCW 76.04.486.

(2) If the fire is started in the course of or as a result of land clearing operations, right-of-way clearing, or a landowner operation, the person, firm, or corporation conducting the operation shall supply:

(a) At no cost to the department, all equipment and able-bodied persons under contract, control, employment, or ownership that are requested by the department and are reasonably available until midnight of the day on which the fire started; and

(b) After midnight of the day on which the fire started, at no cost to the department, all equipment and able-bodied persons under contract, control, employment, or ownership that were within a one-half mile radius of the fire at the time of discovery, until the fire is declared out by the department. In no case may the person, firm, or corporation provide less than one suitable bulldozer and five able-bodied persons, or other equipment accepted by the department as equivalent, unless the department determines less is needed for the purpose of suppressing the fire; and

(c) If the person, firm, or corporation has no personnel or equipment within one-half mile of the fire, payment shall be made to the department for the minimum requirement of one suitable bulldozer and five able-bodied persons, for the duration of the fire; and

(d) If, after midnight of the day on which the fire started, additional personnel and equipment are requested by the department, the person, firm, or corporation shall supply the personnel and equipment under contract, control, employment, or ownership outside the one-half mile radius, if reasonably available, but shall be reimbursed for such personnel and equipment as provided in subsection (4) of this section.

(3) When a fire which occurred in the course of or as a result of land clearing operations, right-of-way clearing, or a landowner operation, which had previously been suppressed, rekindles, the person, firm, or corporation shall supply the same personnel and equipment, under the same conditions, as were required at the time of the original fire.

(4) Claims for reimbursement shall be submitted within a reasonable time to the department which shall upon verifying the amounts therein and the necessity thereof authorize payment at such rates as established by the department for wages and equipment rental. [1986 c 100 § 31.]

76.04.486 Escaped slash burns—Obligations. (1) All personnel and equipment required by the burning permit issued for a slash burn may be required by the department, at the permittee's expense, for suppression of a fire resulting

from the slash burn until the fire is declared out by the department. In no case may the permittee provide less than one suitable bulldozer and five persons capable of taking suppression action. In addition, if a slash burn becomes an uncontrolled fire the department may recover from the landowner the actual costs incurred in suppressing the fire. The amount collected from the landowner shall be limited to and calculated at the rate of one dollar per acre for the landowner's total forestlands protected by the department, up to a maximum charge of fifty thousand dollars per escaped slash burn.

(2) The landowner contingency forest fire suppression account shall be used to pay and the permittee shall not be responsible for fire suppression expenditures greater than fifty thousand dollars or the total amount calculated for forestlands owned as determined in subsection (1) of this section for each escaped slash burn.

(3) All expenses incurred in suppressing a fire resulting from a slash burn in which negligence was involved shall be the obligation of the landowner. [1986 c 100 § 32.]

76.04.495 Negligent starting of fires or allowance of extreme fire hazard or debris—Liability—Recovery of reasonable expenses—Lien. (1) Any person, firm, or corporation:

(a) Whose negligence is responsible for the starting or existence of a fire which spreads on forestland; or (b) who creates or allows an extreme fire hazard under RCW 76.04.660 to exist and which hazard contributes to the spread of a fire; or (c) who allows forest debris subject to RCW 76.04.650 to exist and which debris contributes to the spread of fire, shall be liable for any reasonable expenses made necessary by (a), (b), or (c) of this subsection. The state, a municipality, a forest protective association, or any fire protection agency of the United States may recover such reasonable expenses in fighting the fire, together with costs of investigation and litigation including reasonable attorneys' fees and taxable court costs, if the expense was authorized or subsequently approved by the department. The authority granted under this subsection allowing the recovery of reasonable expenses incurred by fire protection agencies of the United States shall apply only to such expenses incurred after June 30, 1993.

(2) The department or agency incurring such expense shall have a lien for the same against any property of the person, firm, or corporation liable under subsection (1) of this section by filing a claim of lien naming the person, firm, or corporation, describing the property against which the lien is claimed, specifying the amount expended on the lands on which the firefighting took place and the period during which the expenses were incurred, and signing the claim with post office address. No claim of lien is valid unless filed, with the county auditor of the county in which the property sought to be charged is located, within a period of ninety days after the expenses of the claimant are incurred. The lien may be foreclosed in the same manner as a mechanic's lien is foreclosed under the statutes of the state of Washington. [1993 c 196 § 2; 1986 c 100 § 33.]

WILDFIRE RESPONSE, FOREST RESTORATION, AND
COMMUNITY RESILIENCE

76.04.505 Finding—Intent. (1) Over the last decade, forestland and rangeland wildfires have grown larger and increased in intensity and destructiveness throughout Washington state. The annual acres burned in our state illustrates this alarming trend. In the 1990s, an average of 86,000 acres burned annually. In the 2000s, the average annual acres burned increased to 189,000. In the last five years, the annual average grew to more than 488,000 acres burned. This trajectory of escalation continued last year, with wildfires burning more than 812,000 acres.

(2) Recent wildfires have devastated state, federal, tribal, and private lands, destroyed homes and property, and taken lives. These fires have also released greenhouse gases, destroyed critical fish and wildlife habitat, filled our skies with harmful smoke, polluted our waters, damaged our economy, increased the risk of flooding and landslides, created a critical need for reforestation, and threatened the natural resources needed for essential industries and rural economies.

(3) Catastrophic wildfires have significant negative impacts on fish and wildlife habitat, including the loss and degradation of places to shelter and feed, water quality and quantity, and soil nutrients. Washington's fish and wildlife are part of a fire-adapted landscape, but catastrophic wildfires threaten their health and recovery.

(4) The increase in these uncharacteristic wildfires are the result of a combination of climate change-driven drought, hotter temperature, and windstorms; human development patterns and land use planning and activities; and where uncharacteristic fires occur in forests, by past fire suppression and departures from native ecosystem structure and function. Uncharacteristic wildfire risk is addressed through scientifically informed landscape-level treatments designed to restore forest ecosystem and watershed resilience.

(5) Wildfires result in significant greenhouse gas emissions. Wildfires have become one of the largest sources of black carbon in the last five years. From 2014-2018, wildfires in Washington state generated 39.2 million metric tons of carbon, the equivalent of more than 8.5 million cars on the road a year. In 2015, when 1.13 million acres burned in Washington, wildfires were the second largest source of greenhouse gas emissions, second only to transportation.

(6) The legislature has recognized our forests, as well as the manufacturing and utilization of wood products, as a natural carbon solution and critical component of our state's carbon reduction strategy pursuant to chapter 120, Laws of 2020. Uncharacteristic wildfires threaten the ability of our forests to sequester carbon, and they threaten the stability and long-term viability of our forest products industry.

(7) The Washington state department of natural resources' 20-year forest health strategic plan and climate risk assessment finds that carbon emissions from wildfires are anticipated to increase if there is no change in forest management practices. Unless the state significantly increases active forest management across land ownerships to reduce the risk and intensity of wildfires, wildfire emissions will erode efforts to achieve our state's greenhouse gas emissions reduction goals. In addition to reducing fuel loads, many effective

forest health treatments retain and restore older, large fire-resilient trees across the landscape that play an important role in carbon sequestration, enhancing climate resilience and ecosystem services, and mitigating climate change.

(8) Wildfires inflict huge costs to the state budget, the budgets of partner agencies, and our economy. From 2014-2019, agencies in Washington annually spent nearly \$150 million fighting wildfires. In 2015, firefighting costs were more than \$342 million. In 2019, firefighting costs were more than \$172 million. And suppression costs are only a small portion of the full economic impact. According to a 2018 report by the nonprofit headwater's economics, suppression costs account for only nine percent of the total cost of wildfires when factoring in disaster recovery, lost business, lost infrastructure, and timber damage, and public health impacts.

(9) Over one-half of Washington is forested, providing significant environmental and economic value. Over \$4,900,000,000 in wages and \$200,000,000 in taxes are paid by the forest products' sector each year. Opportunities exist to boost our rural economies through wildfire preparation and preparedness that maintain and attract private sector investments and employment in rural communities.

(10) Wildfires are significant threats to life and property. Over the last five years, wildfires in Washington have taken five lives, including four firefighters and the life of a one-year old boy. In 2020 alone, 298 homes were destroyed by wildfires in our state. More than 1,100 homes have been destroyed this decade. Communities in every corner of Washington have felt the impact and devastation of flames and smoke. In 2020, the town of Malden, Washington was forever scarred by rangeland wildfire. Approximately 80 percent of the town's structures burned down in the Babb Road fire, including the city hall, post office, and fire station.

(11) Wildfire smoke has significant negative impacts on public health. For the second time in the last three years, Washington state had the worst air quality in the world due to wildfires. Communities in every corner of the state felt the impact. Exposure to particulate matter in wildfire smoke has been associated with a wide range of damaging health effects. The particulates in this smoke make those breathing the air wheeze, cough, shorten their breath, and experience sore eyes and throats, diminishing health and quality of life. Other adverse health outcomes are more severe, including increases in asthma-related hospitalizations, chronic and acute respiratory and cardiovascular health problems, and premature death.

(12) Historical forest management, legacy wildfire suppression responses, and a rapidly changing climate have increased the risk of catastrophic wildfires throughout the state. It is the policy of the state to encourage prudent and responsible forest resource management to maintain the health of forests and ecosystems in Washington state. Increasing the pace and scale of forest restoration through fuel reduction, thinning, and the use of prescribed fire on federal, state, tribal, and private lands pursuant to the 20-year forest health strategic plan, the wildland fire protection 10-year strategic plan, and RCW 79.10.520 will reduce the risk of catastrophic wildfires.

(13) In 2020, more than 1,300,000 acres of national forest system land in eastern Washington were considered in

need of treatments to restore forest health and reduce the risk of wildfire hazard potential. Many of these lands are adjacent to populated communities, private lands, and state trust lands.

(14) In 2020, 166,000 acres of department of natural resources' land and 74,000 acres of other state-owned lands in eastern Washington were in need of forest health treatment. These forestlands provide critical fish and wildlife habitat, natural and cultural resources, recreation, raw materials for the forest industry, and funding for counties and schools. From 2011-2020, 102,700 forested acres of department of natural resources' managed trust lands have burned.

(15) Tribal lands and communities have been significantly impacted by wildfires and unhealthy forests. Approximately 494,000 acres of tribal lands in eastern Washington need forest health treatments. These forestlands provide critical fish and wildlife habitat, natural and cultural resources, and economic opportunities.

(16) Washington state has nearly eight million acres of private forestlands. Forested acres are declining statewide with a loss of 394,000 acres between 2007 and 2019. Small forestland owners account for 15 percent of total forest acres. Small forestland owner forested acres declined 3.7 percent from 2,990,000 acres in 2007 to 2,880,000 million acres in 2019. The number of small forestland owners increased 8.5 percent from 201,000 in 2007 to 218,000 in 2019. The number of small forestland owner parcels increased 2.1 percent from 256,500 to 261,800. This rapid land use change creates significant challenges for implementing forest health and wildfire response actions in the wildland urban interface. In eastern Washington alone, approximately 288,000 acres owned by small forestland owners are in need of immediate forest health treatment. These forestlands provide critical raw materials for the forest industry, rural economic opportunities, fish and wildlife habitat, cultural resources, and recreation. A coordinated interagency response is needed to address the multifaceted challenge posed by increasing parcelization, forest fragmentation, loss of economic viability, and changes in landowner assistance needs.

(17) The legislature finds that increasing the pace and scale of science-based forest health activities to reduce hazardous fuels and restore fire resilient forests, including through mechanical thinning and prescribed burning, on federal, state, tribal, and private lands, will reduce the risk and severity of wildfires, protect cultural and archaeological resources, improve fish and wildlife habitat, expand recreational opportunities, protect air and water quality, create rural economic opportunities, provide critical wood products, and increase long-term carbon sequestration on our natural resource lands.

(18) Increased development in the wildland urban interface has also increased the number of people living in areas that are at risk of wildfire. In Washington, over 2,000,000 homes are currently at risk of wildfire. Communities and homeowners can take actions that reduce the risk of loss in the event of wildfire including, but not limited to, home hardening, creating defensible space, and building potential control lines or strategic fuel breaks.

(19) Long-term, sustainable investment in wildfire response, forest restoration, and community resilience is of utmost importance to the health and safety of our environ-

ment, our economy, our communities, and the well-being of every resident.

(20) It is the intent of the legislature to take immediate action to fully fund the wildland fire protection 10-year strategic plan. Strategies to accomplish these goals include, but are not limited to:

(a) Upgrading our capability to attack wildfires with critical air and ground resources;

(b) Providing needed wildfire resources to state wildfire response and local fire service districts;

(c) Working with each state utility, local publicly owned electric utility, and electrical cooperative to reduce wildfire risk and develop consistent approaches and shared data related to fire prevention, safety, vegetation management, and energy distribution systems; and

(d) Improving wildfire detection in areas at risk of wildfire through new technologies and equipment.

(21) Furthermore, it is the intent of the legislature to take immediate action to increase the pace and scale of forest management across different land ownerships and fully fund the 20-year forest health strategic plan and activities developed to facilitate implementation of the Washington state forest action plan. Strategies to accomplish these goals include, but are not limited to:

(a) Restoring to health a minimum of 1,250,000 acres of forestland in need of immediate action to become more resilient and improve watershed health;

(b) Increasing prescribed fire and other fuel reduction projects through proven forestry practices and the operation of prescribed fire crews;

(c) Establishing potential control lines and strategic fuel breaks around communities with high wildfire risk;

(d) Increasing funding for the small forestland owner office for technical assistance and support for small forestland owners and funding an integrated small forestland owner forest health program in support of extending management and control of wildfire from homes through the wildland urban interface to small forestland owner holdings; and

(e) Monitoring forest health conditions and effectiveness of treatments throughout the state, including ecological function and reducing catastrophic wildfires.

(22) Furthermore, it is the intent of the legislature to take immediate action to help communities become more resilient to wildfire. Strategies to accomplish these goals include, but are not limited to:

(a) Increasing funding for cost share programs for home hardening, fuels reduction, and community resilience programs in communities at risk of wildfire;

(b) Reducing wildfire risk to wildland urban interfaces; and

(c) Ensuring our state's most vulnerable populations are not disproportionately burdened by the impact and consequences of wildfire.

(23) The legislature intends to provide \$125,000,000 per biennium over the next four biennia for a total of \$500,000,000 and that these investments will help protect the state's people, environment, and economy. [2021 c 298 § 1.]

Short title—2021 c 298: "This act may be known and cited as the wildfire response, forest restoration, and community resilience act." [2021 c 298 § 11.]

76.04.511 Wildfire response, forest restoration, and community resilience account. (1) The wildfire response, forest restoration, and community resilience account is created in the state treasury. All receipts from moneys directed to the account must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for carrying out the purposes of chapter 298, Laws of 2021 and for no other purposes.

(2) Expenditures from the account may be made to state agencies, federally recognized tribes, local governments, fire and conservation districts, nonprofit organizations, forest collaboratives, and small forestland owners, consistent with the 20-year forest health strategic plan, the wildland fire protection 10-year strategic plan, and the Washington state forest action plan.

(3) The wildfire response, forest restoration, and community resilience account may only be used to monitor, track, and implement the following purposes:

(a) Fire preparedness activities consistent with the goals contained in the state's wildland fire protection 10-year strategic plan including, but not limited to, funding for firefighting capacity and investments in ground and aerial firefighting resources, equipment, and technology, and the development and implementation of a wildland fire aviation support plan in order to expand and improve the effectiveness and cost-efficiency of the department's wildland fire aviation program;

(b) Fire prevention activities to restore and improve forest health and reduce vulnerability to drought, insect infestation, disease, and other threats to healthy forests including, but not limited to, silvicultural treatments, seedling development, thinning and prescribed fire, and postfire recovery activities to stabilize and prevent unacceptable degradation to natural and cultural resources and minimize threats to life and property resulting from the effects of a wildfire. Funding priority under this subsection must be given to programs, activities, or projects aligned with the 20-year forest health strategic plan, the wildland fire protection 10-year strategic plan, and the Washington state forest action plan across any combination of local, state, federal, tribal, and private ownerships;

(c) Fire protection activities for homes, properties, communities, and values at risk including, but not limited to: Potential control lines or strategic fuel breaks in forests and rangelands near communities; improved warning and communications systems to prepare for wildfires; increased engagement with non-English speaking communities in their home language for community preparedness; and the national fire protection association's fire wise USA and the fire-adapted communities network programs to help communities take action before wildfires.

(4) Appropriations for forest health activities funded by the wildfire response, forest restoration, and community resilience account shall not be less than 25 percent of the biennial appropriated funding.

(5) Appropriations for community resilience activities funded by the wildfire response, forest restoration, and community resilience account shall not be less than 15 percent of the biennial appropriated funding.

(6) Funding may not be used for emergency fire costs or suppression costs as defined in RCW 76.04.005.

(7) To the maximum extent possible, workforce development investments from the wildfire response, forest restoration, and community resilience account should prioritize historically marginalized, underrepresented, rural, and low-income communities.

(8) Any expenditures from the wildfire response, forest restoration, and community resilience account for forest health treatments on federal lands must be additive to the baseline accomplishments and outputs already funded through the federal government and outlined in the annual work plans of the United States forest service, bureau of land management, the national park service, and/or the United States fish and wildlife service.

(9) The department may solicit the forest health advisory committee established in RCW 76.06.200 and wildland fire advisory committee established in RCW 76.04.179 to provide recommendations for investments under this section. In assessing investments and developing recommendations for communities that will be impacted based on ecological, public infrastructure, and life safety needs as set forth in the 20-year forest health strategic plan and the wildland fire protection 10-year strategic plan, the forest health advisory committee and wildland fire advisory committee must use environmental justice or equity focused tools, such as the Washington tracking network's environmental health disparities tool to identify highly impacted communities. This identification must be used as a factor in determining recommendations for investments under this section. "Highly impacted communities" has the same meaning as defined in RCW 19.405.020.

(10) To the maximum extent practicable and where consistent with the 20-year forest health strategic plan, the wildland fire protection 10-year strategic plan, or the Washington state forest action plan and landowner objectives, forest health treatments funded through the wildfire response, forest restoration, and community resilience account shall seek to utilize the value of any merchantable materials to help offset treatment costs. [2021 c 298 § 2.]

Short title—2021 c 298: See note following RCW 76.04.505.

76.04.516 Report to the governor and legislature—Forest inventory—Forest growth and yield modeling—Sustainable harvest calculation—Review—Report.

(1) By December 1st of each even-numbered year, and in compliance with RCW 43.01.036, the department must report to the governor and legislature on the following:

(a) The type and amount of the expenditures made, by fiscal year, and for what purpose, from the wildfire response, forest restoration, and community resilience account created in RCW 76.04.511 and from expenditures made from the general fund for implementation of chapter 297, Laws of 2022;

(b) The amount of unexpended and unobligated funds in the wildfire response, forest restoration, and community resilience account and recommendations for the disbursement to local districts;

(c) Progress on implementation of the wildland fire protection 10-year strategic plan including, but not limited to, how investments are reducing human-caused wildfire starts, lowering the size and scale and geography of catastrophic wildfires, reducing the communities, landscapes, and popula-

tion at risk, and creating resilient landscapes and communities;

(d) Progress on implementation of the 20-year forest health strategic plan as established through the forest health assessment and treatment framework pursuant to RCW 76.06.200 including, but not limited to: Assessment of fire prone lands and communities that are in need of forest health treatments; forest health treatments prioritized and conducted by landowner type, geography, and risk level; estimated value of any merchantable materials from forest health treatments; and number of acres treated by treatment type, including the use of prescribed fire;

(e) Progress on developing markets for forest residuals and biomass generated from forest health treatments.

(2) The department must include recommendations on any adjustments that may be necessary or advisable to the mechanism of funding dispensation as created under chapter 298, Laws of 2021.

(3) The report required in this section should support existing department assessments pursuant to RCW 79.10.530 and 76.06.200.

(4)(a)(i) Prior to the determination of the 2025-2034 sustainable harvest calculation as required by RCW 79.10.320, the department must hire an independent third-party contractor to assist it in updating its forest inventory by increasing the intensity of forest sample plots on all forestlands over the next two biennium. The department's sustainable harvest calculation technical advisory committee must be involved in the design, development, and implementation of this forest inventory update.

(ii) For purposes of this subsection, "forest inventory" means the collection of sample data to estimate a range of forest attributes including, but not limited to, standing volume, stored carbon, habitat attributes, age classes, tree species, and other inventory attributes, including information needed to estimate rates of tree growth and associated carbon sequestration on department lands.

(iii) The department's sustainable harvest calculation technical advisory committee must bring forward recommendations for regular maintenance and updates to the forest inventory on a ten-year basis.

(b) Prior to the determination of the 2025-2034 sustainable harvest calculation as required by RCW 79.10.320, the department must hire a third-party contractor to review, analyze, and advise the department's forest growth and yield modeling, specific to all types of forested acres managed by the department. The department's sustainable harvest calculation technical advisory committee must be involved in the design, review, and analysis of the department's forest growth and yield modeling.

(c) Prior to the determination of the 2025-2034 sustainable harvest calculation as required by RCW 79.10.320 and in the absence of any litigation, pending or in progress, against the department's sustainable harvest calculation, the joint legislative audit and review committee established in chapter 44.28 RCW must oversee and conduct an independent review of the methodologies and data being utilized by the department in the development of the sustainable harvest calculation, including the associated forest inventory, forest growth, harvest and yield data, and modeling techniques that

impact harvest levels. In carrying out the review, the joint legislative audit and review committee shall:

(i) Retain one or more contractors with expertise in forest inventories, forest growth and yield modeling, and operational research modeling in forest harvest scheduling to conduct the technical review;

(ii) Be a member of department's sustainable harvest calculation technical advisory committee, along with one of its contractors selected in (c)(i) of this subsection; and

(iii) Prior to the department's determination of the sustainable harvest calculation under RCW 79.10.320, ensure that a completed independent review and report with findings and recommendations is submitted to the board of natural resources and the legislature.

(d) Upon receiving the report from the joint legislative audit and review committee required under (c)(iii) of this subsection, the board of natural resources shall determine whether modifications are necessary to the sustainable harvest calculation prior to approving harvest level under RCW 79.10.320. [2022 c 297 § 967; 2021 c 298 § 3.]

Effective date—2022 c 297: See note following RCW 43.79.565.

Short title—2021 c 298: See note following RCW 76.04.505.

76.04.521 Forest sector workforce development. (1)

The legislature finds that satisfying the goals identified in RCW 76.04.505 to increase the pace and scale of forest health treatments and improve wildfire prevention and response requires increasing the workforce that is needed to perform this critical work. This need creates an opportunity to develop employment and career pathways across the state, including in rural communities throughout Washington. Investments to support and further develop the forest sector workforce are recommended in both the department's 2019 "plan for climate resilience" and the department of commerce's 2020 report "Washington's green economy."

(2) The department and the department of commerce shall jointly develop and implement, as appropriate and in consultation with centers of excellence, higher education, secondary education, and workforce development centers, initiatives to develop a forest health workforce necessary to implement the goals of this section. Initiatives may include, but are not limited to:

(a) Creating a new or making an existing grant program available to nonprofits, labor organizations, state agencies, community and technical colleges, institutions of higher education, private sector employers, skills centers, or other training and education institutions that have qualifications and experience in the development of training programs, such as secondary and postsecondary courses, relevant to the workforce needs of the forest sector. Grants must be awarded on a competitive basis with priority funding for programs that meet urgent forest health and wildfire suppression skills gaps and demonstrate a lack of available workforce in underserved communities. Grants awarded may be used for activities such as internships, Washington state registered apprenticeship programs, recognized preapprenticeships, career launch, and other relevant career connect Washington activities, and postsecondary bridge programs for forest sector or skill relevant trades that provide:

(i) On the job training;

(ii) Hard and soft skills development;

(iii) Test preparation for trade apprenticeship;

(iv) Advanced training in the forest sector relating to jobs such as: Hand crews; wildland firefighters; fire safety; equipment operators; timber operators; mill workers; mill or forestry technicians; mechanics; loggers; timber fallers; commercial truck drivers; foresters; ecologists; biologists; or other workforce needs in support of forest restoration and wildfire response;

(b) Developing education programs for elementary, secondary, and higher education students that: (i) Inform people about the role of forestry, fire, vegetation management, and ecological restoration; (ii) increase the awareness of opportunities for careers in the forest sector and exposure of students to those careers through various work-based learning opportunities inside and outside the classroom; (iii) connect students in pathways to careers in the forest sector; and (iv) incorporate opportunities for secondary students to earn industry recognized credentials and dual credit in career and technical education courses;

(c) Developing regional education, industry, and workforce development collaborations, including recruiting and building industry awareness and coordinating candidate development particularly in areas that are traditionally underrepresented in natural resource industries and specifically in forestry;

(d) Building additional statewide response. The department shall develop a recruiting and outreach program across the state to encourage people to volunteer with their local fire departments. The department shall expand existing training programs to meet increased interest and need in wildfire response and forest health work; and

(e) Developing a program to train local building and construction trade members and contractors to be deployed during periods requiring surge capacity for wildland fire suppression including:

(i) As wildland firefighters who meet the requirements of being utilized by the department; and

(ii) As heavy equipment operators who meet the requirements to be utilized by the department as required by RCW 76.04.181.

(3) The commissioner and the director of the department of commerce must direct their staff to develop a plan for tracking, maintaining, and publicly reporting on the following:

(a) A working definition of the forest sector workforce, including the job skills, certifications, and experience required;

(b) Recommendations for the training, recruitment, and retention of the current and anticipated forest sector workforce necessary to implement the goals of chapter 298, Laws of 2021;

(c) The identification of gaps and barriers to a full forest sector workforce pool, including:

(i) Estimates of forest sector workforce jobs created and retained as well as any reductions in the forest sector workforce;

(ii) An estimate of the number of needed private contractors to implement the goals of chapter 298, Laws of 2021, an inventory of local and regional private contractors trained to carry out wildfire response and forest health work, and a list

of local private contractors utilized annually for wildfire response and forest health work; and

(ii) An inventory of existing training facilities and programs that support ongoing and anticipated forest sector, or related sectors, as identified in subsection (2)(a)(iv) of this section;

(d) Recommendations for addressing identified barriers or other needs to otherwise continue the development of a forest workforce necessary to implement the goals of chapter 298, Laws of 2021.

(4) The department and the department of corrections shall jointly develop opportunities to expand existing programs to provide the additional wildfire, forest health, and silvicultural capacity necessary to implement the goals of chapter 298, Laws of 2021, including a postrelease program that helps formerly incarcerated individuals who served on state fire response crews obtain employment in wildfire suppression and forest management.

(5) The department shall utilize existing programs such as the Washington conservation corps, Washington veterans corps, Washington service corps, customized and on-the-job training, or similar programs to expand opportunities and promote family wage careers in the forest sector workforce.

(6) To the maximum extent possible, workforce development programs and policies should prioritize historically marginalized, underrepresented, rural, and low-income communities.

(7) The department and the department of commerce, working with the forest health advisory committee, must assist forestland owners and forest products companies grow existing and develop new market opportunities for the utilization of material produced as a result of forest health treatments funded through the wildfire response, forest restoration, and community resilience account to improve the economic benefit of the treatments while increasing the speed, efficiency, and impact of forest restoration on the landscape. [2021 c 298 § 5.]

Short title—2021 c 298: See note following RCW 76.04.505.

76.04.525 Wildland fire aviation support plan. The department must develop and implement a wildland fire aviation support plan, as recommended by the wildland fire protection 10-year strategic plan, in order to expand and improve the effectiveness and cost-efficiency of the department's wildland fire aviation program. The wildland fire aviation support plan must include:

(1) Recommendations for the addition of air assets in order for the department to increase its initial attack capability and maintain and improve on the department's ability to manage fires to meet 10-year wildland fire protection and 20-year forest health strategic plan goals;

(2) Development of a next-generation rotor wing platform strategy to ensure the availability and use of the latest firefighting aviation technology and provide a path for either the upgrade or replacement, or both, of the department's legacy aircraft;

(3) Evaluation of opportunities to increase the use of contract air assets;

(4) Evaluation of costs and benefits to increase dedicated air resources during peak fire season when there may be lim-

ited available supply due to wildfire activity in other states; and

(5) Strategies to upgrade retardant loading and processing infrastructure to improve tanker turnaround time, including support for development of infrastructure to accommodate very large air tankers, at a port with an international airport within a county east of the crest of the Cascade mountains that does not share a border with another state. [2021 c 298 § 8.]

Short title—2021 c 298: See note following RCW 76.04.505.

ASSESSMENTS, OBLIGATIONS, FUNDS

76.04.600 Owners to protect forests. Every owner of forestland in the state of Washington shall furnish or provide, during the season of the year when there is danger of forest fires, adequate protection against the spread of fire thereon or therefrom which shall meet with the approval of the department. [1986 c 100 § 34.]

76.04.610 Forest fire protection assessment. (1)(a) If any owner of forestland within a forest protection zone neglects or fails to provide adequate fire protection as required by RCW 76.04.600, the department shall provide such protection and shall annually impose the following assessments on each parcel of such land: (i) A flat fee assessment of seventeen dollars and fifty cents; and (ii) twenty-seven cents on each acre exceeding fifty acres.

(b) Assessors may, at their option, collect the assessment on tax exempt lands. If the assessor elects not to collect the assessment, the department may bill the landowner directly.

(2) An owner who has paid assessments on two or more parcels, each containing fewer than fifty acres and each within the same county, may obtain the following refund:

(a) If all the parcels together contain less than fifty acres, then the refund is equal to the flat fee assessments paid, reduced by the total of (i) seventeen dollars and (ii) the total of the amounts retained by the county from such assessments under subsection (5) of this section.

(b) If all the parcels together contain fifty or more acres, then the refund is equal to the flat fee assessments paid, reduced by the total of (i) seventeen dollars, (ii) twenty-seven cents for each acre exceeding fifty acres, and (iii) the total of the amounts retained by the county from such assessments under subsection (5) of this section.

Applications for refunds shall be submitted to the department on a form prescribed by the department and in the same year in which the assessments were paid. The department may not provide refunds to applicants who do not provide verification that all assessments and property taxes on the property have been paid. Applications may be made by mail.

In addition to the procedures under this subsection, property owners with multiple parcels in a single county who qualify for a refund under this section may apply to the department on an application listing all the parcels owned in order to have the assessment computed on all parcels but billed to a single parcel. Property owners with the following number of parcels may apply to the department in the year indicated:

Year	Number of Parcels
2002	10 or more parcels
2003	8 or more parcels
2004 and thereafter	6 or more parcels

The department must compute the correct assessment and allocate one parcel in the county to use to collect the assessment. The county must then bill the forest fire protection assessment on that one allocated identified parcel. The landowner is responsible for notifying the department of any changes in parcel ownership.

(3) Beginning January 1, 1991, under the administration and at the discretion of the department up to two hundred thousand dollars per year of this assessment shall be used in support of those rural fire districts assisting the department in fire protection services on forestlands.

(4) For the purpose of this chapter, the department may divide the forestlands of the state, or any part thereof, into districts, for fire protection and assessment purposes, may classify lands according to the character of timber prevailing, and the fire hazard existing, and place unprotected lands under the administration of the proper district. Amounts paid or contracted to be paid by the department for protection of forestlands from funds at its disposal shall be a lien upon the property protected, unless reimbursed by the owner within ten days after October 1st of the year in which they were incurred. The department shall be prepared to make statement thereof, upon request, to a forest owner whose own protection has not been previously approved as to its adequacy, the department shall report the same to the assessor of the county in which the property is situated. The assessor shall extend the amounts upon the tax rolls covering the property, and upon authorization from the department shall levy the forest protection assessment against the amounts of unimproved land as shown in each ownership on the county assessor's records. The assessor may then segregate on the records to provide that the improved land and improvements thereon carry the millage levy designed to support the rural fire protection districts as provided for in RCW 52.16.170.

(5) The amounts assessed shall be collected at the time, in the same manner, by the same procedure, and with the same penalties attached that general state and county taxes on the same property are collected, except that errors in assessments may be corrected at any time by the department certifying them to the treasurer of the county in which the land involved is situated. Assessments shall be known and designated as assessments of the year in which the amounts became reimbursable. Upon the collection of assessments the county treasurer shall place fifty cents of the total assessments paid on a parcel for fire protection into the county current expense fund to defray the costs of listing, billing, and collecting these assessments. The treasurer shall then transmit the balance to the department. Collections shall be applied against expenses incurred in carrying out the provisions of this section, including necessary and reasonable administrative costs incurred by the department in the enforcement of these provisions. The department may also expend sums collected from owners of forestlands or received from any other source for necessary administrative costs in connection with the enforcement of RCW 76.04.660.

During the 2017-2019 and 2019-2021 fiscal biennia, the legislature may appropriate moneys from the account for department of natural resources wildfire response and forest health activities.

(6) When land against which forest protection assessments are outstanding is acquired for delinquent taxes and sold at public auction, the state shall have a prior lien on the proceeds of sale over and above the amount necessary to satisfy the county's delinquent tax judgment. The county treasurer, in case the proceeds of sale exceed the amount of the delinquent tax judgment, shall immediately remit to the department the amount of the outstanding forest protection assessments.

(7) All nonfederal public bodies owning or administering forestland included in a forest protection zone shall pay the forest protection assessments provided in this section and the special forest fire suppression account assessments under RCW 76.04.630. The forest protection assessments and special forest fire suppression account assessments shall be payable by nonfederal public bodies from available funds within thirty days following receipt of the written notice from the department which is given after October 1st of the year in which the protection was provided. Unpaid assessments are not a lien against the nonfederal publicly owned land but shall constitute a debt by the nonfederal public body to the department and are subject to interest charges at the legal rate.

(8) A public body, having failed to previously pay the forest protection assessments required of it by this section, which fails to suppress a fire on or originating from forestlands owned or administered by it, is liable for the costs of suppression incurred by the department or its agent and is not entitled to reimbursement of costs incurred by the public body in the suppression activities.

(9) The department may adopt rules to implement this section, including, but not limited to, rules on levying and collecting forest protection assessments. [2019 c 415 § 981; 2018 c 299 § 912; 2012 2nd sp.s. c 7 § 922; 2007 c 110 § 1; 2004 c 216 § 1; 2001 c 279 § 2; 1993 c 36 § 1; 1989 c 362 § 1; 1988 c 273 § 3; 1986 c 100 § 35.]

Effective date—2019 c 415: See note following RCW 28B.20.476.

Effective date—2018 c 299: See note following RCW 43.41.433.

Effective date—2012 2nd sp.s. c 7: See note following RCW 2.68.020.

Additional notes found at www.leg.wa.gov

76.04.620 State funds—Loans—Recovery of funds from the landowner contingency forest fire suppression account. Biennial general fund appropriations to the department of natural resources normally provide funds for the purpose of paying the emergency fire costs and expenses incurred and/or approved by the department in forest fire suppression or in reacting to any potential forest fire situation. When a determination is made that the fire started in the course of or as a result of a landowner operation, moneys expended from such appropriations in the suppression of the fire shall be recovered from the landowner contingency forest fire suppression account. The department shall transmit to the state treasurer for deposit in the general fund any such moneys which are later recovered. Moneys recovered during the biennium in which they are expended may be spent for pur-

poses set forth in this section during the same biennium, without reappropriation. Loans between the general fund and the landowner contingency forest fire suppression account are authorized for emergency fire suppression. The loans shall not exceed the amount appropriated for emergency forest fire suppression costs and shall bear interest at the then current rate of interest as determined by the state treasurer. [1986 c 100 § 36.]

76.04.630 Landowner contingency forest fire suppression account—Expenditures—Assessments. There is created a landowner contingency forest fire suppression account in the state treasury. Moneys in the account may be spent only as provided in this section. Disbursements from the account shall be on authorization of the commissioner of public lands or the commissioner's designee. The account is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements.

The department may expend from this account the amounts as may be available and as it considers appropriate for the payment of emergency fire costs resulting from a participating landowner fire. The department may, when moneys are available from the landowner contingency forest fire suppression account, expend moneys for summarily abating, isolating, or reducing an extreme fire hazard under RCW 76.04.660. All moneys recovered as a result of the department's actions, from the owner or person responsible, under RCW 76.04.660 shall be deposited in the landowner contingency forest fire suppression account.

When a determination is made that the fire was started by other than a landowner operation, moneys expended from this account in the suppression of such fire shall be recovered from the general fund appropriations as may be available for emergency fire suppression costs. The department shall deposit in the landowner contingency forest fire suppression account moneys paid out of the account which are later recovered, less reasonable costs of recovery.

This account shall be established and renewed by an annual special forest fire suppression account assessment paid by participating landowners at a rate to be established by the department. In establishing assessments, the department shall seek to establish and thereafter reestablish a balance in the account of three million dollars. The department may establish a flat fee assessment of no more than seven dollars and fifty cents for participating landowners owning parcels of fifty acres or less. For participating landowners owning parcels larger than fifty acres, the department may charge the flat fee assessment plus a per acre assessment for every acre over fifty acres. The per acre assessment established by the department may not exceed fifteen cents per acre per year. The assessments may differ to equitably distribute the assessment based on emergency fire suppression cost experience necessitated by landowner operations. Amounts assessed for this account shall be a lien upon the forestlands with respect to which the assessment is made and may be collected as directed by the department in the same manner as forest protection assessments. Payment of emergency costs from this account shall in no way restrict the right of the department to recover costs pursuant to RCW 76.04.495 or other laws.

When the department determines that a forest fire was started in the course of or as a result of a landowner operation, the determination shall be final, unless, within ninety days of the notification, or an interested party serves a request for a hearing before the department. The hearing shall constitute an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act, and an appeal shall be in accordance with RCW 34.05.510 through 34.05.598. [2010 1st sp.s. c 7 § 129; 1993 c 36 § 2; 1991 sp.s. c 13 § 31. Prior: 1989 c 362 § 2; 1989 c 175 § 162; 1986 c 100 § 37.]

Additional notes found at www.leg.wa.gov

HAZARD ABATEMENT

76.04.650 Disposal of forest debris—Permission to allow trees to fall on another's land. Everyone clearing land or clearing right-of-way for railroad, public highway, private road, ditch, dike, pipe or wire line, or for any other transmission, or transportation utility right-of-way, shall pile and burn or dispose of by other satisfactory means, all forest debris cut thereon, as rapidly as the clearing or cutting progresses, or at such other times as the department may specify, and if during the closed season, in compliance with the law requiring burning permits.

No person clearing any land or right-of-way, or in cutting or logging timber for any purpose, may fell, or permit to be felled, any trees so that they may fall onto land owned by another without first obtaining permission from the owner in addition to complying with the terms of this section for the disposal of refuse. All the terms of this section and other forest laws of the state shall be observed in all clearings of right-of-way or other land on behalf of the state itself or any county thereof, either directly or by contract, and, unless unavoidable emergency prevents, provision shall be made by all officials directing the work for withholding a sufficient portion of the payment therefor until the disposal is completed, to insure the completion of the disposal in compliance with this section. [1986 c 100 § 38.]

76.04.660 Additional fire hazards—Extreme fire hazard areas—Abatement, isolation or reduction—Summary action—Recovery of costs—Inspection of property.

(1) The owner of land on which there is an additional fire hazard, when the hazard is the result of a landowner operation or the land is within an area covered by a forest health hazard warning issued under RCW 76.06.180, shall take reasonable measures to reduce the danger of fire spreading from the area and may abate the hazard by burning or other satisfactory means.

(2) An extreme fire hazard shall exist within areas covered by a forest health hazard order issued by the commissioner of public lands under RCW 76.06.180 in which there is an additional fire hazard caused by disturbance agents and the landowner has failed to take such action as required by the forest health hazard order. The duties and liability of such landowner under this chapter are as described in subsections (5), (6), and (7) of this section.

(3) The department shall adopt rules defining areas of extreme fire hazard that the owner and person responsible shall abate. The areas shall include but are not limited to high risk areas such as where life or buildings may be endangered,

(2022 Ed.)

areas adjacent to public highways, and areas of frequent public use.

(4) The department may adopt rules defining other conditions of extreme fire hazard with a high potential for fire spreading to lands in other ownerships. The department may prescribe additional measures that shall be taken by the owner and person responsible to isolate or reduce the extreme fire hazard.

(5) The owner or person responsible for the existence of the extreme fire hazard is required to abate, isolate, or reduce the hazard. The duty to abate, isolate, or reduce, and liability under this chapter, arise upon creation of the extreme fire hazard. Liability shall include but not be limited to all fire suppression expenses incurred by the department, regardless of fire cause.

(6) If the owner or person responsible for the existence of the extreme fire hazard or forest debris subject to RCW 76.04.650 refuses, neglects, or unsuccessfully attempts to abate, isolate, or reduce the same, the department may summarily abate, isolate, or reduce the hazard as required by this chapter and recover twice the actual cost thereof from the owner or person responsible. Landowner contingency forest fire suppression account moneys may be used by the department, when available, for this purpose. Moneys recovered by the department pursuant to this section shall be returned to the landowner contingency forest fire suppression account.

(7) Such costs shall include all salaries and expenses of people and equipment incurred therein, including those of the department. All such costs shall also be a lien upon the land enforceable in the same manner with the same effect as a mechanic's lien.

(8) The summary action may be taken only after ten days' notice in writing has been given to the owner or reputed owner of the land on which the extreme fire hazard or forest debris subject to RCW 76.04.650 exists. The notice shall include a suggested method of abatement and estimated cost thereof. The notice shall be by personal service or by registered or certified mail addressed to the owner or reputed owner at the owner's last known place of residence.

(9) A landowner or manager may make a written request to the department to inspect their property and provide a written notice that they have complied with a forest health hazard warning or forest health hazard order, or otherwise adequately abated, isolated, or reduced an additional or extreme fire hazard. An additional or extreme fire hazard shall be considered to continue to exist unless and until the department, in its sole discretion, issues such notice. [2010 1st sp.s. c 7 § 130; 2007 c 480 § 13; 1986 c 100 § 39.]

Additional notes found at www.leg.wa.gov

FIRE REGULATION

76.04.700 Failure to extinguish campfire. It is unlawful for any person to start any fire upon any camping ground and upon leaving the camping ground fail to extinguish the fire. [1986 c 100 § 40.]

76.04.710 Wilful setting of fire. It is unlawful for any person to wilfully start a fire, whether on his or her land or the land of another, whereby forestlands or the property of another is endangered, under circumstances not amounting to

arson in either the first or second degree or reckless burning in either the first or second degree. [1986 c 100 § 41.]

76.04.720 Removal of notices. It is unlawful for any person to wilfully and without authorization deface or remove any warning notice posted under the requirements of this chapter. [1986 c 100 § 42.]

76.04.730 Negligent fire—Spread. It is unlawful for any person to negligently allow fire originating on the person's own property to spread to the property of another. [1986 c 100 § 43.]

76.04.740 Reckless burning. (1) It is unlawful to knowingly cause a fire or explosion and thereby place forestlands in danger of destruction or damage.

(2) This section does not apply to acts amounting to reckless burning in the first degree under RCW 9A.48.040.

(3) Terms used in this section shall have the meanings given to them in Title 9A RCW.

(4) A violation of this section shall be punished as a gross misdemeanor under RCW 9A.20.021. [1986 c 100 § 44.]

76.04.750 Uncontrolled fire a public nuisance—Suppression—Duties—Summary action—Recovery of costs. Any fire on or threatening any forestland burning uncontrolled and without proper action being taken to prevent its spread, notwithstanding the origin of the fire, is a public nuisance by reason of its menace to life and property. Any person engaged in any activity on such lands, having knowledge of the fire, notwithstanding the origin or subsequent spread thereof on his or her own or other forestlands, and the landowner, shall make every reasonable effort to suppress the fire. If the person has not suppressed the fire and the fire is on or threatening forestland within a forest protection zone, the department shall summarily suppress the fire. If the owner, lessee, other possessor of such land, or an agent or contractor of the owner, lessee, or possessor, having knowledge of the fire, has not made a reasonable effort to suppress the fire, the cost thereof may be recovered from the owner, lessee, or other possessor of the land and the cost of the work shall also constitute a lien upon the real property or chattels under the person's ownership. The lien may be filed by the department in the office of the county auditor and foreclosed in the same manner provided by law for the foreclosure of mechanics' liens. The prosecuting attorney shall bring the action to recover the cost or foreclose the lien, upon the request of the department. In the absence of negligence, no costs, other than those provided in RCW 76.04.475, shall be recovered from any landowner for lands subject to the forest protection assessment with respect to the land on which the fire burns.

When a fire occurs in a land clearing, right-of-way clearing, or landowner operation it shall be fought to the full limit of the available employees and equipment, and the firefighting shall be continued with the necessary crews and equipment in such numbers as are, in the opinion of the department, sufficient to suppress the fire. The fire shall not be left without a firefighting crew or fire patrol until authority has been granted in writing by the department. [1988 c 273 § 4; 1986 c 100 § 45.]

76.04.760 Civil actions—Forested lands—Fire damage. (1) The owner of public or private forested lands may bring a civil action in superior court for property damage to public or private forested lands, including real and personal property on those lands, when the damage results from a fire that started on or spread from public or private forested lands.

(2) Liability under this section attaches to the extent that evidence demonstrates that:

(a) An action or inaction by a person relating to the start or spread of the fire from public or private forested lands constituted negligence or a higher degree of fault; and

(b) The action or inaction under (a) of this subsection was a proximate cause of the property damage.

(3) Recoverable damages under this section are limited to:

(a) Either: (i) The difference in the fair market value of the damaged property immediately before and after the fire. For real property, the state-certified general real estate appraiser must identify and analyze all relevant characteristics and uses of the property including cultural, recreational, and environmental characteristics and uses, to the extent such characteristics or uses contribute to the fair market value of the property based on the highest and best use of the property. The state-certified general real estate appraiser shall expressly address the assumptions and conditions used to evaluate such characteristics and uses, consistent with standards of professional appraisal practice adopted under chapter 18.140 RCW; or (ii) the reasonable cost of restoring the damaged property to the general condition it was in immediately before the fire, to the extent permitted by Washington law;

(b) The reasonable expenses incurred to suppress or extinguish the fire unless otherwise provided for in this chapter;

(c) Any other objectively verifiable monetary loss, that is not duplicative of the recovery specified under (a) or (b) of this subsection including, but not limited to: Out-of-pocket expenses; loss of earnings; loss of use of property; or loss of business or employment opportunities; and

(d) In actions brought by an Indian tribe for recovery of damages from injury to archaeological objects, archaeological sites, or historic archaeological resources, damages as measured in accordance with WAC 25-48-043 as it existed on June 12, 2014.

(4) This section provides the exclusive cause of action for property damage to public or private forested lands, including real and personal property on those lands, resulting from a fire that started on or spread from public or private forested lands.

(5) The definitions in this subsection only apply throughout this section relating to the specification of damages for fire damage to public and private forested lands, unless the context clearly requires otherwise, and do not apply to and are not intended as a source for interpretation of other sections of this chapter.

(a) "Fair market value" means the amount that a willing buyer would pay to a willing seller for property in an arms-length transaction if both parties were fully informed about all advantages and disadvantages of the property and neither party is acting under a compulsion to sell, as determined by: (i) For real property, a state-certified general real estate

appraiser as defined under RCW 18.140.010; and (ii) for personal property, an appraiser qualified to appraise the property based on training and experience. For real property, the state-certified general real estate appraiser must identify and analyze all relevant characteristics and uses of the property including cultural, recreational, and environmental characteristics and uses, to the extent such characteristics or uses contribute to the fair market value of the property based on the highest and best use of the property. The state-certified general real estate appraiser shall expressly address the assumptions and conditions used to evaluate such characteristics and uses, consistent with standards of professional appraisal practice adopted under chapter 18.140 RCW.

(b) "Forest tree species" means a tree species that is capable of producing logs, fiber, or other wood materials that are suitable for the production of lumber, sheeting, pulp, firewood, or other forest products.

(c) "Owner of public or private forested lands" means any person in actual control of public or private forested lands, whether the control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on the land in any manner.

(d) "Person" includes: An individual; a corporation; a public or private entity or organization; a local, state, or federal government or governmental entity; any business organization, including corporations and partnerships; or a group of two or more individuals acting with a common purpose.

(e) "Public or private forested lands" means any lands used or biologically capable of being used for growing forest tree species regardless of the existing use of the land except when the predominant physical use of the land at the time of the fire is not consistent with the growing, conservation, or preservation of forest tree species. Examples of inconsistent uses include, but are not limited to, buildings, airports, parking lots, mining, solid waste disposal, cropfields, orchards, vineyards, pastures, feedlots, communication sites, and home sites that may include up to ten acres. Public or private forested lands do not include state highways, county roads, railroad rights-of-way, and utility rights-of-way that cross over, under, or through such lands. [2014 c 81 § 1.]

Authority of chapter—2014 c 81: "This act does not: Affect or preclude any action relating to the imposition of criminal or civil penalties as authorized by law; affect or preclude the recovery of fire suppression costs as authorized under chapter 76.04 RCW; affect or preclude an action under RCW 4.24.630 against a person who goes onto the land of another without authorization and wrongfully, intentionally, and unreasonably causes a fire resulting in property damage; affect or preclude an action under chapter 27.44 or 27.53 RCW; or affect the provisions of RCW 76.04.016." [2014 c 81 § 4.]

Application—2014 c 81: "This act applies prospectively only and not retroactively. It applies only to causes of action that arise on or after June 12, 2014." [2014 c 81 § 5.]

76.04.770 Authorization to enter privately or publicly owned land to extinguish or control a wildland fire—Limitation of liability. (1)(a) An individual may, consistent with this section, enter privately owned or publicly owned land for the purposes of attempting to extinguish or control a wildland fire, regardless of whether the individual owns the land, when fighting the wildland fire in that particular time and location can be reasonably considered a public necessity due to an imminent danger.

(b) No civil or criminal liability may be imposed by any court on an individual acting pursuant to this section for any direct or proximate adverse impacts resulting from an individual's access to land for the purposes of attempting to extinguish or control a wildland fire when fighting the wildland fire in that particular time and location can be reasonably considered a public necessity, except upon proof of gross negligence or willful or wanton misconduct by the individual.

(c) An individual may enter land under this subsection (1) only if:

(i) There is an active fire on or in near proximity to the land;

(ii) The individual has a reasonable belief that the local fire conditions are creating an emergency situation and that there is an imminent danger of a fire growing or spreading to or from the parcel of land being entered;

(iii) The individual has a reasonable belief that preventive measures will extinguish or control the wildfire;

(iv) The individual has a reasonable belief that he or she is capable of taking preventive measures;

(v) The individual only undertakes measures that are reasonable and necessary until professional wildfire suppression personnel arrives;

(vi) The individual does not continue to take suppression actions after specific direction to cease from the landowner;

(vii) The individual takes preventive measures only for the period of time until efforts to control the wildfire have been assumed by professional wildfire suppression personnel, unless explicitly authorized by professional wildland firefighting personnel to remain engaged in suppressing the fire;

(viii) The individual follows the instructions of professional wildland firefighting personnel, including ceasing to engage in firefighting activities, when directed to do so by professional wildland firefighting personnel; and

(ix) The individual promptly notifies emergency personnel and the landowner, lessee, or occupant prior to entering the land or within a reasonable time after the individual attempts to extinguish or control the wildland fire.

(d) Nothing in this section authorizes any person to materially benefit from accessing land or retain any valuable materials that may be collected or harvested during the time the individual attempts to extinguish or control the wildland fire.

(e)(i) The authority to enter privately owned or publicly owned land under this subsection (1) is limited to the minimum necessary activities reasonably required to extinguish or control the wildland fire.

(ii) Activities that may be reasonable under this subsection (1) include, but are not limited to: Using hand tools to clear the ground of debris, operating readily available water hoses, clearing flammable materials from the vicinity of structures, unlocking or opening gates to assist firefighter access, and safely scouting and reporting fire behavior.

(iii) Activities that do not fall within the scope of this subsection (1)(e), due to the high potential for adverse consequences, include, but are not limited to: Lighting a fire in an attempt to stop the spread of another fire; using explosives as a firefighting technique; using aircraft for fire suppression; and directing other individuals to engage in firefighting.

(f) Nothing in this subsection (1) confers a legal or civil duty or obligation on a person to attempt to extinguish or control a wildfire.

(2)(a) No civil or criminal liability may be imposed by any court on the owner, lessee, or occupant of any land accessed as permitted under subsection (1) of this section for any direct or proximate adverse impacts resulting from the access to privately owned or publicly owned land allowed under subsection (1) of this section, except upon proof of willful or wanton misconduct by the owner, lessee, or occupant. The barriers to civil and criminal liability imposed by this subsection include, but are not limited to, impacts on:

(i) The individual accessing the privately owned or publicly owned land and the individual's personal property, including loss of life;

(ii) Any structures or land alterations constructed by individuals entering the privately owned or publicly owned land;

(iii) Other landholdings; and

(iv) Overall environmental resources.

(b) This subsection (2) does not apply in any case where liability for damages is provided under RCW 4.24.040.

(3) Nothing in this section limits or otherwise effects any other statutory or common law provisions relating to land access or the control of a conflagration. [2015 c 182 § 4.]

76.04.780 Utility wildland fire prevention advisory committee—Duties—Report—Membership—Immunity. (1) The commissioner shall convene a utility wildland fire prevention advisory committee with electrical power distribution utilities by August 1, 2021. The duties of the advisory committee are to advise the department on issues including, but not limited to:

(a) Matters related to the ongoing implementation of the relevant recommendations of the electric utility wildland fire prevention task force established in chapter 77, Laws of 2019, and by August 1, 2021:

(i) Finalizing a model agreement for managing danger trees and other vegetation adjacent to utility rights-of-way on state uplands managed by the department;

(ii) Implementing recommendations of the task force related to communications and information exchanges between the department and utilities;

(iii) Implementing recommendations of the task force related to protocols and thresholds when implementing provisions of RCW 76.04.015; and

(iv) Implementing recommendations of the task force related to creating rosters of certified wildland fire investigator firms or persons and qualified utility operations personnel who may be called upon as appropriate;

(b) Providing a forum for electric utilities, the department, and other fire suppression organizations of the state to identify and develop solutions to issues of wildfire prevention and risk mitigation specifically related to electric utilities transmission and distribution networks, identification of best management practices, electric utility infrastructure protection, and wildland fire suppression and response;

(c) Establishing joint public communications protocols among members of the advisory committee, and other entities, to inform residents of the state of potential critical fire

weather events and the potential for power outages or disruptions;

(d) Providing comment to the wildland fire advisory committee established in RCW 76.04.179 through an annual presentation addressing policies and priorities of the utility wildland fire prevention advisory committee; and

(e) All other related issues deemed necessary by the commissioner.

(2) By August 1, 2021, the department must post on its website and update quarterly as necessary:

(a) Communication protocols and educational exchanges between the department and electric utilities;

(b) A voluntary model danger tree management agreement to utilities for their consideration for execution with the department;

(c) Protocols and thresholds that may be utilized when the department's investigation involves electric utility infrastructure or potential electric utility liability; and

(d) A roster of third-party certified wildland fire investigators and qualified utility personnel that may assist the department or utility in understanding and reducing risks and liabilities from wildland fire.

(3) Beginning July 1, 2022, and at the beginning of each subsequent biennium thereafter, the department must submit, in compliance with RCW 43.01.036, a report describing the prior biennium proceedings of the advisory committee, including identification of recommended legislation, if any, necessary to prevent wildfires related to electric utilities.

(4) The commissioner or the commissioner's designee must chair the advisory committee created in subsection (1) of this section and must appoint advisory committee members. Advisory committee membership should include:

(a) Entities providing retail electric service, including:

(i) One person representing each investor-owned utility;

(ii) Two persons representing municipal utilities;

(iii) Two persons representing public utility districts;

(iv) Two persons representing rural electric cooperatives;

(v) One person representing small forestland owners;

(vi) One person representing industrial forestland owners;

(b) Other persons with expertise in wildland fire risk reduction and prevention; and

(c) No more than two other persons designated by the commissioner.

(5) In addition to the advisory committee membership established in subsection (4) of this section, the commissioner shall designate two additional advisory committee members representing historically marginalized or underrepresented communities.

(6) The commissioner or the commissioner's designee shall convene the initial meeting of the advisory committee.

(7) The members of the advisory committee, or individuals acting on their behalf, are immune from civil liability for official acts performed in the course of their duties specifically related to the advisory committee.

(8) Participation on the advisory committee created in subsection (1) of this section is strictly voluntary and without compensation.

(9) Any requirements in this section are subject to the availability of amounts appropriated for the specific purposes described. [2021 c 183 § 1; 2019 c 77 § 1.]

76.04.900 Captions—1986 c 100. As used in this act subchapter and section captions constitute no part of the law. [1986 c 100 § 60.]

Chapter 76.06 RCW

FOREST INSECT AND DISEASE CONTROL

Sections

76.06.010	Forest insects and tree diseases are public nuisance.
76.06.020	Definitions.
76.06.030	Administration—Comprehensive forest health program—Limited liability.
76.06.040	Maintenance of forestlands in healthy condition.
76.06.130	Exotic forest insect or disease control—Department's authority and duties—Declaration of forest health emergency.
76.06.140	Forest health problems—Findings.
76.06.150	Forest health—Commissioner of public lands designated as state's lead—Duties—Report to legislature.
76.06.160	Forest health issues—Tiered system.
76.06.170	Forest health technical advisory committee.
76.06.180	Forest health hazard warning—Forest health hazard order—Notice—Appeal.
76.06.190	Chapter 480, Laws of 2007 subject to the provisions of chapter 76.09 RCW.
76.06.200	Forest health assessment and treatment framework.
76.06.900	Severability.

76.06.010 Forest insects and tree diseases are public nuisance. The legislature finds and declares that:

(1) Forest insects and forest tree diseases which threaten the permanent timber production of the forested areas of the state of Washington are a public nuisance.

(2) Exotic forest insects or diseases, even in small numbers, can constitute serious threats to native forests. Native tree species may lack natural immunity. There are often no natural control agents such as diseases, predators, or parasites to limit populations of exotic forest insects or diseases. Exotic forest insects or diseases can also outcompete, displace, or destroy habitat of native species. It is in the public interest to identify, control, and eradicate outbreaks of exotic forest insects or diseases that threaten the diversity, abundance, and survivability of native forest trees and the environment. [2003 c 314 § 1; 1951 c 233 § 1.]

Findings—2003 c 314: See note following RCW 17.24.220.

76.06.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agent" means the recognized legal representative, representatives, agent, or agents for any owner.

(2) "Commissioner" means the commissioner of public lands.

(3) "Department" means the department of natural resources.

(4) "Disturbance agent" means those forces that damage or kill significant numbers of forest trees, such as insects, diseases, windstorms, ice storms, and fires.

(5) "Exotic" means not native to forestlands in Washington state.

(6) "Forest health" means, for the purposes of this chapter, the condition of a forest being sound in ecological func-

(2022 Ed.)

tion, sustainable, resilient, and resistant to insects, diseases, fire, and other disturbance, and having the capacity to meet landowner objectives.

(7) "Forest health emergency" means the introduction of, or an outbreak of, an exotic forest insect or disease that poses an imminent danger of damage to the environment by threatening the survivability of native tree species.

(8) "Forest insect or disease" means a living stage of an insect, other invertebrate animal, or disease-causing organism or agent that can directly or indirectly injure or cause disease or damage in trees, or parts of trees, or in processed or manufactured wood, or other products of trees.

(9) "Forestland" means any land on which there are sufficient numbers and distribution of trees and associated species to, in the judgment of the department, contribute to the spread of forest insect or forest disease outbreaks that could be detrimental to forest health.

(10) "Integrated pest management" means a strategy that uses various combinations of pest control methods, including biological, cultural, and chemical methods, in a compatible manner to achieve satisfactory control and ensure favorable economic and environmental consequences.

(11) "Native" means having populated Washington's forested lands prior to European settlement.

(12) "Outbreak" means a rapidly expanding population of insects or diseases with potential to spread.

(13) "Owner" means and includes persons or their agents.

(14) "Person" means any individual, partnership, private, public, or municipal corporation, county, federal, state, or local governmental agency, tribes, or association of individuals of whatever nature.

(15) "Timberland" means any land on which there is a sufficient number of trees, standing or down, to constitute, in the judgment of the department, a forest insect or forest disease breeding ground of a nature to constitute a menace, injurious and dangerous to permanent forest growth in the district under consideration.

(16) "Uncharacteristic" means ecologically atypical for a forest or vegetation type or plant association and refers to fire, insect, or disease events that are not within a natural range of variability. [2007 c 480 § 2; 2003 c 314 § 2; 2000 c 11 § 2; 1988 c 128 § 15; 1951 c 233 § 2.]

Findings—2003 c 314: See note following RCW 17.24.220.

76.06.030 Administration—Comprehensive forest health program—Limited liability. (1) This chapter shall be administered by the department.

(2) The department has the lead role in developing a comprehensive forest health program to achieve the goals of chapter 480, Laws of 2007. Within available funding, the department shall:

(a) Develop, gather, and disseminate information on forest health conditions, monitor forest health conditions and changes over time, and coordinate and enter agreements with interested and affected parties;

(b) Coordinate with universities, university extension services, federal and state agencies, private, public, and tribal forestland owners, consulting foresters, and forest managers to monitor forest fuel buildup, forest insect and disease outbreaks, and wind and ice storm events; and

(c) Coordinate with universities, university extension services, and state and federal agencies to provide education and technical assistance to private, public, and tribal forestland owners on silvicultural and forest management science, techniques, and technology to maintain forests in conditions that are resilient and resistant to disturbance agents.

(3) The department may implement a technical committee to advise on subjects and procedures for monitoring forest health conditions and program activities.

(4) The department may coordinate, support, and assist in establishing cooperative forest health projects to address outbreaks of insects or diseases. Priority for assistance authorized under this section shall be given to areas under forest health hazard warnings and areas where forest health decline has resulted in increased risk to public safety from fire.

(5) The state and its officers and employees are not liable for damages to a person or their property to the extent that liability is asserted to arise from providing or failing to provide assistance under chapter 480, Laws of 2007. [2007 c 480 § 3; 1988 c 128 § 16; 1951 c 233 § 3.]

76.06.040 Maintenance of forestlands in healthy condition. Landowners and managers are encouraged to maintain their forestlands in a healthy condition in order to meet their individual ownership objectives, protect public resources as defined in chapter 76.09 RCW, and avoid contributing to forest insect or disease outbreaks or increasing the risk of uncharacteristic fire. [2007 c 480 § 4; 1951 c 233 § 4.]

76.06.130 Exotic forest insect or disease control—Department's authority and duties—Declaration of forest health emergency. The department is authorized to contribute resources and expertise to assist the department of agriculture in control or eradication efforts authorized under chapter 17.24 RCW in order to protect forestlands of the state.

If either the department of agriculture has not taken action under chapter 17.24 RCW or the commissioner finds that additional efforts are required to control or prevent an outbreak of an exotic forest insect or disease which has not become so habituated that it can no longer be eradicated and that poses an imminent danger of damage to the forested environment by threatening the diversity, abundance, and survivability of native tree species, or both, the commissioner may declare a forest health emergency.

Upon declaration of a forest health emergency, the department must delineate the area at risk and determine the most appropriate integrated pest management methods to control the outbreak, in consultation with other interested agencies, affected tribes, and affected forestland owners. The department must notify affected forestland owners of its intent to conduct control operations.

Upon declaration of a forest health emergency by the commissioner, the department is authorized to enter into agreements with forestland owners, companies, individuals, tribal entities, and federal, state, and local agencies to accomplish control of exotic forest insects or diseases on any affected forestlands using such funds as have been, or may be, made available.

The department must proceed with the control of the exotic forest insects or diseases on affected nonfederal and nontribal forestlands with or without the cooperation of the owner. The department may reimburse cooperating forestland owners and agencies for actual cost of equipment, labor, and materials utilized in cooperative exotic forest insect or disease control projects, as agreed to by the department.

A forest health emergency no longer exists when the department finds that the exotic forest insect or disease has been controlled or eradicated, that the imminent threat no longer exists, or that there is no longer good likelihood of effective control.

Nothing under this chapter diminishes the authority and responsibility of the department of agriculture under chapter 17.24 RCW. [2003 c 314 § 3.]

Findings—2003 c 314: See note following RCW 17.24.220.

76.06.140 Forest health problems—Findings. The legislature finds as follows:

(1) Washington faces serious forest health problems, primarily in eastern Washington, where forests are overcrowded or trees lack sufficient resilience to insects, diseases, wind, ice storms, and fire. The causes of and contributions to these conditions include fire suppression, past timber harvesting and silvicultural practices, altered species composition and stand structure, and the amplified risks that occur when the urban interface penetrates forestland.

(2) There is a private and public interest in addressing uncharacteristic outbreaks of native, naturalized, and nonnative insects and diseases, and reducing the risk of significant loss due to ice storms, windstorms, and uncharacteristic fire. The public interest is in protecting forest productivity on forests managed for commodity production; restoring and maintaining forest ecosystem vitality and natural forest processes and functions; reducing the cost of fire suppression and the resulting public expenditures; protecting, restoring, and enhancing fish and wildlife habitat, including the habitat of threatened or endangered species; and protecting drinking water supplies and water quality.

(3) Well managed forests are the first line of defense in reducing the likelihood of uncharacteristic fire, insect, and disease events, and supporting conservation and restoration of desired plants and animals. Active management of forests, consistent with landowner objectives and the protection of public resources, is the most economical and effective way to promote forest health and protect communities. Fire, native insects, and diseases perform important ecological functions when their occurrence does not present a material threat to long-term forest productivity and increase the likelihood of uncharacteristic fire.

(4) Forest health problems may exist on forestland regardless of ownership, and the state should pursue collaboration with the federal government to address common health deficiencies. [2007 c 480 § 1; 2004 c 218 § 1.]

Additional notes found at www.leg.wa.gov

76.06.150 Forest health—Commissioner of public lands designated as state's lead—Duties—Report to legislature. (1) The commissioner is designated as the state of Washington's lead for all forest health issues.

(2) The commissioner shall strive to promote communications between the state, tribes, and the federal government regarding forestland management decisions that potentially affect the health of forests in Washington and will allow the state to have an influence on the management of federally owned land in Washington. Such government-to-government cooperation is vital if the condition of the state's public and private forestlands are to be protected. These activities may include, when deemed by the commissioner to be in the best interest of the state:

(a) Representing the state's interest before all appropriate local, state, and federal agencies and tribes;

(b) Assuming the lead state role for developing formal comments on federal forest management plans that may have an impact on the health of forests in Washington;

(c) Pursuing in an expedited manner any available and appropriate cooperative agreements, including cooperating agency status designation, with the United States forest service and the United States bureau of land management that allow for meaningful participation in any federal land management plans that could affect the department's strategic plan for healthy forests and effective fire prevention and suppression, including the pursuit of any options available for giving effect to the cooperative philosophy contained within the national environmental policy act of 1969 (42 U.S.C. Sec. 4331).

(3) The commissioner shall regularly meet and coordinate with the regional leadership of the United States forest service, in order to:

(a) Identify strategies to improve the delivery and increase the pace and scale of forest health and resiliency, and fuels mitigation treatments, on federal lands;

(b) Document the resources needed to increase the capacity available to the United States forest service, on national forests in Washington;

(c) Identify supplemental planning and implementation support to the United States forest service, through the use of cooperative agreements and good neighbor agreements, as that term is defined in RCW 79.02.010;

(d) Maximize the utilization of available efficiencies for compliance with the national environmental policy act, as it applies to actions of the United States forest service in Washington, such as tools to increase the pace and scale of forest health treatments including, but not limited to, categorical exclusions, shared stewardship, and tribal forest protection act for forest health, fuels mitigation, and restoration activities;

(e) Accelerate national environmental policy act completion for forest health and resiliency projects, including through increased staffing and the use of partners, contractors, and department expertise to complete national environmental policy act requirements analysis; and

(f) Pursue agreements with federal agencies in the service of forest biomass energy partnerships and cooperatives authorized under RCW 43.30.835 through [and] 43.30.840.

(4) Every two years, the commissioner shall report to the legislature on progress under this section, including:

(a) The identification, if deemed appropriate by the commissioner, of any needed state or federal statutory changes, policy issues, or funding needs; and

(b) An estimate of the acres of at-risk forests on each national forest and the number of acres treated. [2021 c 298 § 6; 2009 c 163 § 5; 2004 c 218 § 2.]

Short title—2021 c 298: See note following RCW 76.04.505.

Findings—Intent—2009 c 163: See note following RCW 43.30.835.

Additional notes found at www.leg.wa.gov

76.06.160 Forest health issues—Tiered system. Forest health issues shall be addressed by a tiered system.

(1) The first tier is intended to maintain forest health and protect forests from disturbance agents through the voluntary efforts of landowners. Tier 1 is the desired status. Consistent with landowner objectives and the protection of public resources, forests should be managed in ways that create, restore, or maintain healthy forest ecosystems so that disturbance agents occur or exist at nonepidemic levels. To the extent of available funding, information and technical assistance will be made available to forestland owners so they can plan for and implement necessary forest health maintenance and restoration activities.

(2) The second tier is intended to manage the development of threats to forest health, or address existing threats to forest health, due to disturbance agents. Actions by landowners to address such threats to forest health are voluntary except as required under chapter 76.04 RCW to reduce the danger of the spread of fire. Actions suggested to reduce threats to forest health are specified in forest health hazard warnings issued by the commissioner of public lands under RCW 76.06.180. Within available funding, site-specific information, technical assistance, and project coordination services shall be offered as determined appropriate by the department.

(3) The third tier is intended to address significant threats to forest health due to disturbance agents that have spread to multiple forest ownerships or increased forest fuel that is likely to further the spread of fire. Actions required to reduce significant threats to forest health are specified in forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180(5). Within available funding, site-specific information, technical assistance, and project coordination services shall be offered as determined appropriate by the department. Landowners who are provided notice of a forest health hazard order under RCW 76.06.180(5) and fail to take the action required under such order may be subject to increased liability for the spread of fire as described in RCW 76.04.495 and 76.04.660. However, a private landowner need not take actions required under the third tier, and may not be held liable for the failure to take such actions, where the disturbance agents on the private landowner's land spread from state or federal lands or where the presence of disturbance agents on state or federal lands would limit the effectiveness of actions required on the private landowner's land under the third tier. [2007 c 480 § 5.]

76.06.170 Forest health technical advisory committee. (1) The commissioner of public lands may appoint a forest health technical advisory committee when the commissioner determines that forestlands in any area of the state appear to be threatened by a forest health condition of such a nature, extent, or timing that action to reduce the threat may be necessary.

(a) The committee shall consist of one scientist chosen for expertise in forest ecology, one scientist chosen for expertise in aquatic ecology, one scientist chosen for expertise in wildlife biology, two scientists chosen for expertise relative to the attendant risk, one specialist in wildfire protection, one specialist in fuels management, one forester with extensive silvicultural experience in the affected forest type, and a chairperson who shall represent the commissioner. The departments of fish and wildlife, ecology, and natural resources shall provide technical assistance to the committee in the areas of fish and wildlife, water quality, and forest practices, but shall not be members of the committee. The director of forest health protection of region 6 of the United States department of agriculture forest service or their named designee shall be invited to be an ex officio member of the committee. In the event the area affected contains substantial acreage of tribal or federally owned lands, representatives of the affected agencies and tribes shall be invited to participate in the proceedings of the committee.

(b) The commissioner may disband the committee when he or she deems appropriate.

(2) The committee shall evaluate the threat to forest health and make a timely report to the commissioner on its nature, extent, and location.

(a) In its deliberations, the committee shall consider the need for action to reduce the threat and alternative methods of achieving the desired results, including the environmental risks associated with the alternatives and the risks associated with taking no action.

(b) The committee shall also recommend potential approaches to achieve the desired results for forestland ownerships of fewer than ten acres and for forests owned for scientific, study, recreational, or other uses not compatible with active management.

(c) The committee shall recommend to the commissioner whether a forest health hazard warning or forest health hazard order is warranted based on the factors in RCW 76.06.180(2) or when otherwise determined by the committee to be warranted.

(d) When the commissioner issues a forest health hazard warning or forest health hazard order, the committee shall monitor the progress and results of activities to address the hazard, and periodically report its findings to the commissioner.

(3) The exercise by forest health technical advisory committee members of their authority under this section shall not imply or create any liability on their part. Advisory committee members shall be compensated as provided in RCW 43.03.250 and shall receive reimbursement for travel expenses as provided by RCW 43.03.050 and 43.03.060. Costs associated with the committee may be paid from the general fund appropriation made available to the department of natural resources for fire suppression. [2007 c 480 § 6.]

76.06.180 Forest health hazard warning—Forest health hazard order—Notice—Appeal. (1) Prior to issuing a forest health hazard warning or forest health hazard order, the commissioner shall consider the findings and recommendations of the forest health technical advisory committee and shall consult with county government officials, forestland owners and forestland managers, consulting foresters, and

other interested parties to gather information on the threat, opportunities or constraints on treatment options, and other information they may provide. The commissioner, or a designee, shall conduct a public hearing in a county within the geographical area being considered.

(2) The commissioner of public lands may issue a forest health hazard warning when he or she deems such action is necessary to manage the development of a threat to forest health or address an existing threat to forest health. A decision to issue a forest health hazard warning may be based on existing forest stand conditions and:

(a) The presence of an uncharacteristic insect or disease outbreak that has or is likely to (i) spread to multiple forest ownerships and cause extensive damage to forests; or (ii) significantly increase forest fuel that is likely to further the spread of uncharacteristic fire;

(b) When, due to extensive physical damage from wind or ice storm or other cause, there are (i) insect populations building up to large scale levels; or (ii) significantly increased forest fuels that are likely to further the spread of uncharacteristic fire; or

(c) When otherwise determined by the commissioner to be appropriate.

(3) The commissioner of public lands may issue a forest health hazard order when he or she deems such action is necessary to address a significant threat to forest health. A decision to issue a forest health hazard order may be based on existing forest stand conditions and:

(a) The presence of an uncharacteristic insect or disease outbreak that has (i) spread to multiple forest ownerships and has caused and is likely to continue to cause extensive damage to forests; or (ii) significantly increased forest fuels that are likely to further the spread of uncharacteristic fire;

(b) When, due to extensive physical damage from wind or ice storm or other cause (i) insect populations are causing extensive damage to forests; or (ii) significantly increased forest fuels are likely to further the spread of uncharacteristic fire;

(c) Insufficient landowner action under a forest health hazard warning; or

(d) When otherwise determined by the commissioner to be appropriate.

(4) A forest health hazard warning or forest health hazard order shall be issued by use of a commissioner's order. General notice of the commissioner's order shall be published in a newspaper of general circulation in each county within the area covered by the order and on the department's website. The order shall specify the boundaries of the area affected, including federal and tribal lands, the forest stand conditions that would make a parcel subject to the provisions of the order, and the actions landowners or land managers should take to reduce the hazard. If the forest health hazard warning or order relates to land managed by the department, the warning or order may also contain provisions for the department's utilization of any forest biomass pursuant to chapter 79.150 RCW.

(5) Written notice of a forest health hazard warning or forest health hazard order shall be provided to forestland owners of specifically affected property.

(a) The notice shall set forth:

(i) The reasons for the action;

(ii) The boundaries of the area affected, including federal and tribal lands;

(iii) Suggested actions that should be taken by the forestland owner under a forest health hazard warning or the actions that must be taken by a forestland owner under a forest health hazard order;

(iv) The time within which such actions should or must be taken;

(v) How to obtain information or technical assistance on forest health conditions and treatment options;

(vi) The right to request mitigation under subsection (6) of this section and appeal under subsection (7) of this section;

(vii) These requirements are advisory only for federal and tribal lands.

(b) The notice shall be served by personal service or by mail to the latest recorded real property owner, as shown by the records of the county recording officer as defined in RCW 65.08.060. Service by mail is effective on the date of mailing. Proof of service shall be by affidavit or declaration under penalty of perjury.

(6) Forestland owners who have been issued a forest health hazard order under subsection (5) of this section may apply to the department for the remission or mitigation of such order. The application shall be made to the department within fifteen days after notice of the order has been served. Upon receipt of the application, the department may remit or mitigate the order upon whatever terms the department in its discretion deems proper, provided the department deems the remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department may ascertain the facts regarding all such applications in such reasonable manner and under such rule as it deems proper.

(7) Forestland owners who have been issued a forest health hazard order under subsection (5) of this section may appeal the order to the pollution control hearings board.

The appeal shall be filed within thirty days after notice of the order has been served, unless application for mitigation has been made to the department. When such an application for mitigation is made, such appeal shall be filed within thirty days after notice of the disposition of the application for mitigation has been served as provided in RCW 43.21B.230.

(8) A forest health hazard order issued under subsection (5) of this section is effective thirty days after date of service unless application for remission or mitigation is made or an appeal is filed. When an application for remission or mitigation is made, the order is effective thirty days after notice setting forth the disposition of the application is served unless an appeal is filed from such disposition. Whenever an appeal of the order is filed, the order shall become effective only upon completion of all administrative and judicial review proceedings and the issuance of a final decision confirming the order in whole or in part.

(9) Upon written request, the department may certify as adequate a forest health management plan developed by a forestland owner, before or in response to a forest health hazard warning or forest health hazard order, if the plan is likely to achieve the desired result and the terms of the plan are being diligently followed by the forestland owner. The certification of adequacy shall be determined by the department in its sole discretion, and be provided to the requestor in writing. [2010 c 210 § 18; 2010 c 126 § 8; 2007 c 480 § 7.]

(2022 Ed.)

Reviser's note: This section was amended by 2010 c 126 § 8 and by 2010 c 210 § 18, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

76.06.190 Chapter 480, Laws of 2007 subject to the provisions of chapter 76.09 RCW. Nothing in chapter 480, Laws of 2007 shall exempt actions specified under the authority of chapter 480, Laws of 2007 from the application of the provisions of chapter 76.09 RCW and rules adopted thereunder which govern forest practices. [2007 c 480 § 9.]

76.06.200 Forest health assessment and treatment framework. (1) The department must establish a forest health assessment and treatment framework designed to proactively and systematically address the forest health issues facing the state. Specifically, the framework must endeavor to achieve an initial goal of assessing and treating one million acres of land by 2033.

(2) The department must utilize the framework to assess and treat acreage in an incremental fashion each biennium. The framework consists of three elements: Assessment; treatment; and progress review and reporting.

(a) Assessment. Each biennium, the department must identify and assess two hundred thousand acres of fire prone lands and communities that are in need of forest health treatment, including the use of prescribed fire or mechanical treatment.

(i) The scope of the assessment must include lands protected by the department as well as lands outside of the department's fire protection responsibilities that could pose a high risk to department protected lands during a fire.

(ii) The assessment must identify areas in need of treatment, the type or types of treatment recommended, spatial optimization of forest treatments across landscapes, data and planning needs to carry out recommended treatment, and the estimated cost of recommended treatment.

(iii) The department shall develop a mapping tool to identify small forestland owners within wildfire risk areas and use this tool to evaluate and optimize forest health work at a landscape scale to move high risk wildfire areas to lower risk and to leverage funding and the small forestland owner forest health program and landowner assistance program in RCW 76.13.190 with the greatest impact for wildfire prevention, preparedness, and response.

(b) Treatment. Each biennium, the department must review previously completed assessments and prioritize and conduct as many identified treatments as possible using appropriations provided for that specific purpose.

(c) Progress review and reporting. By December 1st of each even-numbered year, the department must provide the appropriate committees of the legislature and the office of financial management with:

(i) A request for appropriations designed to implement the framework in the following biennium, including assessment work and conducting treatments identified in previously completed assessments;

(ii) A prioritized list and brief summary of treatments planned to be conducted under the framework with the

requested appropriations, including relevant information from the assessment; and

(iii) A list and brief summary of treatments carried out under the framework in the preceding biennium, including total funding available, costs for completed treatment, and treatment outcomes. The summary must include any barriers to framework implementation and legislative or administrative recommendations to address those barriers.

(3) In developing and implementing the framework, the department must:

(a) Utilize and build on the forest health strategic planning initiated under section 308(11), chapter 36, Laws of 2016 sp. sess., to the maximum extent practicable, to promote the efficient use of resources;

(b) Prioritize, to the maximum extent practicable consistent with this section, forest health treatments that are strategically planned to serve the dual benefits of forest health maximization while providing geographically planned tools for wildfire response;

(c) Where possible, partner with federally recognized tribes to expand use of the tribal forest protection act on federal lands managed by the United States forest service and the bureau of land management;

(d) When entering into good neighbor agreements, as that term is defined in RCW 79.02.010, prioritize, to the maximum extent practicable consistent with this section, forest health treatments adjacent to or nearby state lands so as to increase the speed, efficiency, and impact on the landscape; and

(e) Establish a forest health advisory committee to assist in developing and implementing the framework. The committee may: (i) Include representation from large and small forestland owners, wildland fire response organizations, milling and log transportation industries, forest collaboratives that may exist in the affected areas, highly affected communities and community preparedness organizations, conservation groups, and other interested parties deemed appropriate by the commissioner; and (ii) consult with relevant local, state, and federal agencies, and tribes.

(4) In implementing subsection (3)(b) of this section, the department shall attempt to locate and design forest health treatments in such a way as to provide wildfire response personnel with strategically located treated areas to assist with managing fire response. These areas must attempt to maximize the firefighting benefits of natural and artificial geographic features and be located in areas that prioritize the protection of commercially managed lands from fires originating on public land.

(5) The department must establish and implement the forest health assessment and treatment framework within the appropriations specifically provided for this purpose.

(6) The department must explore opportunities and developing markets for the utilization of woody biomass residuals from forest treatments, including biochar. When exploring opportunities and developing markets, the department must consult with the department of commerce, relevant federal agencies, representatives of the forest products sector, environmental organizations, and other stakeholders with a working knowledge of woody biomass technology. [2021 c 298 § 4; 2019 c 305 § 1; 2017 c 95 § 1.]

Short title—2021 c 298: See note following RCW 76.04.505.

76.06.900 Severability. If any part of this chapter or requirements imposed upon landowners pursuant to this chapter are found to conflict with requirements of other statutes or rules, the conflicting part of this chapter or requirements imposed pursuant to this chapter shall be inoperative solely to the extent of the conflict. The finding or determination shall not affect the operation of the remainder of this chapter or such requirements. [2007 c 480 § 10.]

Chapter 76.09 RCW FOREST PRACTICES

Sections

76.09.010	Legislative finding and declaration.
76.09.020	Definitions.
76.09.030	Forest practices board—Created—Membership—Terms—Vacancies—Meetings—Compensation, travel expenses—Staff.
76.09.040	Forest practices rules—Adoption—Review of proposed rules—Hearings—Fish protection standards—Program for the acquisition of riparian open space.
76.09.050	Rules establishing classes of forest practices—Applications for classes of forest practices—Approval or disapproval—Notifications—Procedures—Appeals—Waiver.
76.09.055	Findings—Emergency rule making authorized.
76.09.060	Form and contents of notification and application—Reforestation requirements—Conversion of forestland to other use—New applications—Approval—Emergencies.
76.09.063	Forest practices permit—Habitat incentives agreement.
76.09.065	Fee for applications and notifications related to the commercial harvest of timber—Forest practices application account—Creation—Applications submitted to a local governmental entity.
76.09.067	Application for forest practices—Owner of perpetual timber rights.
76.09.070	Reforestation—Requirements—Procedures—Notification on sale or transfer.
76.09.080	Stop work orders—Grounds—Contents—Procedure—Appeals.
76.09.090	Notice of failure to comply—Contents—Procedures—Appeals—Hearing—Final order—Limitations on actions.
76.09.100	Failure to comply with water quality protection—Department of ecology authorized to petition appeals board—Action on petition.
76.09.110	Final orders or final decisions binding upon all parties.
76.09.120	Failure of owner to take required course of action—Notice of cost—Department authorized to complete course of action—Liability of owner for costs—Lien.
76.09.130	Failure to obey stop work order—Departmental action authorized—Liability of owner or operator for costs.
76.09.140	Enforcement.
76.09.150	Inspection—Right of entry.
76.09.160	Right of entry by department of ecology.
76.09.170	Violations—Conversion to nontimber operation—Penalties—Remission or mitigation—Appeals—Lien.
76.09.180	Disposition of moneys received as penalties, reimbursement for damages.
76.09.190	Additional penalty, gross misdemeanor.
76.09.205	Appeals board review.
76.09.240	Forest practices—County, city, or town to regulate—When—Adoption of development regulations—Enforcement—Technical assistance—Exceptions and limitations—Verification that land not subject to a notice of conversion to non-forestry uses—Reporting of information to the department of revenue.
76.09.250	Policy for continuing program of orientation and training.
76.09.260	Department to represent state's interest—Cooperation with other public agencies—Grants and gifts.
76.09.270	Annual determination of state's research needs—Recommendations.
76.09.280	Removal of log and debris jams from streams.
76.09.290	Inspection of lands—Reforestation.
76.09.300	Mass earth movements and fluvial processes—Program to correct hazardous conditions on sites associated with roads and railroad grades—Hazard-reduction plans.
76.09.305	Advisory committee to review hazard-reduction plans authorized—Compensation, travel expenses.

- 76.09.310 Hazard-reduction program—Notice to landowners within areas selected for review—Proposed plans—Objections to plan, procedure—Final plans—Appeal.
- 76.09.315 Implementation of hazard-reduction measures—Election—Notice and application for cost-sharing funds—Inspection—Letter of compliance—Limitations on liability.
- 76.09.320 Implementation of hazard-reduction program—Cost sharing by department—Limitations.
- 76.09.330 Legislative findings—Liability from naturally falling trees required to be left standing.
- 76.09.340 Certain forest practices exempt from rules and policies under this chapter.
- 76.09.350 Long-term multispecies landscape management plans—Pilot projects, selection—Plan approval, elements—Notice of agreement recorded—Memorandums of agreements—Report, evaluation.
- 76.09.360 Single multiyear permit.
- 76.09.368 Intent—Small forestland owners—Alternate plan processes/alternate harvest restrictions—Report to the legislature.
- 76.09.370 Findings—Forests and fish report—Adoption of rules.
- 76.09.390 Sale of land or timber rights with continuing obligations—Notice—Failure to notify—Exemption.
- 76.09.405 Forest and fish support account—Created.
- 76.09.410 Road maintenance and abandonment plans—Fish passage barriers.
- 76.09.420 Road maintenance and abandonment plans—Rules—Checklist—Report to the legislature—Emergency rules.
- 76.09.430 Application to RCW 76.13.150.
- 76.09.440 Small forestland owner—Fish passage barriers.
- 76.09.450 Small forestland owner—Defined.
- 76.09.460 Notice of conversion to nonforestry use—Denial of permits or approvals by the county, city, town, or regional governmental entity—Enforcement.
- 76.09.470 Conversion of land to nonforestry use—Action required of landowner—Action required of county, city, town, or regional governmental entity.
- 76.09.480 Identification of projects that mitigate infrastructure and non-infrastructure development.
- 76.09.490 Forest practices hydraulic project—Department may request information/technical assistance from the department of fish and wildlife—Concurrence review process.
- 76.09.900 Short title.
- 76.09.905 Air pollution laws not modified.
- 76.09.910 Shoreline management act, hydraulics act, other statutes and ordinances not modified—Exceptions.
- 76.09.915 Repeal and savings.
- 76.09.920 Application for extension of prior permits.
- 76.09.925 Effective dates—1974 ex.s. c 137.
- 76.09.935 Severability—1974 ex.s. c 137.

Chapter 76.09 RCW to be used to satisfy federal water pollution act requirements: RCW 90.48.425.

76.09.010 Legislative finding and declaration. (1)

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

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

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

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

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

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

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

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

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

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

(i) Foster cooperation among managers of public resources, forestland owners, Indian tribes and the citizens of the state;

(j) Develop a watershed analysis system that addresses the cumulative effect of forest practices on, at a minimum, the public resources of fish, water, and public capital improvements of the state and its political subdivisions; and

(k) Assist forestland owners in accessing market capital and financing for the ecosystem services provided to the public as a result of the protection of public resources.

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

(4) The legislature further finds and declares that it is in the public interest that the applicants for state forest practices permits should assist in paying for the cost of review and permitting necessary for the environmental protection of these resources. [2010 c 188 § 3; 1999 sp.s. c 4 § 901; 1993 c 443 § 1; 1987 c 95 § 1; 1974 ex.s. c 137 § 1.]

Findings—Intent—2010 c 188: See note following RCW 76.44.070.

Additional notes found at www.leg.wa.gov

76.09.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adaptive management" means reliance on scientific methods to test the results of actions taken so that the management and related policy can be changed promptly and appropriately.

(2) "Appeals board" means the pollution control hearings board created by RCW 43.21B.010.

(3) "Application" means the application required pursuant to RCW 76.09.050.

(4) "Aquatic resources" includes water quality, salmon, other species of the vertebrate classes Cephalaspidomorphi and Osteichthyes identified in the forests and fish report, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and their respective habitats.

(5) "Board" means the forest practices board created in RCW 76.09.030.

(6) "Commissioner" means the commissioner of public lands.

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

(8) "Conversion to a use other than commercial timber operation" means a bona fide conversion to an active use which is incompatible with timber growing and as may be defined by forest practices rules.

(9) "Date of receipt" has the same meaning as defined in RCW 43.21B.001.

(10) "Department" means the department of natural resources.

(11) "Ecosystem services" means the benefits that the public enjoys as a result of natural processes and biological diversity.

(12) "Ecosystem services market" means a system in which providers of ecosystem services can access financing or market capital to protect, restore, and maintain ecological values, including the full spectrum of regulatory, quasiregulatory, and voluntary markets.

(13) "Fill" means the placement of earth material or aggregate for road or landing construction or other similar activities.

(14) "Fish passage barrier" means any artificial instream structure that impedes the free passage of fish.

(15) "Forestland" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forestland does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. As it applies to the operation of the road maintenance and abandonment plan element of the forest practices rules on small forestland owners, the term "forestland" excludes:

(a) Residential home sites, which may include up to five acres; and

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

(16) "Forestland owner" means any person in actual control of forestland, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner. However, any lessee or other person in possession of forestland without legal or equitable title to such land shall be excluded from the definition of "forestland owner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forestland.

(17) "Forest practice" means any activity conducted on or directly pertaining to forestland and relating to growing, harvesting, or processing timber, including but not limited to:

(a) Road and trail construction, including forest practices hydraulic projects that include water crossing structures, and associated activities and maintenance;

(b) Harvesting, final and intermediate;

(c) Precommercial thinning;

(d) Reforestation;

(e) Fertilization;

(f) Prevention and suppression of diseases and insects;

(g) Salvage of trees; and

(h) Brush control.

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

(18) "Forest practices hydraulic project" means a hydraulic project, as defined under RCW 77.55.011, that requires a forest practices application or notification under this chapter.

(19) "Forest practices rules" means any rules adopted pursuant to RCW 76.09.040.

(20) "Forest road," as it applies to the operation of the road maintenance and abandonment plan element of the forest practices rules on small forestland owners, means a road or road segment that crosses land that meets the definition of forestland, but excludes residential access roads.

(21) "Forest trees" does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than fifteen years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees, but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

(22) "Forests and fish report" means the forests and fish report to the board dated April 29, 1999.

(23) "Operator" means any person engaging in forest practices except an employee with wages as his or her sole compensation.

(24) "Person" means any individual, partnership, private, public, or municipal corporation, county, the department or other state or local governmental entity, or association of individuals of whatever nature.

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

(26) "Small forestland owner" has the same meaning as defined in RCW 76.09.450.

(27) "Timber" means forest trees, standing or down, of a commercial species, including Christmas trees. However, "timber" does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

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

(29) "Unconfined channel migration zone" means the area within which the active channel of an unconfined stream is prone to move and where the movement would result in a

potential near-term loss of riparian forest adjacent to the stream. Sizeable islands with productive timber may exist within the zone.

(30) "Unconfined stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex floodplain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement. [2012 1st sp.s. c 1 § 212. Prior: 2010 c 210 § 19; 2010 c 188 § 6; prior: 2009 c 354 § 5; 2009 c 246 § 4; 2003 c 311 § 3; 2002 c 17 § 1; prior: 2001 c 102 § 1; 2001 c 97 § 2; 1999 sp.s. c 4 § 301; 1974 ex.s. c 137 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Finding—Intent—Limitation—Jurisdiction/authority of Indian tribe under act—2012 1st sp.s. c 1: See notes following RCW 77.55.011.

Authority of department of fish and wildlife under act—2012 1st sp.s. c 1: See note following RCW 76.09.040.

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Findings—Intent—2010 c 188: See note following RCW 76.44.070.

Finding—Intent—2009 c 354: See note following RCW 84.33.140.

Findings—2003 c 311: "(1) The legislature finds that chapter 4, Laws of 1999 sp. sess. strongly encouraged the forest practices board to adopt administrative rules that were substantially similar to the recommendations presented to the legislature in the form of the forests and fish report. The rules adopted pursuant to the 1999 legislation require all forestland owners to complete a road maintenance and abandonment plan, and those rules cannot be changed by the forest practices board without either a final order from a court, direct instructions from the legislature, or a recommendation from the adaptive management process. In the time since the enactment of chapter 4, Laws of 1999 sp. sess., it has become clear that both the planning aspect and the implementation aspect of the road maintenance and abandonment plan requirement may cause an unforeseen and unintended disproportionate financial hardship on small forestland owners.

(2) The legislature further finds that the commissioner of public lands and the governor have explored solutions that minimize the hardship caused to small forestland owners by the forest road maintenance and abandonment requirements of the forests and fish law, while maintaining protection for public resources. This act represents recommendations stemming from that process.

(3) The legislature further finds that it is in the state's interest to help small forestland owners comply with the requirements of the forest practices rules in a way that does not require the landowner to spend unreasonably high and unpredictable amounts of money to complete road maintenance and abandonment plan preparation and implementation. Small forestland owners provide significant wildlife habitat and serve as important buffers between urban development and Washington's public forestland holdings." [2003 c 311 § 1.]

Additional notes found at www.leg.wa.gov

76.09.030 Forest practices board—Created—Membership—Terms—Vacancies—Meetings—Compensation, travel expenses—Staff. (1) There is hereby created the forest practices board of the state of Washington as an agency of state government consisting of members as follows:

(a) The commissioner of public lands or the commissioner's designee;

(b) The director of the department of commerce or the director's designee;

(c) The director of the department of agriculture or the director's designee;

(d) The director of the department of ecology or the director's designee;

(2022 Ed.)

(e) The director of the department of fish and wildlife or the director's designee;

(f) An elected member of a county legislative authority appointed by the governor. However, the county member's service on the board shall be conditioned on the member's continued service as an elected county official;

(g) One member representing a timber products union, appointed by the governor from a list of three names submitted by a timber labor coalition affiliated with a statewide labor organization that represents a majority of the timber product unions in the state; and

(h) Six members of the general public appointed by the governor, one of whom shall be a small forestland owner who actively manages his or her land, and one of whom shall be an independent logging contractor.

(2) The members of the initial board appointed by the governor shall be appointed so that the term of one member shall expire December 31, 1975, the term of one member shall expire December 31, 1976, the term of one member shall expire December 31, 1977, the terms of two members shall expire December 31, 1978, and the terms of two members shall expire December 31, 1979. Thereafter, each member shall be appointed for a term of four years. Vacancies on the board shall be filled in the same manner as the original appointments. Each member of the board shall continue in office until his or her successor is appointed and qualified. The commissioner of public lands or the commissioner's designee shall be the chair of the board.

(3) The board shall meet at such times and places as shall be designated by the chair or upon the written request of the majority of the board. The principal office of the board shall be at the state capital.

(4) Members of the board, except public employees and elected officials, shall be compensated in accordance with RCW 43.03.250. Each member shall be entitled to reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060.

(5) The board may employ such clerical help and staff pursuant to chapter 41.06 RCW as is necessary to carry out its duties. [2012 1st sp.s. c 1 § 211; 2008 c 46 § 1; 2003 c 39 § 32; 1999 sp.s. c 4 § 1001; 1995 c 399 § 207; 1993 c 257 § 1; 1987 c 330 § 1301; 1985 c 466 § 70; 1984 c 287 § 108; 1975-'76 2nd ex.s. c 34 § 173; 1975 1st ex.s. c 200 § 1; 1974 ex.s. c 137 § 3.]

Finding—Intent—Limitation—Jurisdiction/authority of Indian tribe under act—2012 1st sp.s. c 1: See notes following RCW 77.55.011.

Authority of department of fish and wildlife under act—2012 1st sp.s. c 1: See note following RCW 76.09.040.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

76.09.040 Forest practices rules—Adoption—Review of proposed rules—Hearings—Fish protection standards—Program for the acquisition of riparian open space. (1)(a) Where necessary to accomplish the purposes and policies stated in RCW 76.09.010, and to implement the provisions of this chapter, the board shall adopt forest practices rules pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in this section that:

(i) Establish minimum standards for forest practices;

[Title 76 RCW—page 31]

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

(iii) Set forth necessary administrative provisions;

(iv) Establish procedures for the collection and administration of forest practice fees as set forth by this chapter; and

(v) Allow for the development of watershed analyses.

(b) Forest practices rules pertaining to water quality protection shall be adopted by the board after reaching agreement with the director of the department of ecology or the director's designee on the board with respect to these rules. All other forest practices rules shall be adopted by the board.

(c) Forest practices rules shall be administered and enforced by either the department or the local governmental entity as provided in this chapter. Such rules shall be adopted and administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

(2)(a) The board shall prepare proposed forest practices rules consistent with this section and chapter 34.05 RCW. In addition to any forest practices rules relating to water quality protection proposed by the board, the department of ecology may submit to the board proposed forest practices rules relating to water quality protection.

(b)(i) The board shall hold one or more hearings on the proposed rules pursuant to chapter 34.05 RCW. Any county representative may propose specific forest practices rules relating to problems existing within the county at the hearings.

(ii) The board may adopt and the department of ecology may approve such proposals if they find the proposals are consistent with the purposes and policies of this chapter.

(3)(a) The board shall incorporate into the forest practices rules those fish protection standards in the rules adopted under chapter 77.55 RCW, as the rules existed on July 10, 2012, that are applicable to activities regulated under the forest practices rules. If fish protection standards are incorporated by reference, the board shall minimize administrative processes by utilizing the exception from the administrative procedures controlling significant legislative rules under RCW 34.05.328(5)(b)(iii) for the incorporation of rules adopted by other state agencies.

(b) Thereafter, the board shall incorporate into the forest practices rules any changes to those fish protection standards in the rules adopted under chapter 77.55 RCW that are: (i) Adopted consistent with RCW 77.55.361; and (ii) applicable to activities regulated under the forest practices rules. If fish protection standards are incorporated by reference, the board shall minimize administrative processes by utilizing the exception from the administrative procedures controlling significant legislative rules under RCW 34.05.328(5)(b)(iii) for the incorporation of rules adopted by other state agencies.

(c) The board shall establish and maintain technical guidance in the forest practices board manual, as provided under WAC 222-12-090 as it existed on July 10, 2012, to assist with implementation of the standards incorporated into the forest practices rules under this section. The guidance must include best management practices and standard techniques to ensure fish protection.

(d) The board must complete the requirements of (a) of this subsection and establish initial technical guidance under (c) of this subsection by December 31, 2013.

(4)(a) The board shall establish by rule a program for the acquisition of riparian open space and critical habitat for threatened or endangered species as designated by the board. Acquisition must be a conservation easement. Lands eligible for acquisition are forestlands within unconfined channel migration zones or forestlands containing critical habitat for threatened or endangered species as designated by the board. Once acquired, these lands may be held and managed by the department, transferred to another state agency, transferred to an appropriate local government agency, or transferred to a private nonprofit nature conservancy corporation, as defined in RCW 64.04.130, in fee or transfer of management obligation. The board shall adopt rules governing the acquisition by the state or donation to the state of such interest in lands including the right of refusal if the lands are subject to unacceptable liabilities. The rules shall include definitions of qualifying lands, priorities for acquisition, and provide for the opportunity to transfer such lands with limited warranties and with a description of boundaries that does not require full surveys where the cost of securing the surveys would be unreasonable in relation to the value of the lands conveyed. The rules shall provide for the management of the lands for ecological protection or fisheries enhancement. For the purposes of conservation easements entered into under this section, the following apply:

(i) For conveyances of a conservation easement in which the landowner conveys an interest in the trees only, the compensation must include the timber value component, as determined by the cruised volume of any timber located within the channel migration zone or critical habitat for threatened or endangered species as designated by the board, multiplied by the appropriate quality code stumpage value for timber of the same species shown on the appropriate table used for timber harvest excise tax purposes under RCW 84.33.091;

(ii) For conveyances of a conservation easement in which the landowner conveys interests in both land and trees, the compensation must include the timber value component in (a)(i) of this subsection plus such portion of the land value component as determined just and equitable by the department. The land value component must be the acreage of qualifying channel migration zone or critical habitat for threatened or endangered species as determined by the board, to be conveyed, multiplied by the average per acre value of all commercial forestland in western Washington or the average for eastern Washington, whichever average is applicable to the qualifying lands. The department must determine the western and eastern Washington averages based on the land value tables established by RCW 84.33.140 and revised annually by the department of revenue.

(b) Subject to appropriations sufficient to cover the cost of such an acquisition program and the related costs of administering the program, the department must establish a conservation easement in land that an owner tenders for purchase; provided that such lands have been taxed as forestlands and are located within an unconfined channel migration zone or contain critical habitat for threatened or endangered species as designated by the board. Lands acquired under this section shall become riparian or habitat open space. These

acquisitions shall not be deemed to trigger the compensating tax of chapters 84.33 and 84.34 RCW.

(c) Instead of offering to sell interests in qualifying lands, owners may elect to donate the interests to the state.

(d) Any acquired interest in qualifying lands by the state under this section shall be managed as riparian open space or critical habitat. [2012 1st sp.s. c 1 § 203; 2010 c 188 § 4; 2009 c 246 § 1; 2000 c 11 § 3; 1999 sp.s. c 4 § 701; 1997 c 173 § 1; 1994 c 264 § 48; 1993 c 443 § 2; 1988 c 36 § 46; 1987 c 95 § 8; 1974 ex.s. c 137 § 4.]

Authority of department of fish and wildlife under act—2012 1st sp.s. c 1: "Nothing in this act authorizes the department of fish and wildlife to assume authority over approval, disapproval, conditioning, or enforcement of applications or notifications submitted under chapter 76.09 RCW." [2012 1st sp.s. c 1 § 217.]

Finding—Intent—Limitation—Jurisdiction/authority of Indian tribe under act—2012 1st sp.s. c 1: See notes following RCW 77.55.011.

Findings—Intent—2010 c 188: See note following RCW 76.44.070.

Additional notes found at www.leg.wa.gov

76.09.050 Rules establishing classes of forest practices—Applications for classes of forest practices—Approval or disapproval—Notifications—Procedures—Appeals—Waiver. (1) The board shall establish by rule which forest practices shall be included within each of the following classes:

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

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

(a) On forestlands that are being converted to another use;

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

(c) Excluded from Class II by the board; or

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

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

(a) Within thirty calendar days from the date the department receives the application if the application is not subject

to concurrence review by the department of fish and wildlife under RCW 76.09.490; and

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

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

(a) On forestlands that are being converted to another use;

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

(c) That involve timber harvesting or road construction on forestlands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except where the forestland owner provides:

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

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

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

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

(2) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this

chapter, no Class II, Class III, or Class IV forest practice shall be commenced or continued after January 1, 1975, unless the department has received a notification with regard to a Class II forest practice or approved an application with regard to a Class III or Class IV forest practice containing all information required by RCW 76.09.060 as now or hereafter amended. However, in the event forest practices regulations necessary for the scheduled implementation of this chapter and RCW 90.48.420 have not been adopted in time to meet such schedules, the department shall have the authority to regulate forest practices and approve applications on such terms and conditions consistent with this chapter and RCW 90.48.420 and the purposes and policies of RCW 76.09.010 until applicable forest practices regulations are in effect.

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

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

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

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

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

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

(b) The objections relate to forestlands that are being converted to another use.

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

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

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

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

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

(12) Notwithstanding subsections (2) through (5) of this section, forest practices applications or notifications are not required for exotic insect and disease control operations conducted in accordance with RCW 76.09.060(8) where eradication can reasonably be expected. [2012 1st sp.s. c 1 § 205; 2011 c 207 § 1; 2010 c 210 § 20; 2005 c 146 § 1003; 2003 c 314 § 4; 2002 c 121 § 1; 1997 c 173 § 2; 1994 c 264 § 49; 1993 c 443 § 3; 1990 1st ex.s. c 17 § 61; 1988 c 36 § 47; 1987 c 95 § 9; 1975 1st ex.s. c 200 § 2; 1974 ex.s. c 137 § 5.]

Contingent effective date—2012 1st sp.s. c 1 §§ 202 and 205: See note following RCW 76.09.490.

Finding—Intent—Limitation—Jurisdiction/authority of Indian tribe under act—2012 1st sp.s. c 1: See notes following RCW 77.55.011.

Authority of department of fish and wildlife under act—2012 1st sp.s. c 1: See note following RCW 76.09.040.

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Findings—2003 c 314: See note following RCW 17.24.220.

Additional notes found at www.leg.wa.gov

76.09.055 Findings—Emergency rule making authorized. (1) The legislature finds that the levels of fish stocks throughout much of the state require immediate action to be taken to help these fish runs where possible. The legislature also recognizes that federal and state agencies, tribes, county representatives, and private timberland owners have spent considerable effort and time to develop the forests and fish report. Given the agreement of the parties, the legislature believes that the immediate adoption of emergency rules is appropriate in this particular instance. These rules can implement many provisions of the forests and fish report to protect the economic well-being of the state, and to minimize the risk to the state and landowners to legal challenges. This authority is not designed to set any precedents for the forest practices board in future rule making or set any precedents for other rule-making bodies of the state.

(2) The forest practices board is authorized to adopt emergency rules amending the forest practices rules with respect to the protection of aquatic resources, in accordance with RCW 34.05.350, except: (a)(i) That the rules adopted under this section may remain in effect until permanent rules are adopted, or until June 30, 2001, whichever is sooner; (ii) that the rules adopted under RCW 76.09.420(5) must remain in effect until permanent rules are adopted; (b) notice of the proposed rules must be published in the Washington State Register as provided in RCW 34.05.320; (c) at least one public hearing must be conducted with an opportunity to provide oral and written comments; and (d) a rule-making file must be maintained as required by RCW 34.05.370. In adopting emergency rules consistent with this section, the board is not required to prepare a small business economic impact statement under chapter 19.85 RCW, prepare a statement indicating whether the rules constitute a significant legislative rule under RCW 34.05.328, prepare a significant legislative rule analysis under RCW 34.05.328, or follow the procedural requirements of the state environmental policy act, chapter 43.21C RCW. Except as provided in RCW 76.09.420, the forest practices board may only adopt recommendations contained in the forests and fish report as emergency rules under this section. [2003 c 311 § 5; 2000 c 11 § 4; 1999 sp.s. c 4 § 201.]

Findings—Effective date—2003 c 311: See notes following RCW 76.09.020.

Additional notes found at www.leg.wa.gov

76.09.060 Form and contents of notification and application—Reforestation requirements—Conversion of forestland to other use—New applications—Approval—Emergencies. (1) The department shall prescribe the form and contents of the notification and application. The forest practices rules shall specify by whom and under what conditions the notification and application shall be signed or otherwise certified as acceptable. Activities conducted by the department or a contractor under the direction of the department under the provisions of RCW 76.04.660, shall be exempt from the landowner signature requirement on any

(2022 Ed.)

forest practices application required to be filed. The application or notification shall be delivered in person to the department, sent by first-class mail to the department or electronically filed in a form defined by the department. The form for electronic filing shall be readily convertible to a paper copy, which shall be available to the public pursuant to chapter 42.56 RCW. The information required may include, but is not limited to:

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

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

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

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

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

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

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

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

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

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

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

(l) All necessary application or notification fees.

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

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

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

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

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

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

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

- (i) A notice of a conversion to nonforestry use;
- (ii) A copy of the applicable forest practices application or notification, if any; and
- (iii) Copies of any applicable outstanding final orders or decisions issued by the department related to the forest practices application or notification.

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

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

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

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

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

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

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

(6)(a) Except as provided in RCW 76.09.350(4), the notification to or the approval given by the department to an

application to conduct a forest practice shall be effective for a term of three years from the date of approval or notification.

(b) A notification or application may be renewed for an additional three-year term by the filing and approval of a notification or application, as applicable, prior to the expiration of the original application or notification. A renewal application or notification is subject to the forest practices rules in effect at the time the renewal application or notification is filed. Nothing in this section precludes the applicant from applying for a new application or notification after the renewal period has lapsed.

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

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

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

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

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

(b) In order to minimize adverse impacts to public resources, control measures must be based on integrated pest management, as defined in RCW 17.15.010, and must follow forest practices rules relating to road construction and maintenance, timber harvest, and forest chemicals, to the extent possible without compromising control objectives.

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

(d) When the appropriate regulatory staff of the department are notified under (c) of this subsection, they must consult with the landowner, interested agencies, and affected tribes, and assist the notifying agencies in the development of

integrated pest management plans that comply with forest practices rules as required under (b) of this subsection.

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

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

(g) The exemption from obtaining approved forest practices applications or notifications does not apply to forest practices conducted after the governor, the director of the department of agriculture, or the commissioner of public lands have declared that an emergency no longer exists because control objectives have been met, that there is no longer an imminent threat, or that there is no longer a good likelihood of control. [2012 1st sp.s. c 1 § 206. Prior: 2007 c 480 § 11; 2007 c 106 § 1; 2005 c 274 § 357; 2003 c 314 § 5; prior: 1997 c 290 § 3; 1997 c 173 § 3; 1993 c 443 § 4; 1992 c 52 § 22; 1990 1st ex.s. c 17 § 62; 1975 1st ex.s. c 200 § 3; 1974 ex.s. c 137 § 6.]

Finding—Intent—Limitation—Jurisdiction/authority of Indian tribe under act—2012 1st sp.s. c 1: See notes following RCW 77.55.011.

Authority of department of fish and wildlife under act—2012 1st sp.s. c 1: See note following RCW 76.09.040.

Findings—2003 c 314: See note following RCW 17.24.220.

Additional notes found at www.leg.wa.gov

76.09.063 Forest practices permit—Habitat incentives agreement. When a private landowner is applying for a forest practices permit under this chapter and that landowner has entered into a habitat incentives agreement with the department and the department of fish and wildlife as provided in *RCW 77.55.300, the department shall comply with the terms of that agreement when evaluating the permit application. [2003 c 39 § 33; 1997 c 425 § 5.]

*Reviser's note: RCW 77.55.300 was recodified as RCW 77.55.121 pursuant to 2005 c 146 § 1001.

Finding—Intent—1997 c 425: See note following RCW 77.55.121.

76.09.065 Fee for applications and notifications related to the commercial harvest of timber—Forest practices application account—Creation—Applications submitted to a local governmental entity. (1) An applicant shall pay an application fee, if applicable, at the time an application or notification is submitted to the department or to the local governmental entity as provided in this chapter.

(2)(a) If RCW 77.55.361, 76.09.490, 76.09.040, and 76.09.060 are not enacted into law by June 30, 2012, then the fee for applications and notifications submitted to the department shall be fifty dollars for class II, III, and IV forest practices applications or notifications relating to the commercial harvest of timber. However, the fee shall be five hundred dollars for class IV forest practices applications on lands being converted to other uses or on lands which are not to be reforested because of the likelihood of future conversion to urban development or on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except the fee shall be fifty dollars on those lands where the forestland owner provides:

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

(ii) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the forest practices application.

(b)(i) If RCW 77.55.361, 76.09.490, 76.09.040, and 76.09.060 are enacted into law by June 30, 2012, then:

(A) The fee for applications and notifications relating to the commercial harvest of timber submitted to the department shall be one hundred dollars for class II applications and notifications, class III applications, and class IV forest practices that have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW, when the application or notification is submitted by a landowner who satisfies the definition of small forestland owner provided in RCW 76.09.450 and the application or notification applies to a single contiguous ownership consisting of one or more parcels;

(B) The fee for applications and notifications relating to the commercial harvest of timber submitted to the department shall be one hundred fifty dollars for class II applications and notifications, class III applications, and class IV forest practices that have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW, when the application or notification is submitted by a landowner who does not satisfy the criteria for a reduced application fee as provided in (b)(i)(A) of this subsection (2); and

(C) The fee shall be one thousand five hundred dollars for class IV forest practices applications on lands being converted to other uses or on lands that are not to be reforested because of the likelihood of future conversion to urban development or on lands that are contained within urban growth areas, designated pursuant to chapter 36.70A RCW, except the fee shall be the same as for a class III forest practices application where the forestland owner provides:

(I) A written statement of intent signed by the forestland owner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or

(II) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the forest practices application.

(ii) If the board has not incorporated fish protection standards adopted under chapter 77.55 RCW into the forest practices rules and approved technical guidance as required under RCW 76.09.040 by December 31, 2013, the fee for applications and notifications submitted to the department shall be as provided under (a) of this subsection until the rules are adopted and technical guidance approved.

(3) The forest practices application account is created in the state treasury. Moneys in the account may be spent only after appropriation. All money collected from fees under subsection (2) of this section shall be deposited in the forest practices application account for the purposes of implementing this chapter, chapter 76.13 RCW, and Title 222 WAC.

(4) For applications submitted to a local governmental entity as provided in this chapter, the fee shall be determined, collected, and retained by the local governmental entity. [2012 1st sp.s. c 1 § 209; 2000 c 11 § 5; 1997 c 173 § 4; 1993 c 443 § 5.]

Finding—Intent—Limitation—Jurisdiction/authority of Indian tribe under act—2012 1st sp.s. c 1: See notes following RCW 77.55.011.

Authority of department of fish and wildlife under act—2012 1st sp.s. c 1: See note following RCW 76.09.040.

Additional notes found at www.leg.wa.gov

76.09.067 Application for forest practices—Owner of perpetual timber rights. Notwithstanding any other provision of this chapter to the contrary, for the purposes of RCW 76.09.050(1) and 76.09.060, where timber rights have been transferred by deed to a perpetual owner who is different from the forestland owner, the owner of perpetual timber rights may sign the forest practices application or notification. The forest practices application is not complete until the holder of perpetual timber rights has submitted evidence to the department that the signed forest practices application or notification has been received by the forestland owner. [2007 c 106 § 5; 1998 c 100 § 1.]

76.09.070 Reforestation—Requirements—Procedures—Notification on sale or transfer. (1) After the completion of a logging operation, satisfactory reforestation, as defined by the rules and regulations promulgated by the board, shall be completed within three years. However:

(a) A longer period may be authorized if seed or seedlings are not available;

(b) A period of up to five years may be allowed where a natural regeneration plan is approved by the department; and

(c) The department may identify low-productivity lands on which it may allow for a period of up to ten years for natural regeneration.

(2)(a) Upon the completion of a reforestation operation a report on such operation shall be filed with the department of natural resources.

(b) Within twelve months of receipt of such a report the department shall inspect the reforestation operation, and shall determine either that the reforestation operation has been properly completed or that further reforestation and inspection is necessary.

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

(4)(a) Prior to the sale or transfer of land or perpetual timber rights subject to a reforestation obligation or to a notice of conversion to a nonforestry use issued under RCW 76.09.060, the seller shall notify the buyer of the existence

and nature of the obligation and the buyer shall sign a notice indicating the buyer's knowledge of all obligations.

(b) The notice shall be on a form prepared by the department and shall be sent to the department by the seller at the time of sale or transfer of the land or perpetual timber rights.

(c) If the seller fails to notify the buyer about the reforestation obligation or the notice of conversion to a nonforestry use, the seller shall pay the buyer's costs related to reforestation or mitigation under RCW 76.09.470, including all legal costs which include reasonable attorneys' fees, incurred by the buyer in enforcing the reforestation obligation or mitigation requirements against the seller.

(d) Failure by the seller to send the required notice to the department at the time of sale shall be prima facie evidence, in an action by the buyer against the seller for costs related to reforestation or mitigation, that the seller did not notify the buyer of the reforestation obligation or potential mitigation requirements prior to sale.

(5) The forest practices regulations may provide alternatives to or limitations on the applicability of reforestation requirements with respect to forestlands being converted in whole or in part to another use which is compatible with timber growing. The forest practices regulations may identify classifications and/or areas of forestland that have the likelihood of future conversion to urban development within a ten year period. The reforestation requirements may be modified or eliminated on such lands. However, such identification and/or such conversion to urban development must be consistent with any local or regional land use plans or ordinances. [2007 c 106 § 4; 1987 c 95 § 10; 1982 c 173 § 1; 1975 1st ex.s. c 200 § 4; 1974 ex.s. c 137 § 7.]

Additional notes found at www.leg.wa.gov

76.09.080 Stop work orders—Grounds—Contents—Procedure—Appeals. (1) The department shall have the authority to serve upon an operator a stop work order which shall be a final order of the department if:

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

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

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

(2) The stop work order shall set forth:

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

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

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

(d) The right of the operator to a hearing before the appeals board.

The department shall immediately file a copy of such order with the appeals board and mail a copy thereof to the timber owner and forestland owner at the addresses shown on the application. The operator, timber owner, or forestland owner may commence an appeal to the appeals board within thirty days from the date of receipt of the order by the operator. If such appeal is commenced, a hearing shall be held not more than twenty days after copies of the notice of appeal were filed with the appeals board. Such proceeding shall be an adjudicative proceeding within the meaning of chapter 34.05 RCW, the administrative procedure act. The operator shall comply with the order of the department immediately upon being served, but the appeals board if requested shall have authority to continue or discontinue in whole or in part the order of the department under such conditions as it may impose pending the outcome of the proceeding. [2010 c 210 § 21; 1989 c 175 § 163; 1975 1st ex.s. c 200 § 5; 1974 ex.s. c 137 § 8.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Additional notes found at www.leg.wa.gov

76.09.090 Notice of failure to comply—Contents—Procedures—Appeals—Hearing—Final order—Limitations on actions. If a violation, a deviation, material damage or potential for material damage to a public resource has occurred and the department determines that a stop work order is unnecessary, then the department shall issue and serve upon the operator or land owner a notice, which shall clearly set forth:

(1)(a) The specific nature, extent, and time of failure to comply with the approved application; or identifying the damage or potential damage; and/or

(b) The relevant provisions of this chapter or of the forest practice regulations relating thereto;

(2) The right of the operator or land owner to a hearing before the department; and

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

The department shall mail a copy thereof to the forestland owner and the timber owner at the addresses shown on the application, showing the date of service upon the operator. Such notice to comply shall become a final order of the department: PROVIDED, That no direct appeal to the appeals board will be allowed from such final order. Such operator shall undertake the course of action so ordered by the department unless, within fifteen days after the date of service of such notice to comply, the operator, forestland owner, or timber owner, shall request the department in writing to schedule a hearing. If so requested, the department shall schedule a hearing on a date not more than twenty days after receiving such request. Within ten days after such hearing, the department shall issue a final order either withdraw-

(2022 Ed.)

ing its notice to comply or clearly setting forth the specific course of action to be followed by such operator. Such operator shall undertake the course of action so ordered by the department unless within thirty days after the date of receipt of such final order, the operator, forestland owner, or timber owner appeals such final order to the appeals board.

No person shall be under any obligation under this section to prevent, correct, or compensate for any damage to public resources which occurs more than one year after the date of completion of the forest practices operations involved exclusive of reforestation, unless such forest practices were not conducted in accordance with forest practices rules and regulations: PROVIDED, That this provision shall not relieve the forestland owner from any obligation to comply with forest practices rules and regulations pertaining to providing continuing road maintenance. No action to recover damages shall be taken under this section more than two years after the date the damage involved occurs. [2010 c 210 § 22; 1975 1st ex.s. c 200 § 6; 1974 ex.s. c 137 § 9.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

76.09.100 Failure to comply with water quality protection—Department of ecology authorized to petition appeals board—Action on petition. If the department of ecology determines that a person has failed to comply with the forest practices regulations relating to water quality protection, and that the department of natural resources has not issued a stop work order or notice to comply, the department of ecology shall inform the department thereof. If the department of natural resources fails to take authorized enforcement action within twenty-four hours under RCW 76.09.080, 76.09.090, 76.09.120, or 76.09.130, the department of ecology may petition to the chair of the appeals board, who shall, within forty-eight hours, either deny the petition or direct the department of natural resources to immediately issue a stop work order or notice to comply, or to impose a penalty. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department of natural resources. [2013 c 23 § 220; 1975 1st ex.s. c 200 § 7; 1974 ex.s. c 137 § 10.]

76.09.110 Final orders or final decisions binding upon all parties. Unless declared invalid on appeal, a final order of the department or a final decision of the appeals board shall be binding upon all parties. [1974 ex.s. c 137 § 11.]

76.09.120 Failure of owner to take required course of action—Notice of cost—Department authorized to complete course of action—Liability of owner for costs—Lien. If an operator fails to undertake and complete any course of action with respect to a forest practice, as required by a final order of the department or a final decision of the appeals board or any court pursuant to RCW 76.09.080 and 76.09.090, the department may determine the cost thereof and give written notice of such cost to the operator, the timber owner and the owner of the forestland upon or in connection with which such forest practice was being conducted. If such operator, timber owner, or forestland owner fails within thirty

days after such notice is given to undertake such course of action, or having undertaken such course of action fails to complete it within a reasonable time, the department may expend any funds available to undertake and complete such course of action and such operator, timber owner, and forestland owner shall be jointly and severally liable for the actual, direct cost thereof, but in no case more than the amount set forth in the notice from the department. If not paid within sixty days after the department completes such course of action and notifies such forestland owner in writing of the amount due, such amount shall become a lien on such forestland and the department may collect such amount in the same manner provided in chapter 60.04 RCW for mechanics' liens. [1974 ex.s. c 137 § 12.]

76.09.130 Failure to obey stop work order—Departmental action authorized—Liability of owner or operator for costs. When the operator has failed to obey a stop work order issued under the provisions of RCW 76.09.080 the department may take immediate action to prevent continuation of or avoid material damage to public resources. If a final order or decision fixes liability with the operator, timber owner, or forestland owner, they shall be jointly and severally liable for such emergency costs which may be collected in the manner provided for in RCW 76.09.120. [1974 ex.s. c 137 § 13.]

76.09.140 Enforcement. (1) The department of natural resources may take any necessary action to enforce any final order or final decision, and may disapprove any forest practices application or notification submitted by any person who has failed to comply with a final order or final decision or has failed to pay any civil penalties as provided in RCW 76.09.170, for up to one year from the issuance of a notice of intent to disapprove notifications and applications under this section or until the violator pays all outstanding civil penalties and complies with all validly issued and outstanding notices to comply and stop work orders, whichever is longer. For purposes of chapter 482, Laws of 1993, the terms "final order" and "final decision" shall mean the same as set forth in RCW 76.09.080, 76.09.090, and 76.09.110. The department shall provide written notice of its intent to disapprove an application or notification under this subsection. The department shall forward copies of its notice of intent to disapprove to any affected landowner. The disapproval period shall run from thirty days following the date of actual notice or when all administrative and judicial appellate processes, if any, have been exhausted. Any person provided the notice may seek review from the appeals board by filing a request for review within thirty days of the date of the notice of intent. While the notice of intent to disapprove is in effect, the violator may not serve as a person in charge of, be employed by, manage, or otherwise participate to any degree in forest practices.

(2) On request of the department, the attorney general may take action necessary to enforce this chapter, including, but not limited to: Seeking penalties, interest, costs, and attorneys' fees; enforcing final orders or decisions; and seeking civil injunctions, show cause orders, or contempt orders.

(3) A county may bring injunctive, declaratory, or other actions for enforcement for forest practice activities within its

jurisdiction in the superior court as provided by law against the department, the forestland owner, timber owner or operator to enforce the forest practices rules or any final order of the department, or the appeals board. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department. Injunctions, declaratory actions, or other actions for enforcement under this subsection may not be commenced unless the department fails to take appropriate action after ten days written notice to the department by the county of a violation of the forest practices rules or final orders of the department or the appeals board.

(4)(a) The department may require financial assurance prior to the conduct of any further forest practices from an operator or landowner who within the preceding three-year period has:

(i) Operated without an approved forest practices application, other than an unintentional operation in connection with an approved application outside the approved boundary of such an application;

(ii) Continued to operate in breach of, or failed to comply with, the terms of an effective stop work order or notice to comply; or

(iii) Failed to pay any civil or criminal penalty.

(b) The department may deny any application for failure to submit financial assurances as required. [2000 c 11 § 6; 1999 sp.s. c 4 § 801; 1993 c 482 § 1; 1975 1st ex.s. c 200 § 8; 1974 ex.s. c 137 § 14.]

Additional notes found at www.leg.wa.gov

76.09.150 Inspection—Right of entry. (1) The department shall make inspections of forestlands, before, during, and after the conducting of forest practices as necessary for the purpose of ensuring compliance with this chapter, the forest practices rules, including forest practices rules incorporated under RCW 76.09.040(3), and to ensure that no material damage occurs to the natural resources of this state as a result of forest practices.

(2) Any duly authorized representative of the department shall have the right to enter upon forestland at any reasonable time to enforce the provisions of this chapter and the forest practices rules.

(3) The department or the department of ecology may apply for an administrative inspection warrant to either Thurston county superior court, or the superior court in the county in which the property is located. An administrative inspection warrant may be issued where:

(a) The department has attempted an inspection of forestlands under this chapter to ensure compliance with this chapter and the forest practices rules or to ensure that no potential or actual material damage occurs to the natural resources of this state, and access to all or part of the forestlands has been actually or constructively denied; or

(b) The department has reasonable cause to believe that a violation of this chapter or of rules adopted under this chapter is occurring or has occurred.

(4) In connection with any watershed analysis, any review of a pending application by an identification team appointed by the department, any compliance studies, any effectiveness monitoring, or other research that has been agreed to by a landowner, the department may invite repre-

representatives of other agencies, tribes, and interest groups to accompany a department representative and, at the landowner's election, the landowner, on any such inspections. Reasonable efforts shall be made by the department to notify the landowner of the persons being invited onto the property and the purposes for which they are being invited. [2012 1st sp.s. c 1 § 207; 2000 c 11 § 7; 1999 sp.s. c 4 § 802; 1974 ex.s. c 137 § 15.]

Finding—Intent—Limitation—Jurisdiction/authority of Indian tribe under act—2012 1st sp.s. c 1: See notes following RCW 77.55.011.

Authority of department of fish and wildlife under act—2012 1st sp.s. c 1: See note following RCW 76.09.040.

Additional notes found at www.leg.wa.gov

76.09.160 Right of entry by department of ecology.

Any duly authorized representative of the department of ecology shall have the right to enter upon forestland at any reasonable time to administer the provisions of this chapter and RCW 90.48.420. [1974 ex.s. c 137 § 16.]

76.09.170 Violations—Conversion to nontimber operation—Penalties—Remission or mitigation—Appeals—Lien. (1) Every person who violates any provision of RCW 76.09.010 through 76.09.280 or of the forest practices rules, or who converts forestland to a use other than commercial timber operation within three years after completion of the forest practice without the consent of the county, city, or town, shall be subject to a penalty in an amount of not more than ten thousand dollars for every such violation. Each and every such violation shall be a separate and distinct offense. In case of a failure to comply with a stop work order, every day's continuance shall be a separate and distinct violation. Every person who through an act of commission or omission procures, aids or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty in this section. No penalty shall be imposed under this section upon any governmental official, an employee of any governmental department, agency, or entity, or a member of any board or advisory committee created by this chapter for any act or omission in his or her duties in the administration of this chapter or of any rule adopted under this chapter.

(2) The department shall develop and recommend to the board a penalty schedule to determine the amount to be imposed under this section. The board shall adopt by rule, pursuant to chapter 34.05 RCW, such penalty schedule to be effective no later than January 1, 1994. The schedule shall be developed in consideration of the following:

- (a) Previous violation history;
- (b) Severity of the impact on public resources;
- (c) Whether the violation of this chapter or its rules was intentional;
- (d) Cooperation with the department;
- (e) Repairability of the adverse effect from the violation; and

(f) The extent to which a penalty to be imposed on a forestland owner for a forest practice violation committed by another should be reduced because the owner was unaware of the violation and has not received substantial economic benefits from the violation.

(3) The penalty in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department describing the violation with reasonable particularity. Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of such penalty. Upon receipt of the application, that department may remit or mitigate the penalty upon whatever terms that department in its discretion deems proper, provided the department deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department shall have authority to ascertain the facts regarding all such applications in such reasonable manner and under such rule as it may deem proper.

(4) Any person incurring a penalty under this section may appeal the penalty to the appeals board. Such appeals shall be filed within thirty days after the date of receipt of the penalty unless an application for remission or mitigation is made to the department. When such an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the department setting forth the disposition of the application for remission or mitigation.

(5) The penalty imposed under this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or an appeal is filed. When such an application for remission or mitigation is made, any penalty incurred under this section shall become due and payable thirty days after receipt of notice setting forth the disposition of such application unless an appeal is filed from such disposition. Whenever an appeal of the penalty incurred is filed, the penalty shall become due and payable only upon completion of all administrative and judicial review proceedings and the issuance of a final decision confirming the penalty in whole or in part.

(6) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty, interest, costs, and attorneys' fees. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in this chapter. In addition to or as an alternative to seeking enforcement of penalties in superior court, the department may bring an action in district court as provided in Title 3 RCW, to collect penalties, interest, costs, and attorneys' fees.

(7) Penalties imposed under this section for violations associated with a conversion to a use other than commercial timber operation shall be a lien upon the real property of the person assessed the penalty and the department may collect such amount in the same manner provided in chapter 60.04 RCW for mechanics' liens.

(8) Any person incurring a penalty imposed under this section is also responsible for the payment of all costs and attorneys' fees incurred in connection with the penalty and interest accruing on the unpaid penalty amount. [2010 c 210

§ 23; 1999 sp.s. c 4 § 803; 1993 c 482 § 2; 1975 1st ex.s. c 200 § 9; 1974 ex.s. c 137 § 17.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Additional notes found at www.leg.wa.gov

76.09.180 Disposition of moneys received as penalties, reimbursement for damages. All penalties received or recovered by state agency action for violations as prescribed in RCW 76.09.170 shall be deposited in the state general fund. All such penalties recovered as a result of local government action shall be deposited in the local government general fund. Any funds recovered as reimbursement for damages pursuant to RCW 76.09.080 and 76.09.090 shall be transferred to that agency with jurisdiction over the public resource damaged, including but not limited to political subdivisions, the department of fish and wildlife, the department of ecology, the department of natural resources, or any other department that may be so designated: PROVIDED, That nothing herein shall be construed to affect the provisions of RCW 90.48.142. [1994 c 264 § 50; 1988 c 36 § 48; 1974 ex.s. c 137 § 18.]

76.09.190 Additional penalty, gross misdemeanor. In addition to the penalties imposed pursuant to RCW 76.09.170, any person who conducts any forest practice or knowingly aids or abets another in conducting any forest practice in violation of any provisions of RCW 76.09.010 through 76.09.280 or 90.48.420, or of the regulations implementing RCW 76.09.010 through 76.09.280 or 90.48.420, shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment for up to three hundred sixty-four days or by both fine and imprisonment for each separate violation. Each day upon which such violation occurs shall constitute a separate violation. [2011 c 96 § 55; 1974 ex.s. c 137 § 19.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

76.09.205 Appeals board review. A person aggrieved by the approval or disapproval of an application to conduct a forest practice or the approval or disapproval of any landscape plan or permit or watershed analysis may seek review from the appeals board by filing a request for the same within thirty days from the date of receipt of the decision. Concurrently with the filing of any request for review with the appeals board as provided in this section, the requestor must file a copy of his or her request with the department and the attorney general. The attorney general may intervene to protect the public interest and ensure that the provisions of this chapter are complied with. [2010 c 210 § 24.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

76.09.240 Forest practices—County, city, or town to regulate—When—Adoption of development regulations—Enforcement—Technical assistance—Exceptions and limitations—Verification that land not subject to a notice of conversion to nonforestry uses—Reporting of information to the department of revenue. (1)(a) Counties planning under RCW 36.70A.040 with a population greater

than one hundred thousand, and the cities and towns within those counties, where more than a total of twenty-five Class IV forest practices applications, as defined in RCW 76.09.050(1) Class IV (a) through (d), have been filed with the department between January 1, 2003, and December 31, 2005, shall adopt and enforce ordinances or regulations as provided in subsection (2) of this section for the following:

(i) Forest practices classified as Class I, II, III, and IV that are within urban growth areas designated under RCW 36.70A.110, except for forest practices on ownerships of contiguous forestland equal to or greater than twenty acres where the forestland owner provides, to the department and the county, city, or town, a written statement of intent, signed by the forestland owner, not to convert to a use other than growing commercial timber for ten years. This statement must be accompanied by either:

(A) A written forest management plan acceptable to the department; or

(B) Documentation that the land is enrolled as forestland of long-term commercial significance under the provisions of chapter 84.33 RCW; and

(ii) Forest practices classified as Class IV, outside urban growth areas designated under RCW 36.70A.110, involving either timber harvest or road construction, or both on:

(A) Forestlands that are being converted to another use; or

(B) Lands which, under RCW 76.09.070, are not to be reforested because of the likelihood of future conversion to urban development;

(b) Counties planning under RCW 36.70A.040, and the cities and towns within those counties, not included in (a) of this subsection, may adopt and enforce ordinances or regulations as provided in (a) of this subsection; and

(c) Counties not planning under RCW 36.70A.040, and the cities and towns within those counties, may adopt and enforce ordinances or regulations as provided in subsection (2) of this section for forest practices classified as Class IV involving either timber harvest or road construction, or both on:

(i) Forestlands that are being converted to another use; or

(ii) Lands which, under RCW 76.09.070, are not to be reforested because of the likelihood of future conversion to urban development.

(2) Before a county, city, or town may regulate forest practices under subsection (1) of this section, it shall ensure that its critical areas and development regulations are in compliance with RCW 36.70A.130 and, if applicable, RCW 36.70A.215. The county, city, or town shall notify the department and the department of ecology in writing sixty days prior to adoption of the development regulations required in this section. The transfer of jurisdiction shall not occur until the county, city, or town has notified the department, the department of revenue, and the department of ecology in writing of the effective date of the regulations. Ordinances and regulations adopted under subsection (1) of this section and this subsection must be consistent with or supplement development regulations that protect critical areas pursuant to RCW 36.70A.060, and shall at a minimum include:

(a) Provisions that require appropriate approvals for all phases of the conversion of forestlands, including land clearing and grading; and

(b) Procedures for the collection and administration of permit and recording fees.

(3) Activities regulated by counties, cities, or towns as provided in subsections (1) and (2) of this section shall be administered and enforced by those counties, cities, or towns. The department shall not regulate these activities under this chapter.

(4) The board shall continue to adopt rules and the department shall continue to administer and enforce those rules in each county, city, or town for all forest practices as provided in this chapter until such a time as the county, city, or town has updated its development regulations as required by RCW 36.70A.130 and, if applicable, RCW 36.70A.215, and has adopted ordinances or regulations under subsections (1) and (2) of this section. However, counties, cities, and towns that have adopted ordinances or regulations regarding forest practices prior to July 22, 2011, are not required to readopt their ordinances or regulations in order to satisfy the requirements of this section except as necessary to ensure consistency with Class IV forest practices as defined in RCW 76.09.050.

(5) Upon request, the department shall provide technical assistance to all counties, cities, and towns while they are in the process of adopting the regulations required by this section, and after the regulations become effective.

(6) For those forest practices over which the board and the department maintain regulatory authority no county, city, municipality, or other local or regional governmental entity shall adopt or enforce any law, ordinance, or regulation pertaining to forest practices, except that to the extent otherwise permitted by law, such entities may exercise any:

(a) Land use planning or zoning authority: PROVIDED, That exercise of such authority may regulate forest practices only where the application submitted under RCW 76.09.060 as now or hereafter amended indicates that the lands are being converted to a use other than commercial forest product production: PROVIDED, That no permit system solely for forest practices shall be allowed; that any additional or more stringent regulations shall not be inconsistent with the forest practices regulations enacted under this chapter; and such local regulations shall not unreasonably prevent timber harvesting;

(b) Taxing powers;

(c) Regulatory authority with respect to public health; and

(d) Authority granted by chapter 90.58 RCW, the "Shoreline Management Act of 1971."

(7) All counties and cities adopting or enforcing regulations or ordinances under this section shall include in the regulation or ordinance a requirement that a verification accompany every permit issued for forestland by that county or city associated with the conversion to a use other than commercial timber operation, as that term is defined in RCW 76.09.020, that verifies that the land in question is not or has not been subject to a notice of conversion to nonforestry uses under RCW 76.09.060 during the six-year period prior to the submission of a permit application.

(8) To improve the administration of the forest excise tax created in chapter 84.33 RCW, a county, city, or town that regulates forest practices under this section shall report permit information to the department of revenue for all approved

forest practices permits. The permit information shall be reported to the department of revenue no later than sixty days after the date the permit was approved and shall be in a form and manner agreed to by the county, city, or town and the department of revenue. Permit information includes the landowner's legal name, address, telephone number, and parcel number. [2011 c 207 § 2; 2010 c 219 § 1. Prior: 2007 c 236 § 1; 2007 c 106 § 6; 2002 c 121 § 2; 1997 c 173 § 5; 1975 1st ex.s. c 200 § 11; 1974 ex.s. c 137 § 24.]

76.09.250 Policy for continuing program of orientation and training. The board shall establish a policy for a continuing program of orientation and training to be conducted by the department with relation to forest practices and the regulation thereof pursuant to RCW 76.09.010 through 76.09.280. [1974 ex.s. c 137 § 25.]

76.09.260 Department to represent state's interest—Cooperation with other public agencies—Grants and gifts. The department shall represent the state's interest in matters pertaining to forestry and forest practices, including federal matters, and may consult with and cooperate with the federal government and other states, as well as other public agencies, in the study and enhancement of forestry and forest practices. The department is authorized to accept, receive, disburse, and administer grants or other funds or gifts from any source, including private individuals or agencies, the federal government, and other public agencies for the purposes of carrying out the provisions of this chapter.

Nothing in this chapter shall modify the designation of the department of ecology as the agency representing the state for all purposes of the Federal Water Pollution Control Act. [1974 ex.s. c 137 § 26.]

76.09.270 Annual determination of state's research needs—Recommendations. The department, along with other affected agencies and institutions, shall annually determine the state's needs for research in forest practices and the impact of such practices on public resources and shall recommend needed projects to the governor and the legislature. [1974 ex.s. c 137 § 27.]

76.09.280 Removal of log and debris jams from streams. Forestland owners shall permit reasonable access requested by appropriate agencies for removal from streambeds abutting their property of log and debris jams accumulated from upstream ownerships. Any owner of logs in such jams in claiming or removing them shall be required to remove all unmerchantable material from the streambed in accordance with the forest practices regulations. Any material removed from streambeds must also be removed in compliance with all applicable laws administered by other agencies. [1974 ex.s. c 137 § 28.]

76.09.290 Inspection of lands—Reforestation. The department shall inspect, or cause to be inspected, deforested lands of the state and ascertain if the lands are valuable chiefly for agriculture, timber growing, or other purposes, with a view to reforestation. [1986 c 100 § 49.]

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

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

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

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

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

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

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

(5) Unless requested by a forestland owner under RCW 76.09.320, the department shall study geographic areas for participation in the program only to the extent that funds have been appropriated for cost sharing of hazard-reduction measures under RCW 76.09.320. [1987 c 95 § 2.]

76.09.305 Advisory committee to review hazard-reduction plans authorized—Compensation, travel expenses. The forest practices board may, upon request of the department or at its own discretion, appoint an advisory committee consisting of not more than five members qualified by appropriate experience and training to review and comment upon such draft hazard reduction plans prepared by the department as the department submits for review.

If an advisory committee is established, and within ninety days following distribution of a draft plan, the advisory committee shall prepare a written report on each hazard reduction plan submitted to it. The report, which shall be kept on file by the department, shall address each of those elements described in RCW 76.09.300(2).

Final authority for each plan is vested in the department, and advisory committee comments and decisions shall be advisory only. The exercise by advisory committee members

of their authority to review and comment shall not imply or create any liability on their part. Advisory committee members shall be compensated as provided for in RCW 43.03.250 and shall receive reimbursement for travel expenses as provided by RCW 43.03.050 and 43.03.060. [1987 c 95 § 3.]

76.09.310 Hazard-reduction program—Notice to landowners within areas selected for review—Proposed plans—Objections to plan, procedure—Final plans—Appeal. (1) The department shall send a notice to all forestland owners, both public and private, within the geographic area selected for review, stating that the department intends to study the area as part of the hazard-reduction program.

(2) The department shall prepare a proposed plan for each geographic area studied. The department shall provide the proposed plan to affected landowners, Indian tribes, interested parties, and to the advisory committee, if established pursuant to RCW 76.09.305.

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

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

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

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

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

(8) The department shall provide a copy of the final hazard-reduction plan to the department of ecology and to each affected county. [2010 c 210 § 25; 1987 c 95 § 4.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

76.09.315 Implementation of hazard-reduction measures—Election—Notice and application for cost-sharing funds—Inspection—Letter of compliance—Limitations on liability. (1) When a forestland owner elects to implement the recommended hazard-reduction measures, the landowner shall notify the department and apply for cost-sharing funds. Upon completion, the department shall inspect the remedial measures undertaken by the forestland owner. If, in the department's opinion, the remedial measures have been properly implemented, the department shall promptly trans-

mit a letter to the landowner stating that the landowner has complied with the hazard-reduction measures.

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

(3) The exercise by the department of its authority, duties, and responsibilities provided for developing and implementing the hazard-reduction program and plans shall not imply or create any liability in the state of Washington or the department except that the department may be liable if the department is negligent in making a final hazard-reduction plan or in approving the implementation of specific hazard-reduction measures. [1987 c 95 § 5.]

76.09.320 Implementation of hazard-reduction program—Cost sharing by department—Limitations. (1) Subject to the availability of appropriated funds, the department shall pay fifty percent of the cost of implementing the hazard-reduction program, except as provided in subsection (2) of this section.

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

(3) No cost-sharing funds may be made available for sites where the department determines that the hazardous condition results from a violation of then-prevailing standards as established by statute or rule. [2013 c 23 § 231; 1987 c 95 § 6.]

76.09.330 Legislative findings—Liability from naturally falling trees required to be left standing. The legislature hereby finds and declares that riparian ecosystems on forestlands in addition to containing valuable timber resources, provide benefits for wildlife, fish, and water quality. The legislature further finds and declares that leaving riparian areas unharvested and leaving snags and green trees for large woody debris recruitment for streams and rivers provides public benefits including but not limited to benefits for threatened and endangered salmonids, other fish, amphibians, wildlife, and water quality enhancement. The legislature further finds and declares that leaving upland areas unharvested for wildlife and leaving snags and green trees for future snag recruitment provides benefits for wildlife. Forest-

land owners may be required to leave trees standing in riparian and upland areas to benefit public resources. It is recognized that these trees may blow down or fall into streams and that organic debris may be allowed to remain in streams. This is beneficial to riparian dependent and other wildlife species. Further, it is recognized that trees may blow down, fall onto, or otherwise cause damage or injury to public improvements, private property, and persons. Notwithstanding any statutory provision, rule, or common law doctrine to the contrary, the landowner, the department, and the state of Washington shall not be held liable for any injury or damages resulting from these actions, including but not limited to wildfire, erosion, flooding, personal injury, property damage, damage to public improvements, and other injury or damages of any kind or character resulting from the trees being left. [1999 sp.s. c 4 § 602; 1992 c 52 § 5; 1987 c 95 § 7.]

Additional notes found at www.leg.wa.gov

76.09.340 Certain forest practices exempt from rules and policies under this chapter. Forest practices consistent with a habitat conservation plan approved prior to March 25, 1996, by the secretary of the interior or commerce under 16 U.S.C. Sec. 1531 et seq., and the endangered species act of 1973 as amended, are exempt from rules and policies under this chapter, provided the proposed forest practices indicated in the application are in compliance with the plan, and provided this exemption applies only to rules and policies adopted primarily for the protection of one or more species, including unlisted species, covered by the plan. Such forest practices are deemed not to have the potential for a substantial impact on the environment but may be found to have the potential for a substantial impact on the environment due to other reasons under RCW 76.09.050.

Nothing in this section is intended to limit the board's rule-making authority under this chapter. [1996 c 136 § 1.]

Additional notes found at www.leg.wa.gov

76.09.350 Long-term multispecies landscape management plans—Pilot projects, selection—Plan approval, elements—Notice of agreement recorded—Memorandums of agreements—Report, evaluation. The legislature recognizes the importance of providing the greatest diversity of habitats, particularly riparian, wetland, and old growth habitats, and of assuring the greatest diversity of species within those habitats for the survival and reproduction of enough individuals to maintain the native wildlife of Washington forestlands. The legislature also recognizes the importance of long-term habitat productivity for natural and wild fish, for the protection of hatchery water supplies, and for the protection of water quality and quantity to meet the needs of people, fish, and wildlife. The legislature recognizes the importance of maintaining and enhancing fish and wildlife habitats capable of sustaining the commercial and noncommercial uses of fish and wildlife. The legislature further recognizes the importance of the continued growth and development of the state's forest products industry which has a vital stake in the long-term productivity of both the public and private forestland base.

The development of a landscape planning system would help achieve these goals. Landowners and resource managers should be provided incentives to voluntarily develop long-

term multispecies landscape management plans that will provide protection to public resources. Because landscape planning represents a departure from the use of standard baseline rules and may result in unintended consequences to both the affected habitats and to a landowner's economic interests, the legislature desires to establish up to seven experimental pilot programs to gain experience with landscape planning that may prove useful in fashioning legislation of a more general application.

(1) Until December 31, 2000, the department in cooperation with the department of fish and wildlife, and the department of ecology when relating to water quality protection, is granted authority to select not more than seven pilot projects for the purpose of developing individual landowner multispecies landscape management plans.

(a) Pilot project participants must be selected by the department in cooperation with the department of fish and wildlife, and the department of ecology when relating to water quality protection, no later than October 1, 1997.

(b) The number and the location of the pilot projects are to be determined by the department in cooperation with the department of fish and wildlife, and the department of ecology when relating to water quality protection, and should be selected on the basis of risk to the habitat and species, variety and importance of species and habitats in the planning area, geographic distribution, surrounding ownership, other ongoing landscape and watershed planning activities in the area, potential benefits to water quantity and quality, financial and staffing capabilities of participants, and other factors that will contribute to the creation of landowner multispecies landscape planning efforts.

(c) Each pilot project shall have a landscape management plan with the following elements:

(i) An identification of public resources selected for coverage under the plan and measurable objectives for the protection of the selected public resources;

(ii) A termination date of not later than 2050;

(iii) A general description of the planning area including its geographic location, physical and biological features, habitats, and species known to be present;

(iv) An identification of the existing forest practices rules that will not apply during the term of the plan;

(v) Proposed habitat management strategies or prescriptions;

(vi) A projection of the habitat conditions likely to result from the implementation of the specified management strategies or prescriptions;

(vii) An assessment of habitat requirements and the current habitat conditions of representative species included in the plan;

(viii) An assessment of potential or likely impacts to representative species resulting from the prescribed forest practices;

(ix) A description of the anticipated benefits to those species or other species as a result of plan implementation;

(x) A monitoring plan;

(xi) Reporting requirements including a schedule for review of the plan's performance in meeting its objectives;

(xii) Conditions under which a plan may be modified, including a procedure for adaptive management;

(xiii) Conditions under which a plan may be terminated;

(xiv) A procedure for adaptive management that evaluates the effectiveness of the plan to meet its measurable public resources objectives, reflects changes in the best available science, and provides changes to its habitat management strategies, prescriptions, and hydraulic project standards to the extent agreed to in the plan and in a timely manner and schedule;

(xv) A description of how the plan relates to publicly available plans of adjacent federal, state, tribal, and private timberland owners; and

(xvi) A statement of whether the landowner intends to apply for approval of the plan under applicable federal law.

(2) Until December 31, 2000, the department, in agreement with the department of fish and wildlife, and the department of ecology when the landowner elects to cover water quality in the plan, shall approve a landscape management plan and enter into a binding implementation agreement with the landowner when such departments find, based upon the best scientific data available, that:

(a) The plan contains all of the elements required under this section including measurable public resource objectives;

(b) The plan is expected to be effective in meeting those objectives;

(c) The landowner has sufficient financial resources to implement the management strategies or prescriptions to be implemented by the landowner under the plan;

(d) The plan will:

(i) Provide better protection than current state law for the public resources selected for coverage under the plan considered in the aggregate; and

(ii) Compared to conditions that could result from compliance with current state law:

(A) Not result in poorer habitat conditions over the life of the plan for any species selected for coverage that is listed as threatened or endangered under federal or state law, or that has been identified as a candidate for such listing, at the time the plan is approved; and

(B) Measurably improve habitat conditions for species selected for special consideration under the plan;

(e) The plan shall include watershed analysis or provide for a level of protection that meets or exceeds the protection that would be provided by watershed analysis, if the landowner selects fish or water quality as a public resource to be covered under the plan. Any alternative process to watershed analysis would be subject to timely peer review;

(f) The planning process provides for a public participation process during the development of the plan, which shall be developed by the department in cooperation with the landowner.

The management plans must be submitted to the department and the department of fish and wildlife, and the department of ecology when the landowner elects to cover water quality in the plan, no later than March 1, 2000. The department shall provide an opportunity for public comment on the proposed plan. The comment period shall not be less than forty-five days. The department shall approve or reject plans within one hundred twenty days of submittal by the landowner of a final plan. The decision by the department, in agreement with the department of fish and wildlife, and the department of ecology when the landowner has elected to cover water quality in the plan, to approve or disapprove the

management plan is subject to the environmental review process of chapter 43.21C RCW, provided that any public comment period provided for under chapter 43.21C RCW shall run concurrently with the public comment period provided in this subsection (2).

(3) After a landscape management plan is adopted:

(a) Forest practices consistent with the plan need not comply with:

(i) The specific forest practices rules identified in the plan; and

(ii) Any forest practice rules and policies adopted after the approval of the plan to the extent that the rules:

(A) Have been adopted primarily for the protection of a public resource selected for coverage under the plan; or

(B) Provide for procedural or administrative obligations inconsistent with or in addition to those provided for in the plan with respect to those public resources; and

(b) If the landowner has selected fish as one of the public resources to be covered under the plan, the plan shall serve as the hydraulic project approval for the life of the plan, in compliance with *RCW 77.55.100.

(4) The department is authorized to issue a single landscape level permit valid for the life of the plan to a landowner who has an approved landscape management plan and who has requested a landscape permit from the department. Landowners receiving a landscape level permit shall meet annually with the department and the department of fish and wildlife, and the department of ecology where water quality has been selected as a public resource to be covered under the plan, to review the specific forest practices activities planned for the next twelve months and to determine whether such activities are in compliance with the plan. The departments will consult with the affected Indian tribes and other interested parties who have expressed an interest in connection with the review. The landowner is to provide ten calendar days' notice to the department prior to the commencement of any forest practices authorized under a landscape level permit. The landscape level permit will not impose additional conditions relating to the public resources selected for coverage under the plan beyond those agreed to in the plan. For the purposes of chapter 43.21C RCW, forest practices conducted in compliance with an approved plan are deemed not to have the potential for a substantial impact on the environment as to any public resource selected for coverage under the plan.

(5) Except as otherwise provided in a plan, the agreement implementing the landscape management plan is an agreement that runs with the property covered by the approved landscape management plan and the department shall record notice of the plan in the real property records of the counties in which the affected properties are located. Prior to its termination, no plan shall permit forestland covered by its terms to be withdrawn from such coverage, whether by sale, exchange, or other means, nor to be converted to nonforestry uses except to the extent that such withdrawal or conversion would not measurably impair the achievement of the plan's stated public resource objectives. If a participant transfers all or part of its interest in the property, the terms of the plan still apply to the new landowner for the plan's stated duration unless the plan is terminated under its terms or unless the plan specifies the conditions under which the terms of the plan do not apply to the new landowner.

(6) The departments of natural resources, fish and wildlife, and ecology shall seek to develop memorandums of agreements with federal agencies and affected Indian tribes relating to tribal issues in the landscape management plans. The departments shall solicit input from affected Indian tribes in connection with the selection, review, and approval of any landscape management plan. If any recommendation is received from an affected Indian tribe and is not adopted by the departments, the departments shall provide a written explanation of their reasons for not adopting the recommendation.

(7) The department is directed to report to the forest practices board annually through the year 2000, but no later than December 31st of each year, on the status of each pilot project. The department is directed to provide to the forest practices board, no later than December 31, 2000, an evaluation of the pilot projects including a determination if a permanent landscape planning process should be established along with a discussion of what legislative and rule modifications are necessary. [2003 c 39 § 34; 1997 c 290 § 1.]

*Reviser's note: RCW 77.55.100 was repealed by 2005 c 146 § 1006.

76.09.360 Single multiyear permit. The department together with the department of fish and wildlife, and the department of ecology relating to water quality protection, shall develop a suitable process to permit landowners to secure all permits required for the conduct of forest practices in a single multiyear permit to be jointly issued by the departments and the departments shall report their findings to the legislature not later than December 31, 2000. [1997 c 290 § 2.]

76.09.368 Intent—Small forestland owners—Alternate plan processes/alternate harvest restrictions—Report to the legislature. The legislature intends that small forestland owners have access to alternate plan processes or alternate harvest restrictions, or both if necessary, that meet the public resource protection standard set forth in RCW 76.09.370(3), but which also lowers the overall cost of regulation to small forestland owners including, but not limited to, timber value forgone, layout costs, and operating costs. The forest practices board shall consult with the small forestland owner office advisory committee in developing these alternate approaches. By July 1, 2003, the forest practices board shall provide the legislature with a written report that describes the board's progress in developing alternate plan processes or alternate harvest restrictions, or both if necessary, that meet legislative intent.

As used in this section, "small forestland owner" has the same meaning as defined in RCW 76.13.120(2). [2002 c 120 § 4.]

76.09.370 Findings—Forests and fish report—Adoption of rules. (1) The legislature finds that the process that produced the forests and fish report was instigated by the forest practices board, the report is the product of considerable negotiations between several diverse interest groups, and the report has the support of key federal agencies. When adopting permanent rules under this section, the forest practices board is strongly encouraged to follow the recommendations of the forests and fish report, but may include other alterna-

tives for protection of aquatic resources. If the forest practices board chooses to adopt rules under this section that are not consistent with the recommendations contained in the forests and fish report, the board must notify the appropriate legislative committees of the proposed deviations, the reasons for the proposed deviations, and whether the parties to the forests and fish report still support the agreement. The board shall defer final adoption of such rules for sixty days of the legislative session to allow for the opportunity for additional public involvement and legislative oversight.

(2) The forest practices board shall follow the regular rules adoption process contained in the administrative procedure act, chapter 34.05 RCW, when adopting permanent rules pertaining to forest practices and the protection of aquatic resources except as limited by subsection (1) of this section. The permanent rules must accomplish the policies stated in RCW 76.09.010 without jeopardizing the economic viability of the forest products industry.

(3) The rules adopted under this section should be as specific as reasonably possible while also allowing an applicant to propose alternate plans in response to site-specific physical features. Alternate plans should provide protection to public resources at least equal in overall effectiveness by alternate means.

(4) Rule making under subsection (2) of this section shall be completed by June 30, 2001.

(5) The board should consider coordinating any environmental review process under chapter 43.21C RCW relating to the adoption of rules under subsection (2) of this section with any review of a related proposal under the national environmental policy act (42 U.S.C. Sec. 4321, et seq.).

(6) After the board has adopted permanent rules under subsection (2) of this section, changes to those rules and any new rules covering aquatic resources may be adopted by the board but only if the changes or new rules are consistent with recommendations resulting from the scientifically based adaptive management process established by a rule of the board. Any new rules or changes under this subsection need not be based upon the recommendations of the adaptive management process if: (a) The board is required to adopt or modify rules by the final order of any court having jurisdiction thereof; or (b) future state legislation directs the board to adopt or modify the rules.

(7) In adopting permanent rules, the board shall incorporate the scientific-based adaptive management process described in the forests and fish report which will be used to determine the effectiveness of the new forest practices rules in aiding the state's salmon recovery effort. The purpose of an adaptive management process is to make adjustments as quickly as possible to forest practices that are not achieving the resource objectives. The adaptive management process shall incorporate the best available science and information, include protocols and standards, regular monitoring, a scientific and peer review process, and provide recommendations to the board on proposed changes to forest practices rules to meet timber industry viability and salmon recovery. [1999 sp.s. c 4 § 204.]

Additional notes found at www.leg.wa.gov

76.09.390 Sale of land or timber rights with continuing obligations—Notice—Failure to notify—Exemption.

[Title 76 RCW—page 48]

(1) Except as provided in subsection (2) of this section, prior to the sale or transfer of land or perpetual timber rights subject to continuing forestland obligations under the forest practices rules adopted under RCW 76.09.370, as specifically identified in the forests and fish report the seller shall notify the buyer of the existence and nature of such a continuing obligation and the buyer shall sign a notice of continuing forestland obligation indicating the buyer's knowledge thereof. The notice shall be on a form prepared by the department and shall be sent to the department by the seller at the time of sale or transfer of the land or perpetual timber rights and retained by the department. If the seller fails to notify the buyer about the continuing forestland obligation, the seller shall pay the buyer's costs related to such continuing forestland obligation, including all legal costs and reasonable attorneys' fees, incurred by the buyer in enforcing the continuing forestland obligation against the seller. Failure by the seller to send the required notice to the department at the time of sale shall be prima facie evidence, in an action by the buyer against the seller for costs related to the continuing forestland obligation, that the seller did not notify the buyer of the continuing forestland obligation prior to sale.

(2) Subsection (1) of this section does not apply to checklist road maintenance and abandonment plans created by RCW 76.09.420. [2003 c 311 § 6; 1999 sp.s. c 4 § 707.]

Findings—Effective date—2003 c 311: See notes following RCW 76.09.020.

Additional notes found at www.leg.wa.gov

76.09.405 Forest and fish support account—Created.

The forest and fish support account is hereby created in the state treasury. Receipts from appropriations, the surcharge imposed under RCW 82.04.261, and other sources must be deposited into the account. Expenditures from the account shall be used for activities pursuant to the state's implementation of the forests and fish report as defined in this chapter and related activities including, but not limited to, adaptive management, monitoring, and participation grants to tribes, state and local agencies, and not-for-profit public interest organizations. Expenditures from the account may be made only after appropriation by the legislature. During the 2019-2021 fiscal biennium, the legislature may appropriate moneys from the account for activities to implement this chapter. [2019 c 415 § 982. Prior: 2007 c 54 § 3; 2007 c 48 § 1; 2006 c 300 § 3.]

Effective date—2019 c 415: See note following RCW 28B.20.476.

Additional notes found at www.leg.wa.gov

76.09.410 Road maintenance and abandonment plans—Fish passage barriers.

(1) The state may not require a small forestland owner to invest in upgrades, replacements, or other engineering of a forest road, and any fish passage barriers that are a part of the road, that do not threaten public resources or create a barrier to the passage of fish.

(2) Participation in the forests and fish agreement provides a benefit to both the landowner in terms of federal assurances, and the public in terms of aquatic habitat preservation and water quality enhancement; therefore, if conditions do threaten public resources or create a fish passage barrier, the road maintenance and abandonment planning process may not require a small forestland owner to take a

(2022 Ed.)

positive action that will result in high cost without a significant portion of that cost being shared by the public.

(3) Some fish passage barriers are more of a threat to public resources than others; therefore, no small forestland owner should be required to repair a fish passage barrier until higher priority fish passage barriers on other lands in the watershed have been repaired.

(4) If an existing fish passage barrier on land owned by a small forestland owner was installed under an approved forest practices application or notification, and hydraulics approval, and that fish passage barrier becomes a high priority for fish passage based on the watershed ranking in *RCW 76.13.150, one hundred percent public funding shall be provided.

(5) The preparation of a road maintenance and abandonment plan can require technical expertise that may require large expenditures before the time that the landowner plans to conduct any revenue-generating operations on his or her land; therefore, small forestland owners should be allowed to complete a simplified road maintenance and abandonment plan checklist, that does not require professional engineering or forestry expertise to complete, and that does not need to be submitted until the time that the landowner submits a forest practices application or notification for final or intermediate harvesting, or for salvage of trees. Chapter 311, Laws of 2003 is intended to provide an alternate way for small forestland owners to comply with the road maintenance and abandonment plan goals identified in the forest practices rules. [2003 c 311 § 2.]

***Reviser's note:** The reference to RCW 76.13.150 appears to be erroneous. Reference to RCW 77.12.755 was apparently intended.

Findings—Effective date—2003 c 311: See notes following RCW 76.09.020.

76.09.420 Road maintenance and abandonment plans—Rules—Checklist—Report to the legislature—Emergency rules. (1) The board must amend the forest practices rules relating to road maintenance and abandonment plans that exist on May 14, 2003, to reflect the following:

(a) A forestland owner who owns a total of eighty acres or less of forestland in Washington is not required to submit a road maintenance and abandonment plan for any block of forestland that is twenty contiguous acres or less in area;

(b) A landowner who satisfies the definition of a small forestland owner, but who does not qualify under (a) of this subsection, is only required to submit a checklist road maintenance and abandonment plan with the abbreviated content requirements provided for in subsection (3) of this section, and is not required to comply with annual reporting and review requirements; and

(c) Existing forest roads must be maintained only to the extent necessary to prevent damage to public resources.

(2) The department must provide a landowner who is either exempted from submitting a road maintenance and abandonment plan under subsection (1)(a) of this section, or who qualifies for a checklist road maintenance and abandonment plan under subsection (1)(b) of this section, with an educational brochure outlining road maintenance standards and requirements. In addition, the department must develop a

(2022 Ed.)

series of nonmandatory educational workshops on the rules associated with road construction and maintenance.

(3)(a) A landowner who qualifies for a checklist road maintenance and abandonment plan under subsection (1)(b) of this section is only required to submit a checklist, designed by the department in consultation with the small forestland owner office advisory committee created in RCW 76.13.110, that confirms that the landowner is applying the checklist criteria to forest roads covered or affected by a forest practices application or notification. When developing the checklist road maintenance and abandonment plan, the department shall ensure that the checklist does not exceed current state law. Nothing in this subsection increases or adds to small forestland owners' duties or responsibilities under any other section of the forest practices rules or any other state law or rule.

(b) A landowner who qualifies for the checklist road maintenance and abandonment plan is not required to submit the checklist before the time that he or she submits a forest practices application or notification for final or intermediate harvesting, or for salvage of trees. The department may encourage and accept checklists prior to the time that they are due.

(4) The department must monitor the extent of the checklist road maintenance and abandonment plan approach and report its findings to the appropriate committees of the legislature by December 31, 2008, and December 31, 2013.

(5) The board shall adopt emergency rules under RCW 34.05.090 by October 31, 2003, to implement this section. The emergency rules shall remain in effect until permanent rules can be adopted. The forest practices rules that relate to road maintenance and abandonment plans shall remain in effect as they existed on May 14, 2003, until emergency rules have been adopted under this section.

(6) This section is only intended to relate to the board's duties as they relate to the road maintenance and abandonment plan element of the forests and fish report. Nothing in this section alters any forestland owner's duties and responsibilities under any other section of the forest practices rules, or any other state law or rule. [2003 c 311 § 4.]

Findings—Effective date—2003 c 311: See notes following RCW 76.09.020.

76.09.430 Application to RCW 76.13.150. RCW 76.13.150 applies to road maintenance and abandonment plans under this chapter. [2003 c 311 § 8.]

Findings—Effective date—2003 c 311: See notes following RCW 76.09.020.

76.09.440 Small forestland owner—Fish passage barriers. The department shall not disapprove a forest practices application filed by a small forestland owner on the basis that fish passage barriers have not been removed or replaced if the small forestland owner filing the application has committed to participate in the program established in RCW 76.13.150 for all fish passage barriers existing on the block of forestland covered by the forest practices application, and the fish passage barriers existing on the block of forestland covered by the forest practices application are lower on the funding order list established for the program than the current projects that are capable of being funded by the program. [2003 c 311 § 9.]

Findings—Effective date—2003 c 311: See notes following RCW 76.09.020.

76.09.450 Small forestland owner—Defined. For the purposes of this chapter and RCW 76.13.150 and 77.12.755, "small forestland owner" means an owner of forestland who, at the time of submission of required documentation to the department, has harvested from his or her own lands in this state no more than an average timber volume of two million board feet per year during the three years prior to submitting documentation to the department and who certifies that he or she does not expect to harvest from his or her own lands in the state more than an average timber volume of two million board feet per year during the ten years following the submission of documentation to the department. However, any landowner who exceeded the two million board feet annual average timber harvest threshold from their land in the three years prior to submitting documentation to the department, or who expects to exceed the threshold during any of the following ten years, shall still be deemed a "small forestland owner" if he or she establishes to the department's reasonable satisfaction that the harvest limits were, or will be, exceeded in order to raise funds to pay estate taxes or for an equally compelling and unexpected obligation, such as for a court-ordered judgment or for extraordinary medical expenses. [2003 c 311 § 11.]

Findings—Effective date—2003 c 311: See notes following RCW 76.09.020.

76.09.460 Notice of conversion to nonforestry use—Denial of permits or approvals by the county, city, town, or regional governmental entity—Enforcement. If a county, city, town, or regional governmental entity receives a notice of conversion to nonforestry use by the department under RCW 76.09.060, then the county, city, town, or regional governmental entity must deny all applications for permits or approvals, including building permits and subdivision approvals, relating to nonforestry uses of the land that is the subject of the notification. The prohibition created by this section must be enforced by the county, city, town, or regional governmental entity:

(1) For a period of six years from the approval date of the applicable forest practices application or notification or the date that the department was made aware of the harvest activities; or

(2) Until the following activities are completed for the land that is the subject of the notice of conversion to a nonforestry use:

(a) Full compliance with chapter 43.21C RCW, if applicable;

(b) The department has notified the county, city, town, or regional governmental entity that the landowner has resolved any outstanding final orders or decisions issued by the department; and

(c) A determination is made by the county, city, town, or regional governmental entity as to whether or not the condition of the land in question is in full compliance with local ordinances and regulations. If full compliance is not found, a mitigation plan to address violations of local ordinances or regulations must be required for the parcel in question by the county, city, town, or regional governmental entity. Required

mitigation plans must be prepared by the landowner and approved by the county, city, town, or regional governmental entity. Once approved, the mitigation plan must be implemented by the landowner. Mitigation measures that may be required include, but are not limited to, revegetation requirements to plant and maintain trees of sufficient maturity and appropriate species composition to restore critical area and buffer function or to be in compliance with applicable local government regulations. [2007 c 106 § 2.]

76.09.470 Conversion of land to nonforestry use—Action required of landowner—Action required of county, city, town, or regional governmental entity. (1) If a landowner who did not state an intent to convert his or her land to a nonforestry use decides to convert his or her land to a nonforestry use within six years of receiving an approved forest practices application or notification under this chapter, the landowner must:

(a) Stop all forest practices activities on the parcels subject to the proposed land use conversion to a nonforestry use;

(b) Contact the department of ecology and the applicable county, city, town, or regional governmental entity to begin the permitting process; and

(c) Notify the department, withdraw any applicable applications or notifications, and submit a new application for the conversion. The fee for a new application for conversion under this subsection (1)(c) is the difference between the applicable fee for the new application under RCW 76.09.065 and the fee previously paid for the original application or notification, which must be deposited in the forest practices application account created in RCW 76.09.065.

(2) Upon being contacted by a landowner under this section, the county, city, town, or regional governmental entity must:

(a) Notify the department and request from the department the status of any applicable forest practices applications, notifications, or final orders or decisions; and

(b) Complete the following activities:

(i) Require that the landowner be in full compliance with chapter 43.21C RCW, if applicable;

(ii) Receive notification from the department that the landowner has resolved any outstanding final orders or decisions issued by the department; and

(iii) Make a determination as to whether or not the condition of the land in question is in full compliance with local ordinances and regulations. If full compliance is not found, a mitigation plan to address violations of local ordinances or regulations must be required for the parcel in question by the county, city, town, or regional governmental entity. Required mitigation plans must be prepared by the landowner and approved by the county, city, town, or regional governmental entity. Once approved, the mitigation plan must be implemented by the landowner. Mitigation measures that may be required include, but are not limited to, revegetation requirements to plant and maintain trees of sufficient maturity and appropriate species composition to restore critical area and buffer function or to be in compliance with applicable local government regulations. [2012 1st sp.s. c 1 § 210; 2007 c 106 § 3.]

Finding—Intent—Limitation—Jurisdiction/authority of Indian tribe under act—2012 1st sp.s. c 1: See notes following RCW 77.55.011.

Authority of department of fish and wildlife under act—2012 1st sp.s. c 1: See note following RCW 76.09.040.

76.09.480 Identification of projects that mitigate infrastructure and noninfrastructure development. The department and, when appropriate, the small forestland owner office established in RCW 76.13.110 must assist in identifying potential projects that can be used for the mitigation of infrastructure and noninfrastructure development, as those terms are defined in RCW 90.74.010, as provided in RCW 90.74.040. [2012 c 62 § 8.]

76.09.490 Forest practices hydraulic project—Department may request information/technical assistance from the department of fish and wildlife—Concurrence review process. (1) The department may request information and technical assistance from the department of fish and wildlife regarding any forest practices hydraulic project regulated under this chapter.

(2) A concurrence review process is established for certain forest practices hydraulic projects, as follow[s]:

(a) After receiving an application under RCW 76.09.050 that includes a forest practices hydraulic project involving one or more water crossing structures meeting the criteria of (b) of this subsection, the department shall provide all necessary information provided by the applicant to the department of fish and wildlife for concurrence review consistent with RCW 77.55.361(3). The required information must be transmitted by the department to the department of fish and wildlife as soon as practicable following the receipt of a complete application.

(b) The concurrence review process applies only to:

(i) Culvert installation or replacement, and repair at or below the bankfull width, as that term is defined in WAC 222-16-010 on July 10, 2012, in fish bearing rivers and streams that exceed five percent gradient;

(ii) Bridge construction or replacement, and repair at or below the bankfull width, of fish bearing unconfined streams; or

(iii) Fill within the flood level - 100 year, as that term is defined in WAC 222-16-010, as it existed on July 10, 2012, of fish bearing unconfined streams. [2012 1st sp.s. c 1 § 202.]

Contingent effective date—2012 1st sp.s. c 1 §§ 202 and 205: "Sections 202 and 205 of this act take effect on the date the forest practices board incorporates fish protection standards adopted under chapter 77.55 RCW into the forest practices rules and approves technical guidance as required under RCW 76.09.040. The department of natural resources must provide written notice of the effective date of these sections to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department of natural resources." [2012 1st sp.s. c 1 § 215.] On November 4, 2013, the department of natural resources provided notice to the chief clerk of the house of representatives and the secretary of the senate of the completion of the "Forest Practices Hydraulic Project" rule making and guidance incorporating the fish protection standards of the hydraulic code into the forest practices rules. The rules became effective December 30, 2013. Therefore, sections 202 and 205 of this act took effect December 30, 2013.

Finding—Intent—Limitation—Jurisdiction/authority of Indian tribe under act—2012 1st sp.s. c 1: See notes following RCW 77.55.011.

Authority of department of fish and wildlife under act—2012 1st sp.s. c 1: See note following RCW 76.09.040.

(2022 Ed.)

76.09.900 Short title. Sections 1 through 28 of this 1974 act shall be known and may be cited as the "Forest Practices Act of 1974". [1974 ex.s. c 137 § 29.]

76.09.905 Air pollution laws not modified. Nothing in RCW 76.09.010 through 76.09.280 or 90.48.420 shall modify chapter 70A.15 RCW or any other provision of law relating to the control of air pollution. [2021 c 65 § 80; 1974 ex.s. c 137 § 31.]

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

76.09.910 Shoreline management act, hydraulics act, other statutes and ordinances not modified—Exceptions. Nothing in RCW 76.09.010 through 76.09.280 as now or hereafter amended shall modify any requirements to comply with the Shoreline Management Act of 1971 except as limited by RCW 76.09.240 as now or hereafter amended, or the hydraulics act (*RCW 77.55.100), other state statutes in effect on January 1, 1975, and any local ordinances not inconsistent with RCW 76.09.240 as now or hereafter amended. [2003 c 39 § 35; 1975 1st ex.s. c 200 § 12; 1974 ex.s. c 137 § 32.]

*Reviser's note: RCW 77.55.100 was repealed by 2005 c 146 § 1006.

76.09.915 Repeal and savings. (1) The following acts or parts of acts are each repealed:

(a) Section 2, chapter 193, Laws of 1945, section 1, chapter 218, Laws of 1947, section 1, chapter 44, Laws of 1953, section 1, chapter 79, Laws of 1957, section 10, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.010;

(b) Section 1, chapter 193, Laws of 1945 and RCW 76.08.020;

(c) Section 3, chapter 193, Laws of 1945, section 2, chapter 218, Laws of 1947, section 1, chapter 115, Laws of 1955 and RCW 76.08.030;

(d) Section 4, chapter 193, Laws of 1945, section 3, chapter 218, Laws of 1947, section 2, chapter 79, Laws of 1957 and RCW 76.08.040;

(e) Section 5, chapter 193, Laws of 1945, section 4, chapter 218, Laws of 1947, section 3, chapter 79, Laws of 1957, section 11, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.050;

(f) Section 6, chapter 193, Laws of 1945, section 5, chapter 218, Laws of 1947, section 2, chapter 44, Laws of 1953, section 12, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.060;

(g) Section 7, chapter 193, Laws of 1945 and RCW 76.08.070;

(h) Section 8, chapter 193, Laws of 1945, section 6, chapter 218, Laws of 1947, section 3, chapter 44, Laws of 1953, section 2, chapter 115, Laws of 1955, section 1, chapter 40, Laws of 1961 and RCW 76.08.080; and

(i) Section 9, chapter 193, Laws of 1945, section 4, chapter 44, Laws of 1953 and RCW 76.08.090.

(2) Notwithstanding the foregoing repealer, obligations under such sections or permits issued thereunder and in effect on January 1, 1975, shall continue in full force and effect, and no liability thereunder, civil or criminal, shall be in any way modified. [1974 ex.s. c 137 § 34.]

76.09.920 Application for extension of prior permits.

Permits issued by the department under the provisions of RCW 76.08.030 during 1974 shall be effective until April 1, 1975 if an application has been submitted under the provisions of RCW 76.09.050 prior to January 1, 1975. [1974 ex.s. c 137 § 35.]

76.09.925 Effective dates—1974 ex.s. c 137. RCW 76.09.030, 76.09.040, 76.09.050, 76.09.060, 76.09.200, 90.48.420, and 76.09.935 are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. RCW 76.09.010, 76.09.020, 76.09.070, 76.09.080, 76.09.090, 76.09.100, 76.09.110, 76.09.120, 76.09.130, 76.09.140, 76.09.150, 76.09.160, 76.09.170, 76.09.180, 76.09.190, *76.09.210, *76.09.220, *76.09.230, 76.09.240, 76.09.250, 76.09.260, 76.09.270, 76.09.280, 76.09.900, 76.09.905, 76.09.910, 76.09.930, 76.09.915, and 76.09.920 shall take effect January 1, 1975. [1974 ex.s. c 137 § 37.]

*Reviser's note: RCW 76.09.210, 76.09.220, and 76.09.230 were repealed by 2010 c 210 § 41.

76.09.935 Severability—1974 ex.s. c 137. If any provision of this 1974 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provisions to other persons or circumstances shall not be affected. [1974 ex.s. c 137 § 36.]

Chapter 76.10 RCW SURFACE MINING

Reviser's note: Chapter 64, Laws of 1970 ex. sess. has been codified as chapter 78.44 RCW, "Mines, minerals, and petroleum" although section 1 of the act states "Sections 2 through 25 of this act shall constitute a new chapter in Title 76 RCW." As the act pertains solely to surface mining, the change in placement has been made to preserve the subject matter arrangement of the code.

Chapter 76.13 RCW STEWARDSHIP OF NONINDUSTRIAL FORESTS AND WOODLANDS

Sections

76.13.005	Finding.
76.13.007	Purpose.
76.13.010	Definitions.
76.13.020	Authority.
76.13.030	Funding sources—Fees—Contracts.
76.13.100	Findings.
76.13.110	Small forestland owner office—Establishment—Duties—Advisory committee—Report to the legislature.
76.13.120	Findings—Definitions—Forestry riparian easement program.
76.13.130	Small parcels—Alternative management plans.
76.13.140	Small forestland owners—Value of buffer trees.
76.13.150	Fish passage barriers—Cost-sharing program.
76.13.160	Qualifying small forestland owner—Review of certain records.
76.13.170	List of forest riparian easements to be funded.
76.13.180	Sale of land to nonqualifying landowner—Selling landowner must reimburse the state.
76.13.190	Integrated small forestland owner forest health program.

76.13.005 Finding. The legislature hereby finds and declares that:

(1) Over half of the private forest and woodland acreage in Washington is owned by landowners with less than five

thousand acres who are not in the business of industrial handling or processing of timber products.

(2) Nonindustrial forests and woodlands are absorbing more demands and impacts on timber, fish, wildlife, water, recreation, and aesthetic resources, due to population growth and a shrinking commercial forestland base.

(3) Nonindustrial forests and woodlands provide valuable habitat for many of the state's numerous fish, wildlife, and plant species, including some threatened and endangered species, and many habitats can be protected and improved through knowledgeable forest resource stewardship.

(4) Providing for long-term stewardship of nonindustrial forests and woodlands in growth areas and rural areas is an important factor in maintaining Washington's special character and quality of life.

(5) In order to encourage and maintain nonindustrial forests and woodlands for their present and future benefit to all citizens, Washington's nonindustrial forest and woodland owners' long-term commitments to stewardship of forest resources must be recognized and supported by the citizens of Washington state. [1991 c 27 § 1.]

76.13.007 Purpose. The purpose of this chapter is to:

(1) Promote the coordination and delivery of services with federal, state, and local agencies, colleges and universities, landowner assistance organizations, consultants, forest resource-related industries and environmental organizations to nonindustrial forest and woodland owners.

(2) Facilitate the production of forest products, enhancement of wildlife and fisheries, protection of streams and wetlands, culturing of special plants, availability of recreation opportunities and the maintenance of scenic beauty for the enjoyment and benefit of nonindustrial forest and woodland owners and the citizens of Washington by meeting the landowners' stewardship objectives. [1991 c 27 § 2.]

76.13.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply to RCW 76.13.005, 76.13.007, 76.13.020, and 76.13.030.

(1) "Cooperating organization" means federal, state, and local agencies, colleges and universities, landowner assistance organizations, consultants, forest resource-related industries, and environmental organizations which promote and maintain programs designed to provide information and technical assistance services to nonindustrial forest and woodland owners.

(2) "Department" means the department of natural resources.

(3) "Landowner" means an individual, partnership, private, public or municipal corporation, Indian tribe, state agency, county, or local government entity, educational institution, or association of individuals of whatever nature that own nonindustrial forests and woodlands.

(4) "Nonindustrial forests and woodlands" are those suburban acreages and rural lands supporting or capable of supporting trees and other flora and fauna associated with a forest ecosystem, comprised of total individual land ownerships of less than five thousand acres and not directly associated with wood processing or handling facilities.

(5) "Stewardship" means managing by caring for, promoting, protecting, renewing, or reestablishing or both, for-

ests and associated resources for the benefit of the landowner, the natural resources and the citizens of Washington state, in accordance with each landowner's objectives, best management practices, and legal requirements. [2000 c 11 § 11; 1999 sp.s. c 4 § 502; 1991 c 27 § 3.]

Additional notes found at www.leg.wa.gov

76.13.020 Authority. In order to accomplish the purposes stated in RCW 76.13.007, the department may:

(1) Establish and maintain a nonindustrial forest and woodland owner assistance program, and through such a program, assist nonindustrial forest and woodland owners in meeting their stewardship objectives.

(2) Provide direct technical assistance through development of management plans, advice, and information to nonindustrial forestland owners to meet their stewardship objectives.

(3) Assist and facilitate efforts of cooperating organizations to provide stewardship education, information, technical assistance, and incentives to nonindustrial forest and woodland owners.

(4) Provide financial assistance to landowners and cooperating organizations.

(5) Appoint a stewardship advisory committee to assist in establishing and operating this program.

(6) Loan or rent surplus equipment to assist cooperating organizations and nonindustrial forest and woodland owners.

(7) Work with local governments to explain the importance of maintaining nonindustrial forests and woodlands.

(8) Take such other steps as are necessary to carry out the purposes of this chapter. [1991 c 27 § 4.]

76.13.030 Funding sources—Fees—Contracts. The department may:

(1) Receive and disburse any and all moneys contributed, allotted, or paid by the United States under authority of any act of congress for the purposes of this chapter.

(2) Receive such gifts, grants, bequests, and endowments and donations of moneys, labor, material, seedlings, and equipment from public or private sources as may be made for the purpose of carrying out the provisions of this chapter and may spend the gifts, grants, bequests, endowments, and donations as well as other moneys from public or private sources according to their terms.

(3) Charge fees for attendance at workshops and conferences, for various publications and other materials which the department may prepare.

(4) Enter into contracts with cooperating organizations having responsibility to carry out programs of similar purposes to this chapter. [1991 c 27 § 5.]

76.13.100 Findings. (1) The legislature finds that increasing regulatory requirements continue to diminish the economic viability of small forestland owners. The concerns set forth in RCW 77.85.180 about the importance of sustaining forestry as a viable land use are particularly applicable to small landowners because of the location of their holdings, the expected complexity of the regulatory requirements, and the need for significant technical expertise not readily available to small landowners. The further reduction in harvestable timber owned by small forestland owners as a result of

the rules to be adopted under RCW 76.09.055 will further erode small landowners' economic viability and willingness or ability to keep the lands in forestry use and, therefore, reduce the amount of habitat available for salmon recovery and conservation of other aquatic resources, as defined in RCW 76.09.020.

(2) The legislature finds that the concerns identified in subsection (1) of this section should be addressed by establishing within the department of natural resources a small forestland owner office that shall be a resource and focal point for small forestland owner concerns and policies. The legislature further finds that a forestry riparian easement program shall be established to acquire easements from small landowners along riparian and other areas of value to the state for protection of aquatic resources. The legislature further finds that small forestland owners should have the option of alternate management plans or alternate harvest restrictions on smaller harvest units that may have a relatively low impact on aquatic resources. The small forestland owner office should be responsible for assisting small landowners in the development and implementation of these plans or restrictions. [2003 c 39 § 36; 1999 sp.s. c 4 § 501.]

Additional notes found at www.leg.wa.gov

76.13.110 Small forestland owner office—Establishment—Duties—Advisory committee—Report to the legislature. (1) The department of natural resources shall establish and maintain a small forestland owner office. The small forestland owner office shall be a resource and focal point for small forestland owner concerns and policies, and shall have significant expertise regarding the management of small forest holdings, governmental programs applicable to such holdings, and the forestry riparian easement program.

(2) The small forestland owner office shall administer the provisions of the forestry riparian easement program created under RCW 76.13.120.

(3) The small forestland owner office shall assist in the development of small landowner options through alternate management plans or alternate harvest restrictions appropriate to small landowners. The small forestland owner office shall develop criteria to be adopted by the forest practices board in rules and a manual for alternate management plans or alternate harvest restrictions. These alternate plans or alternate harvest restrictions shall meet riparian functions while requiring less costly regulatory prescriptions. At the landowner's option, alternate plans or alternate harvest restrictions may be used to further meet riparian functions.

The small forestland owner office shall evaluate the cumulative impact of such alternate management plans or alternate harvest restrictions on essential riparian functions at the subbasin or watershed level. The small forestland owner office shall adjust future alternate management plans or alternate harvest restrictions in a manner that will minimize the negative impacts on essential riparian functions within a subbasin or watershed.

(4) An advisory committee is established to assist the small forestland owner office in developing policy and recommending rules to the forest practices board. The advisory committee shall consist of seven members, including a representative from the department of ecology, the department of fish and wildlife, and a tribal representative. Four additional

committee members shall be small forestland owners who shall be appointed by the commissioner of public lands from a list of candidates submitted by the board of directors of the Washington farm forestry association or its successor organization. The association shall submit more than one candidate for each position. The commissioner shall designate two of the initial small forestland owner appointees to serve five-year terms and the other two small forestland owner appointees to serve four-year terms. Thereafter, appointees shall serve for a term of four years. The small forestland owner office shall review draft rules or rule concepts with the committee prior to recommending such rules to the forest practices board. The office shall reimburse nongovernmental committee members for reasonable expenses associated with attending committee meetings as provided in RCW 43.03.050 and 43.03.060.

(5) By December 1, 2002, the small forestland owner office shall provide a report to the board and the legislature containing:

(a) Estimates of the amounts of nonindustrial forests and woodlands in holdings of twenty acres or less, twenty-one to one hundred acres, one hundred to one thousand acres, and one thousand to five thousand acres, in western Washington and eastern Washington, and the number of persons having total nonindustrial forest and woodland holdings in those size ranges;

(b) Estimates of the number of parcels of nonindustrial forests and woodlands held in contiguous ownerships of twenty acres or less, and the percentages of those parcels containing improvements used: (i) As primary residences for half or more of most years; (ii) as vacation homes or other temporary residences for less than half of most years; and (iii) for other uses;

(c) The watershed administrative units in which significant portions of the riparian areas or total land area are nonindustrial forests and woodlands;

(d) Estimates of the number of forest practices applications and notifications filed per year for forest road construction, silvicultural activities to enhance timber growth, timber harvest not associated with conversion to nonforestland uses, with estimates of the number of acres of nonindustrial forests and woodlands on which forest practices are conducted under those applications and notifications; and

(e) Recommendations on ways the board and the legislature could provide more effective incentives to encourage continued management of nonindustrial forests and woodlands for forestry uses in ways that better protect salmon, other fish and wildlife, water quality, and other environmental values.

(6) By December 1, 2004, and every four years thereafter, the small forestland owner office shall provide to the board and the legislature an update of the report described in subsection (5) of this section, containing more recent information and describing:

(a) Trends in the items estimated under subsection (5)(a) through (d) of this section;

(b) Whether, how, and to what extent the forest practices act and rules contributed to those trends; and

(c) Whether, how, and to what extent: (i) The board and legislature implemented recommendations made in the previous report; and (ii) implementation of or failure to implement

those recommendations affected those trends. [2002 c 120 § 1; 2001 c 280 § 1; 2000 c 11 § 12; 1999 sp.s. c 4 § 503.]

Additional notes found at www.leg.wa.gov

76.13.120 Findings—Definitions—Forestry riparian easement program. (1) The legislature finds that the state should acquire easements primarily along riparian and other sensitive aquatic areas from qualifying small forestland owners willing to sell or donate easements to the state provided that the state will not be required to acquire the easements if they are subject to unacceptable liabilities. Therefore the legislature establishes a forestry riparian easement program.

(2) The definitions in this subsection apply throughout this section and RCW 76.13.100, 76.13.110, 76.13.140, and 76.13.160 unless the context clearly requires otherwise.

(a) "Forestry riparian easement" means an easement covering qualifying timber granted voluntarily to the state by a qualifying small forestland owner.

(b) "Qualifying small forestland owner" means a landowner meeting all of the following characteristics as of the date the department offers compensation for a forestry riparian easement:

(i) Is a small forestland owner as defined in (d) of this subsection; and

(ii) Is an individual, partnership, corporation, or other nongovernmental for-profit legal entity.

(c) "Qualifying timber" means those forest trees for which the small forestland owner is willing to grant the state a forestry riparian easement and meets all of the following:

(i) The forest trees are covered by a forest practices application that the small forestland owner is required to leave unharvested under the rules adopted under RCW 76.09.040, 76.09.055, and 76.09.370 or that is made uneconomic to harvest by those rules;

(ii) The forest trees are within or bordering a commercially reasonable harvest unit as determined under rules adopted by the forest practices board, or for which an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules;

(iii) The forest trees are located within, or affected by forest practices rules pertaining to any one, or all, of the following:

(A) Riparian or other sensitive aquatic areas;

(B) Channel migration zones; or

(C) Areas of potentially unstable slopes or landforms, verified by the department, and must meet all of the following:

(I) Are addressed in a forest practices application;

(II) Are adjacent to a commercially reasonable harvest area; and

(III) Have the potential to deliver sediment or debris to a public resource or threaten public safety.

(d) "Small forestland owner" means a landowner meeting all of the following characteristics:

(i) A forestland owner as defined in RCW 76.09.020 whose interest in the land and timber is in fee or who has rights to the timber to be included in the forestry riparian easement that extend at least fifty years from the date the completed forestry riparian easement application associated with the easement is submitted;

(ii) An entity that has harvested from its own lands in this state during the three years prior to the year of application an average timber volume that would qualify the owner as a small harvester under RCW 84.33.035; and

(iii) An entity that certifies at the time of application that it does not expect to harvest from its own lands more than the volume allowed by RCW 84.33.035 during the ten years following application. If a landowner's prior three-year average harvest exceeds the limit of RCW 84.33.035, or the landowner expects to exceed this limit during the ten years following application, and that landowner establishes to the department's reasonable satisfaction that the harvest limits were or will be exceeded to raise funds to pay estate taxes or equally compelling and unexpected obligations such as court-ordered judgments or extraordinary medical expenses, the landowner shall be deemed to be a small forestland owner. For purposes of determining whether a person qualifies as a small forestland owner, the small forestland owner office, created in RCW 76.13.110, shall evaluate the landowner under this definition, pursuant to RCW 76.13.160, as of the date that the forest practices application is submitted and the date that the department offers compensation for the forestry riparian easement. A small forestland owner can include an individual, partnership, corporation, or other nongovernmental legal entity. If a landowner grants timber rights to another entity for less than five years, the landowner may still qualify as a small forestland owner under this section. If a landowner is unable to obtain an approved forest practices application for timber harvest for any of his or her land because of restrictions under the forest practices rules, the landowner may still qualify as a small forestland owner under this section.

(e) "Completion of harvest" means that the trees have been harvested from an area and that further entry into that area by mechanized logging or slash treating equipment is not expected.

(3) The department is authorized and directed to accept and hold in the name of the state of Washington forestry riparian easements granted by qualifying small forestland owners covering qualifying timber and to pay compensation to the landowners in accordance with this section. The department may not transfer the easements to any entity other than another state agency.

(4) Forestry riparian easements shall be effective for fifty years from the date of the completed forestry riparian easement application, unless the easement is voluntarily terminated earlier by the department, based on a determination that termination is in the best interest of the state, or under the terms of a termination clause in the easement.

(5) Forestry riparian easements shall be restrictive only, and shall preserve all lawful uses of the easement premises by the landowner that are consistent with the terms of the easement and the requirement to protect riparian functions during the term of the easement, subject to the restriction that the leave trees required by the rules to be left on the easement premises may not be cut during the term of the easement. No right of public access to or across, or any public use of the easement premises is created by this statute or by the easement. Forestry riparian easements shall not be deemed to trigger the compensating tax of or otherwise disqualify land from being taxed under chapter 84.33 or 84.34 RCW.

(6) The small forestland owner office shall determine what constitutes a completed application for a forestry riparian easement. An application shall, at a minimum, include documentation of the owner's status as a qualifying small forestland owner, identification of location and the types of qualifying timber, and notification of completion of harvest, if applicable.

(7) Upon receipt of the qualifying small forestland owner's forestry riparian easement application, and subject to the availability of amounts appropriated for this specific purpose, the following must occur:

(a) The small forestland owner office must determine the compensation to be offered to the qualifying small forestland owner for qualifying timber after the department accepts the completed forestry riparian easement application and the landowner has completed marking the boundary of the area containing the qualifying timber. The legislature recognizes that there is not readily available market transaction evidence of value for easements of the nature required by this section, and thus establishes the methodology provided in this subsection to ascertain the value for forestry riparian easements. Values so determined may not be considered competent evidence of value for any other purpose.

(b) The small forestland owner office, subject to the availability of amounts appropriated for this specific purpose, is responsible for assessing the volume of qualifying timber. However, no more than fifty percent of the total amounts appropriated for the forestry riparian easement program may be applied to determine the volume of qualifying timber for completed forestry riparian easement applications. Based on the volume established by the small forestland owner office and using data obtained or maintained by the department of revenue under RCW 84.33.074 and 84.33.091, the small forestland owner office shall attempt to determine the fair market value of the qualifying timber as of the date the complete forestry riparian easement application is received. Removal of any qualifying timber before the expiration of the easement must be in accordance with the forest practices rules and the terms of the easement. There shall be no reduction in compensation for reentry.

(8)(a) Except as provided in subsection (9) of this section and subject to the availability of amounts appropriated for this specific purpose, the small forestland owner office shall offer compensation for qualifying timber to the qualifying small forestland owner in the amount of fifty percent of the value determined by the small forestland owner office, plus the compliance and reimbursement costs as determined in accordance with RCW 76.13.140. However, compensation for any qualifying small forestland owner for qualifying timber located on potentially unstable slopes or landforms may not exceed a total of fifty thousand dollars during any biennial funding period.

(b) If the landowner accepts the offer for qualifying timber, the department shall pay the compensation promptly upon:

(i) Completion of harvest in the area within a commercially reasonable harvest unit with which the forestry riparian easement is associated under an approved forest practices application, unless an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules;

(ii) Verification that the landowner has no outstanding violations under chapter 76.09 RCW or any associated rules; and

(iii) Execution and delivery of the easement to the department.

(c) Upon donation or payment of compensation, the department may record the easement.

(9) For approved forest practices applications for which the regulatory impact is greater than the average percentage impact for all small forestland owners as determined by an analysis by the department under the regulatory fairness act, chapter 19.85 RCW, the compensation offered will be increased to one hundred percent for that portion of the regulatory impact that is in excess of the average. Regulatory impact includes all trees identified as qualifying timber. A separate average or high impact regulatory threshold shall be established for western and eastern Washington. Criteria for these measurements and payments shall be established by the small forestland owner office.

(10) The forest practices board shall adopt rules under the administrative procedure act, chapter 34.05 RCW, to implement the forestry riparian easement program, including the following:

(a) A standard version of a forestry riparian easement application as well as all additional documents necessary or advisable to create the forestry riparian easements as provided for in this section;

(b) Standards for descriptions of the easement premises with a degree of precision that is reasonable in relation to the values involved;

(c) Methods and standards for cruises and valuation of forestry riparian easements for purposes of establishing the compensation. The department shall perform the timber cruises of forestry riparian easements required under this chapter and chapter 76.09 RCW. Timber cruises are subject to amounts appropriated for this purpose. However, no more than fifty percent of the total appropriated funding for the forestry riparian easement program may be applied to determine the volume of qualifying timber for completed forestry riparian easement applications. Any rules concerning the methods and standards for valuations of forestry riparian easements shall apply only to the department, qualifying small forestland owners, and the small forestland owner office;

(d) A method to determine that a forest practices application involves a commercially reasonable harvest, and adopt criteria for entering into a forestry riparian easement where a commercially reasonable harvest is not possible or a forest practices application that has been submitted cannot be approved because of restrictions under the forest practices rules;

(e) A method to address blowdown of qualified timber falling outside the easement premises;

(f) A formula for sharing of proceeds in relation to the acquisition of qualified timber covered by an easement through the exercise or threats of eminent domain by a federal or state agency with eminent domain authority, based on the present value of the department's and the landowner's relative interests in the qualified timber;

(g) High impact regulatory thresholds;

(h) A method to determine timber that is qualifying timber because it is rendered uneconomic to harvest by the rules adopted under RCW 76.09.055 and 76.09.370;

(i) A method for internal department review of small forestland owner office compensation decisions under this section; and

(j) Consistent with RCW 76.13.180, a method to collect reimbursement from landowners who received compensation for a forestry riparian easement and who, within the first ten years after receipt of compensation for a forestry riparian easement, sells the land on which an easement is located to a nonqualifying landowner.

(11) The legislature finds that the overall societal benefits of economically viable working forests are multiple, and include the protection of clean, cold water, the provision of wildlife habitat, the sheltering of cultural resources from development, and the natural carbon storage potential of growing trees. As such, working forests and the forest [forestry] riparian easement program may be part of the state's overall carbon sequestration strategy. If the state creates a climate strategy, the department must share information regarding the carbon sequestration benefits of the forest [forestry] riparian easement program with other state programs using methods and protocols established in the state climate strategy that attempt to quantify carbon storage or account for carbon emissions. The department must promote the expansion of funding for the forest [forestry] riparian easement program and the ecosystem services supported by the program based on the findings stated in RCW 76.13.100. Nothing in this subsection allows a landowner to be reimbursed by the state more than once for the same forest riparian easement application. [2017 c 140 § 1; 2011 c 218 § 1; 2004 c 102 § 1; 2002 c 120 § 2; 2001 c 280 § 2; 2000 c 11 § 13; 1999 sp.s. c 4 § 504.]

Additional notes found at www.leg.wa.gov

76.13.130 Small parcels—Alternative management plans. On parcels of twenty contiguous acres or less, landowners with a total parcel ownership of less than eighty acres shall not be required to leave riparian buffers adjacent to streams according to forest practices rules adopted under the forests and fish report as defined in RCW 76.09.020. These landowners shall be subject to the permanent forest practices rules in effect as of January 1, 1999, but may additionally be required to leave timber adjacent to streams that is equivalent to no greater than fifteen percent of a volume of timber contained in a stand of well managed fifty-year old commercial timber covering the harvest area. The additional fifteen percent leave tree level shall be computed as a rotating stand volume and shall be regulated through flexible forest practices as the stream buffer is managed over time to meet riparian functions.

On parcels of twenty contiguous acres or less the small forestland owner office shall work with landowners with a total parcel ownership of less than eighty acres to develop alternative management plans for riparian buffers. Such alternative plans shall provide for the removal of leave trees as other new trees grow in order to ensure the most effective protection of critical riparian function. The office may recommend reasonable modifications in alternative management plans of such landowners to further reduce risks to pub-

lic resources and endangered species so long as the anticipated operating costs are not unreasonably increased and the landowner is not required to leave a greater volume than the threshold level. To qualify for the provisions of this section, parcels must be twenty acres or less in contiguous ownership, and owners cannot have ownership interests in a total of more than eighty acres of forestlands within the state. [1999 sp.s. c 4 § 505.]

Additional notes found at www.leg.wa.gov

76.13.140 Small forestland owners—Value of buffer trees. In order to assist small forestland owners to remain economically viable, the legislature intends that the qualifying small forestland owners be able to net fifty percent of the value of the trees left in the buffer areas. The amount of compensation offered in RCW 76.13.120 shall also include the compliance costs for participation in the forestry riparian easement program, including the cost of preparing and recording the forestry riparian easement, and any business and occupation tax and real estate excise tax imposed because of entering into the forestry riparian easement. The small forestland owner office may contract with private consultants that the office finds qualified to perform timber cruises of forestry riparian easements or to lay out streamside buffers and comply with other forest practices regulatory requirements related to the forestry riparian easement program. The department shall reimburse qualifying small forestland owners for the actual costs incurred for laying out the streamside buffers and marking the qualifying timber once a contract has been executed for the forestry riparian easement program. Reimbursement is subject to the work being acceptable to the department. The small forestland owner office shall determine how the reimbursement costs will be calculated. [2011 c 218 § 2; 2002 c 120 § 3; 2001 c 280 § 3.]

76.13.150 Fish passage barriers—Cost-sharing program. (1) The legislature finds that a state-led cost-sharing program is necessary to assist small forestland owners with removing and replacing fish passage barriers that were added to their land prior to May 14, 2003, to help achieve the goals of the forests and fish report, and to assist small forestland owners in complying with the state's fish passage requirements.

(2) The small forestland owner office must, in cooperation with the department of fish and wildlife, establish a program designed to assist small forestland owners with repairing or removing fish passage barriers and assist lead entities in acquiring the data necessary to fill any gaps in fish passage barrier information. The small forestland owner office and the department of fish and wildlife must work closely with lead entities or other local watershed groups to make maximum use of current information regarding the location and priority of current fish passage barriers. Where additional fish passage barrier inventories are necessary, funding will be sought for the collection of this information. Methods, protocols, and formulas for data gathering and prioritizing must be developed in consultation with the department of fish and wildlife. The department of fish and wildlife must assist in the training and management of fish passage barrier location data collection.

(3) The small forestland owner office must actively seek out funding for the program authorized in this section. The small forestland owner office must work with consenting landowners to identify and secure funding from local, state, federal, tribal, or nonprofit habitat restoration organizations and other private sources, including the salmon recovery funding board, the United States department of agriculture, the United States department of transportation, the Washington state department of transportation, the United States department of commerce, and the federal highway administration.

(4)(a) Except as otherwise provided in this subsection, the small forestland owner office, in implementing the program established in this section, must provide the highest proportion of public funding available for the removal or replacement of any fish passage barrier.

(b) In no case shall a small forestland owner be required to pay more than the lesser of either: (i) Twenty-five percent of any costs associated with the removal or replacement of a particular fish passage barrier; or (ii) five thousand dollars for the removal or replacement of a particular fish passage barrier. No small forestland owner shall be required to pay more than the maximum total annual costs in (c) of this subsection.

(c) The portion of the total cost of removing or replacing fish passage barriers that a small forestland owner must pay in any calendar year shall be determined based on the average annual timber volume harvested from the landowner's lands in this state during the three preceding calendar years, and whether the fish passage barrier is in eastern or western Washington.

(i) In western Washington (west of the Cascade Crest), a small forestland owner who has harvested an average annual timber volume of less than five hundred thousand board feet shall not be required to pay more than a total of eight thousand dollars during that calendar year, a small forestland owner who has harvested an annual average timber volume between five hundred thousand and nine hundred ninety-nine thousand board feet shall not be required to pay more than a total of sixteen thousand dollars during that calendar year, a small forestland owner who has harvested an average annual timber volume between one million and one million four hundred ninety-nine thousand board feet shall not be required to pay more than a total of twenty-four thousand dollars during that calendar year, and a small forestland owner who has harvested an average annual timber volume greater than or equal to one million five hundred thousand board feet shall not be required to pay more than a total of thirty-two thousand dollars during that calendar year, regardless of the number of fish passage barriers removed or replaced on the landowner's lands during that calendar year.

(ii) In eastern Washington (east of the Cascade Crest), a small forestland owner who has harvested an average annual timber volume of less than five hundred thousand board feet shall not be required to pay more than a total of two thousand dollars during that calendar year, a small forestland owner who has harvested an annual average timber volume between five hundred thousand and nine hundred ninety-nine thousand board feet shall not be required to pay more than a total of four thousand dollars during that calendar year, a small forestland owner who has harvested an average annual timber volume between one million and one million four hundred

ninety-nine thousand board feet shall not be required to pay more than a total of twelve thousand dollars during that calendar year, and a small forestland owner who has harvested an average annual timber volume greater than or equal to one million five hundred thousand board feet shall not be required to pay more than a total of sixteen thousand dollars during that calendar year, regardless of the number of fish passage barriers removed or replaced on the landowner's lands during that calendar year.

(iii) Maximum total annual costs for small forestland owners with fish passage barriers in both western and eastern Washington shall be those specified under (c)(i) and (ii) of this subsection.

(d) If an existing fish passage barrier on land owned by a small forestland owner was installed under an approved forest practices application or notification, and hydraulics approval, and that fish passage barrier becomes a high priority for fish passage based on the watershed ranking in *RCW 76.13.150, one hundred percent public funding shall be provided.

(5) If a small forestland owner is required to contribute a portion of the funding under the cost-share program established in this section, that landowner may satisfy his or her required proportion by providing either direct monetary contributions or in-kind services to the project. In-kind services may include labor, equipment, materials, and other landowner-provided services determined by the department to have an appropriate value to the removal of a particular fish passage barrier.

(6)(a) The department, using fish passage barrier assessments and ranked inventory information provided by the department of fish and wildlife and the appropriate lead entity as delineated in RCW 77.12.755, must establish a prioritized list for the funding of fish passage barrier removals on property owned by small forestland owners that ensures that funding is provided first to the known fish passage barriers existing on forestland owned by small forestland owners that cause the greatest harm to public resources.

(b) As the department collects information about the presence of fish passage barriers from submitted checklists, it must share this information with the department of fish and wildlife and the technical advisory groups established in **RCW 77.85.070. If the addition of the information collected in the checklists or any other changes to the scientific instruments described in RCW 77.12.755 alter the analysis conducted under RCW 77.12.755, the department must alter the funding order appropriately to reflect the new information.

(7) The department may accept commitments from small forestland owners that they will participate in the program to remove fish passage barriers from their land at any time, regardless of the funding order given to the fish passage barriers on a particular landowner's property. [2003 c 311 § 7.]

Reviser's note: *(1) The reference to RCW 76.13.150 appears to be erroneous. Reference to RCW 77.12.755 was apparently intended.

** (2) RCW 77.85.070 was repealed by 2005 c 309 § 10.

Findings—Effective date—2003 c 311: See notes following RCW 76.09.020.

76.13.160 Qualifying small forestland owner—Review of certain records. When establishing a forestry

riparian easement program applicant's status as a qualifying small forestland owner pursuant to RCW 76.13.120, the department shall not review the applicant's timber harvest records, or any other tax-related documents, on file with the department of revenue. The department of revenue may confirm or deny an applicant's status as a small forestland owner at the request of the department. However, for the purposes of this section, the department of revenue may not disclose more information than whether or not the applicant has reported a harvest or harvests totaling greater than or less than the qualifying thresholds established in RCW 76.13.120. Nothing in this section, or RCW 84.33.280, prohibits the department from reviewing aggregate or general information provided by the department of revenue. [2011 c 218 § 3; 2004 c 102 § 2.]

76.13.170 List of forest riparian easements to be funded. (1) Before November 1st of each even-numbered year, the department must recommend to the governor a list of all forest riparian easement applications to be funded under RCW 76.13.120. The governor must determine the number of applications to receive funding and then submit the list in the capital budget request to the legislature. The list must include, but not be limited to, the date of the forestry riparian easement application, the type of qualifying timber, estimates of the value of the easement, aerial photograph maps of the application area, and an estimate of administrative costs for purchase of easements.

(2) The governor or the legislature may remove an application from the list if there is evidence that the applicant is a nonqualifying landowner for a forestry riparian easement. [2011 c 218 § 4.]

76.13.180 Sale of land to nonqualifying landowner—Selling landowner must reimburse the state. If, within the first ten years after receipt of compensation for a forestry riparian easement, a landowner sells the land on which an easement is located to a nonqualifying landowner, then the selling landowner must reimburse the state for the full compensation received for the forestry riparian easement. The department continues to hold, in the name of the state, the forestry riparian easement for the full term of the easement. The department may not transfer the easement to any entity other than another state agency. [2011 c 218 § 5.]

76.13.190 Integrated small forestland owner forest health program. (1) There is established an integrated small forestland owner forest health program that promotes the coordination and delivery of services with federal, state, and local agencies, including local fire districts, conservation districts, and community wildfire resilience coalitions, forest landowner associations, colleges and universities, landowner assistance organizations, consultants, forest resource-related industries, and environmental organizations to nonindustrial forests and woodland owners, hereafter referred to as small forestland owners.

(2) Under the state forester's direction, the program must:

(a) Integrate existing landowner assistance forest health programs consistent with the recommendations of "Washington's Small Forest Landowners in 2020, Status, Trends and Recommendations after 20 years of Forests & Fish, January

2021" (the report required by chapter 457, Laws of 2019), to more efficiently and effectively reach the diversity of small forestland owner audiences to take forest health action;

(b) Identify and remove barriers to technical assistance, funding, and forest health management planning;

(c) Increase education and outreach to small forestland owners; and

(d) Distribute funding effectively to move high wildfire risk areas to lower risk.

(3) Priority areas for forest health treatment under the Washington state forest action plan, the 10-year forest health strategic plan, and the wildland fire protection 10-year strategic plan may not prohibit technical support or stewardship plan support for small forestland owner lands outside the designated emphasis areas. [2021 c 298 § 7.]

Short title—2021 c 298: See note following RCW 76.04.505.

Chapter 76.14 RCW FOREST REHABILITATION

Sections

76.14.010	Definitions.
76.14.020	Yacolt burn designated high hazard area—Rehabilitation required.
76.14.030	Administration.
76.14.040	Duties.
76.14.050	Firebreaks—Powers of department—Grazing lands.
76.14.051	Firebreaks—Preexisting agreements not altered.
76.14.060	Powers and duties—Private lands.
76.14.070	Powers and duties—Expenditure of public funds.
76.14.080	Fire protection projects—Assessments—Payment.
76.14.090	Fire protection projects—Notice—Hearing.
76.14.100	Fire protection projects—Collection of assessments.
76.14.110	Fire protection projects—Credit on assessment for private expenditure.
76.14.120	Landowner's responsibility under other laws.
76.14.130	Lands not to be included in project.

76.14.010 Definitions. As used in this chapter:

(1) "Department" means the department of natural resources;

(2) "Forestland" means any lands considered best adapted for the growing of trees; and

(3) The term "owner" means and includes individuals, partnerships, corporations, associations, federal land managing agencies, state of Washington, counties, municipalities, and other forestland owners. [2000 c 11 § 14; 1988 c 128 § 37; 1953 c 74 § 2.]

76.14.020 Yacolt burn designated high hazard area—Rehabilitation required. The Yacolt burn situated in Clark, Skamania, and Cowlitz counties in townships 2, 3, 4, 5, 6 and 7 north, ranges 3, 4, 5, 6, 7, 7 1/2 and 8 east is hereby designated a high hazard forest area requiring rehabilitation by the establishment of extensive protection facilities and by the restocking of denuded areas artificially to restore the productivity of the land. [1953 c 74 § 1.]

76.14.030 Administration. This chapter shall be administered by the department. [1988 c 128 § 38; 1953 c 74 § 3.]

76.14.040 Duties. The department shall use funds placed at its disposal to map, survey, fell snags, build firebreaks and access roads, increase forest protection activities

and do all work deemed necessary to protect forestlands from fire in the rehabilitation zone, and to perform reforestation and do other improvement work on state lands in the rehabilitation zone. [1988 c 128 § 39; 1955 c 171 § 1; 1953 c 74 § 4.]

76.14.050 Firebreaks—Powers of department—Grazing lands. The department is authorized to cooperate with owners of land located in the area described in RCW 76.14.020 in establishing firebreaks in their most logical position regardless of land ownership. The department may by gift, purchase, condemnation or otherwise acquire easements for road rights-of-way and land or interests therein located in the high hazard forest area described in RCW 76.14.020 for any purpose deemed necessary for access for forest protection, reforestation, development and utilization, and for access to state owned lands within the area described in RCW 76.14.020 for all other purposes, and the department shall have authority to regulate the use thereof. When the landowner is using the land for agricultural grazing purposes the state shall maintain gates or adequate cattle guards at each place the road enters upon the private landowner's fenced lands. [1988 c 128 § 40; 1975 1st ex.s. c 101 § 1; 1955 c 171 § 2; 1953 c 74 § 5.]

76.14.051 Firebreaks—Preexisting agreements not altered. Nothing in the provisions of RCW 76.14.050 as now or hereafter amended shall be construed to otherwise alter the terms of any existing agreements heretofore entered into by the state and private parties under the authority of RCW 76.14.050 as now or hereafter amended. [1975 1st ex.s. c 101 § 2.]

76.14.060 Powers and duties—Private lands. The department shall have authority to acquire the right by purchase, condemnation or otherwise to cause snags on private land to be felled, slash to be disposed of, and to take such other measures on private land necessary to carry out the objectives of this chapter. [1988 c 128 § 41; 1955 c 171 § 3.]

76.14.070 Powers and duties—Expenditure of public funds. The department shall have authority to expend public money for the purposes and objectives provided in this chapter. [1988 c 128 § 42; 1955 c 171 § 4.]

76.14.080 Fire protection projects—Assessments—Payment. The department shall develop fire protection projects within the high hazard forest area and shall determine the boundaries thereof in accordance with the lands benefited thereby and shall assess one-sixth of the cost of such projects equally upon all forestlands within the project on an acreage basis. Such assessment shall not, however, exceed twenty-five cents per acre annually nor more than one dollar and fifty cents per acre in the aggregate and shall constitute a lien upon any forest products harvested therefrom. The landowner may by written notice to the department elect to pay his or her assessment on a deferred basis at a rate of ten cents per thousand board feet and/or one cent per Christmas tree when these products are harvested from the lands for commercial use until the assessment plus two percent interest from the date of completion of each project has been paid for each acre. Pay-

ments under the deferred plan shall be credited by forty acre tracts and shall be first applied to payment of the assessment against the forty acre tract from which the funds were derived and secondly to other forty acre tracts held and designated by the payor. In the event total ownership is less than forty acres, then payment shall be applied on an undivided basis to the entire areas as to which the assessment remains unpaid. The landowner who elects to pay on deferred basis may pay any unpaid assessment and interest at any time. [2013 c 23 § 232; 1988 c 128 § 43; 1955 c 171 § 5.]

76.14.090 Fire protection projects—Notice—Hearing. Notice of each project, the estimated assessment per acre, and a description of the boundaries thereof shall be given by publication in a local newspaper of general circulation thirty days in advance of commencing work. Any person owning land within the project may within ten days after publication of notice demand a hearing before the department in Olympia and present any reasons why he or she feels the assessment should not be made upon his or her land. Thereafter, the department may change the boundaries of said project to eliminate land from the project which it determines in its discretion will not be benefited by the project. [2013 c 23 § 233; 1988 c 128 § 44; 1955 c 171 § 6.]

76.14.100 Fire protection projects—Collection of assessments. Except when the owner has notified the department in writing that he or she will make payment on the deferred plan, the assessment shall be collected by the department reporting the same to the county assessor of the county in which the property is situated upon completion of the work in that project and the assessor shall annually extend the amounts upon the tax rolls covering the property, and the amounts shall be collected in the same manner, by the same procedure, and with the same penalties attached as the next general state and county taxes on the same property are collected. Errors in assessments may be corrected at any time by the department by certifying them to the treasurer of the county in which the land involved is situated. Upon the collection of such assessments, the county treasurer shall transmit them to the department. Payment on the deferred plan shall be made directly to the department. Such payment must be made by January 31st for any timber or Christmas trees harvested during the previous calendar year and must be accompanied by a statement of the amount of timber or number of Christmas trees harvested and the legal description of the property from which they were harvested. Whenever an owner paying on the deferred plan desires to pay any unpaid balance or portion thereof, he or she may make direct payment to the department. [2013 c 23 § 234; 1988 c 128 § 45; 1955 c 171 § 7.]

Collection of taxes: Chapter 84.56 RCW.

76.14.110 Fire protection projects—Credit on assessment for private expenditure. Where the department finds that a portion of the work in any project, except road building, has been done by private expenditures for fire protection purposes only and that the work was not required by other forestry laws having general application, then the department shall appraise the work on the basis of what it would have cost the state and shall credit the amount of the appraisal

toward payment of any sums assessed against lands contained in the project and owned by the person or his or her predecessors in title making the expenditure. Such appraisal shall be added to the cost of the project for purposes of determining the general assessment. [2013 c 23 § 235; 1988 c 128 § 46; 1955 c 171 § 8.]

76.14.120 Landowner's responsibility under other laws. This chapter shall not relieve the landowner of providing adequate fire protection for forestland pursuant to RCW 76.04.610 or, in lieu thereof, of paying the forest fire protection assessment specified, but shall be deemed as providing solely for extra fire protection needed in the extrahazardous fire area. [1986 c 100 § 56; 1955 c 171 § 9.]

76.14.130 Lands not to be included in project. Projects pursuant to RCW 76.14.080 shall not be developed to include lands outside the following described boundary within the high hazard forest areas: Beginning at a point on the east boundary of section 24, township 4 north, range 4 east 1/4 mile south of the northeast corner; thence west 1/4 mile; south 1/16 mile; west 1/4 mile; north 1/16 mile; west 1/2 mile; south 1/8 mile; west 1/4 mile; south 1/8 mile; west 1/2 mile; south 1/16 mile; west 1/8 mile; south 1/16 mile; west 1/8 mile; south 1/16 mile; west 1/2 mile; south 1/16 mile; west 3/4 mile; north 1/16 mile; west 1/4 mile; north 1/16 mile; west 1/2 mile; north 1/16 mile; west 1/4 mile; north 1/16 mile; west 1 3/4 miles to the west quarter corner of section 19, township 4 north, range 4 east. Thence north 1/4 mile; west 1/4 mile; north 1/8 mile; west 1/8 mile; north 1/8 mile; west 1/16 mile; north 1/4 mile; west 1/16 mile; north 1/8 mile; west 1/8 mile; north 1/8 mile; west 3/16 mile; south 1/8 mile; west 3/16 mile; south 1/8 mile; east 3/16 mile; south 1/4 mile; west 2 3/16 miles; south 1/8 mile; west 1/8 mile; south 1/4 mile; east 1/8 mile; south 1/16 mile; east 1/4 mile; south 3/16 mile; east 3/8 mile; south 1/8 mile; east 1/8 mile; south 1/16 mile; east 3/16 mile; south 7/16 mile; west 3/16 mile; south 1/4 mile; west 3/16 mile; south 1/4 mile; east 15/16 mile; south 1/4 mile; east 1/4 mile; south 1/4 mile; east 1/4 mile; south 3/4 mile; to the southwest corner of section 36, township 4 north, range 3 east. Thence west 3/8 mile; south 1/8 mile; east 1/8 mile; south 1/2 mile; west 1/8 mile; south 3/8 mile; west 1/8 mile; south 1/4 mile; west 1/4 mile; south 1/2 mile; west 1/8 mile; south 1/4 mile; east 3/8 mile; south 7/16 mile; west 1/4 mile; south 1/16 mile; west 1/4 mile; south 1/2 mile; west 1/8 mile; south 1/4 mile; east 1/8 mile; south 1/16 mile; west 1/4 mile; south 1/4 mile; east 1/2 mile; south 3/16 mile; east 1/4 mile; south 1/16 mile; east 7/16 mile; south 3/16 mile; east 9/16 mile; south 1/4 mile; east 1/16 mile; south 1/4 mile; east 1/16 mile; south 1/8 mile; east 1/8 mile; south 1/8 mile; west 1/16 mile; south 5/8 mile; west 3/16 mile; south 1/16 mile; east 1/4 mile; south 1/16 mile; east 1/8 mile; south 3/16 mile; west 1/8 mile; south 1/16 mile; west 11/16 mile; south 3/16 mile; east 15/16 mile, being 1/16 mile north of the southeast corner of section 36, township 3 north, range 3 east. Thence east 1 mile; south 1/16 mile; west 7/8 mile; south 1/8 mile; east 1/4 mile; south 1/4 mile; west 1/8 mile; south 1/8 mile; west 3/16 mile; south 1/4 mile; west 7/16 mile; north 1/8 mile; west 1/8 mile; south 1/8 mile; west 5/16 mile; south 1/4 mile; west 3/16 mile; south 1/16 mile; east 1/2 mile; north 1/16 mile; east 1/4 mile; south

1/8 mile; east 1/8 mile; north 1/8 mile; east 1/8 mile being the southeast corner of section 1, township 2 north, range 3 east. Thence south 1/4 mile; east 1/4 mile; south 1/16 mile; east 1/4 mile; south 1/16 mile; east 1/4 mile; south 1/8 mile; east 1/8 mile; north 1/8 mile; east 3/8 mile; south 1/8 mile; east 1/16 mile; north 1/4 mile; east 7/16 mile; north 1/8 mile; east 9/16 mile; south 1/4 mile; west 1/16 mile; south 1/8 mile; west 1/8 mile; south 1/8 mile; west 1/16 mile; south 1/4 mile; west 1/16 mile; south 1/8 mile; west 1/8 mile; south 1/16 mile; west 1/4 mile; south 5/16 mile; to the center of section 17, township 2 north, range 4 east. Thence east 1 mile; south 1/16 mile; east 2 miles; north 1/16 mile; east 1 1/2 miles; to the east quarter corner of section 13, township 2 north, range 4 east. Thence easterly 9 miles following Bonneville Power Administration's power transmission line through sections 18, 17, 16, 15, 14 and 13, township 2 north, range 5 east and sections 18, 17 and 16, township 2 north, range 6 east to the southeast corner of section 16, township 2 north, range 6 east. Thence easterly 3 3/4 miles; north 1 1/4 miles; east 1/4 mile; north 2 1/4 miles; west 3/4 mile; north 1 1/2 miles; east 3/4 mile; north 1/2 mile; east 1 mile; north 1/2 mile; east 1 mile; north 1 mile; east 2 miles; south 1 mile; east 1 mile; north 3 miles; to the northeast corner of section 1, township 3 north, range 7 east. Thence west 4 miles; south 1 mile; west 2 miles; north 1/2 mile; west 2 miles; south 1/2 mile; west 1 mile; south 1/2 mile; west 2 miles; north 1 1/2 miles; west 1 mile; south 1 mile; west 2 miles; south 1 1/2 miles; east 1 mile; south 1/2 mile; west 1 mile; south 1/2 mile; west 1/2 mile; south 1/2 mile; west 3 1/2 miles to the northwest corner of section 30, township 3 north, range 5 east. Thence north along Gifford Pinchot National Forest boundary to the point of beginning. [1955 c 171 § 10.]

Chapter 76.15 RCW

URBAN FOREST MANAGEMENT

Sections

76.15.005	Finding.
76.15.007	Purpose.
76.15.010	Definitions.
76.15.020	Authority.
76.15.030	Funding sources—Fees—Contracts.
76.15.040	Primary duty, department's—Cooperation.
76.15.050	Agreements for urban tree planting.
76.15.060	Urban tree planting to be encouraged.
76.15.090	Evergreen community designation—Department's duties.
76.15.100	Analysis—Priority regions—Consultation—Vulnerable populations—Statewide inventory.
76.15.110	Promotion of urban and community forestry—Department's authority.

76.15.005 Finding. (1) Trees and other woody vegetation are a necessary and important part of community environments. Urban and community forests have many values and uses including conserving energy, reducing air and water pollution and soil erosion, contributing to property values, attracting business, reducing glare and noise, providing aesthetic and historical values, providing wood products, and affording comfort and protection for humans and wildlife.

(2) As urban and community areas in Washington state grow, the need to plan for, promote, and manage urban and community forests increases. Cities and communities benefit from assistance in developing and maintaining urban and

community forestry programs that also address future growth.

(3) Assistance and encouragement in the establishment, retention, and enhancement of these forests and trees by local governments, residents, organizations, and professionals are in the interest of the state based on the contributions these forests make in preserving and enhancing the quality of life of Washington's cities, counties, and tribal lands while providing opportunities for economic development.

(4) Well-maintained urban forests deliver local air and water quality benefits that can have positive impacts on human health.

(5) Increased tree canopy in urban areas can positively impact salmon populations through stormwater management and reduction of stream temperatures, thereby improving critical salmon habitat. [2021 c 209 § 2; 1991 c 179 § 1.]

Findings—Intent—2021 c 209: "(1) The legislature finds that preservation and enhancement of city trees and urban forests contributes multiple benefits, including stormwater management, carbon sequestration, local air and water quality enhancements, and fish and wildlife habitat, and is a cost-effective way to meet these objectives. The legislature further finds that climate change is impacting our state in numerous ways, including summer heat waves, heavier winter rains, and lower air quality, all of which can be improved by increased tree canopy. The legislature further finds that modern and well-crafted urban forestry programs can have significant additional benefits related to human health, especially when delivered in highly impacted communities with higher health disparities and that also have lower existing tree canopy. Significant research exists demonstrating health benefits of trees and green spaces, including air and water quality improvements, positive emotional responses to being in nature, physical activity, and social cohesion through interacting in public green spaces. Furthermore, the legislature finds that Washington state faces continued urgency in adequately protecting essential salmon habitat, which is necessary to promote salmon recovery and thus help protect our endangered southern resident killer whale population. It is the intent of the legislature to enhance urban forestry programs that maximize cobenefits related to human health and salmon recovery.

(2) The legislature further recognizes that the existing evergreen communities act, in chapter 76.15 RCW and related programs in state law, established a successful framework for supporting urban forestry in Washington state. That act established the need for tools including canopy assessment and regional tree canopy analysis, and targeted technical assistance to support cities and counties seeking to deliver impactful urban forestry programs. The legislature intends to modernize and add capacity to the evergreen communities act by utilizing information and analysis around environmental health disparities and salmon recovery plans, and increasing capacity for the delivery of an urban forestry program in order to strengthen and enhance the impacts of this act and to expand participation to include federally recognized tribes and other community-based organizations." [2021 c 209 § 1.]

76.15.007 Purpose. The purpose of this chapter is to:

(1) Encourage planning for, planting, maintaining, and managing of trees in the state's cities, counties, and tribal lands and maximize the potential of tree and vegetative cover in improving the quality of the environment;

(2) Encourage the coordination of activities by state, local agency, and federally recognized tribes, and maximize resident participation in the development and implementation of urban and community forestry-related programs, including through capacity building to facilitate participation from new partners;

(3) Foster healthy economic activity for the state's urban and community forestry-related businesses through cooperative and supportive contracts with the private business sector;

(4) Facilitate the creation of employment opportunities related to urban and community forestry activities, including opportunities for youth, especially in urban areas, to learn

teamwork, resource conservation, environmental appreciation, and job skills;

(5) Provide meaningful voluntary opportunities for the state's residents and organizations interested in urban and community forestry activities;

(6) Contribute to improved human health through targeted delivery of programs and activities in highly impacted communities with greater health disparities;

(7) Contribute to salmon and orca recovery through targeted delivery of programs and activities in regions that include important salmon habitat identified by regional salmon recovery plans. [2021 c 209 § 3; 1991 c 179 § 2.]

Findings—Intent—2021 c 209: See note following RCW 76.15.005.

76.15.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of natural resources.

(2) "Evergreen community" means a city, town, or county designated as such under RCW 76.15.090.

(3) "Highly impacted community" has the same meaning as defined in RCW 19.405.020 or an equivalent cumulative impacts analysis that identifies the environmental health conditions of communities as a factor of both environmental health hazards and vulnerable populations as defined in RCW 19.405.020.

(4) "Management plan" means an urban forest management plan developed pursuant to this chapter.

(5) "Tree canopy" means the layer of leaves, branches, and stems of trees that cover the ground when viewed from above and that can be measured as a percentage of a land area shaded by trees.

(6) "Tribes" means any federally recognized Indian tribes whose traditional lands and territories include parts of the state.

(7) "Urban and community forest" or "urban forest" is that land in and around human settlements ranging from small communities to metropolitan areas, occupied or potentially occupied by trees and associated vegetation. Urban and community forestland may be planted or unplanted, used or unused, and includes public and private lands, lands along transportation and utility corridors, and forested watershed lands within populated areas. Nothing in this chapter may be construed to apply to lands subject to or designated under chapter 76.09, 79.70, 79.71, 84.33, or 84.34 RCW.

(8) "Urban and community forest assessment" or "urban forest assessment" means an analysis of the urban and community forest inventory to: Establish the scope and scale of forest-related benefits and services; determine the economic valuation of such benefits, highlight trends, and issues of concern; identify high priority areas to be addressed; outline strategies for addressing the critical issues and urban landscapes; and identify opportunities for retaining trees, expanding forest canopy, and planting additional trees to sustain Washington's urban and community forests.

(9) "Urban and community forest inventory" or "urban forest inventory" means a management tool designed to gauge the condition, management status, health, and diversity of an urban and community forest. An inventory may evaluate individual trees or groups of trees or canopy cover within

urban and community forests, and will be periodically updated by the department.

(10) "Urban and community forestry" or "urban forestry" means the planning, establishment, protection, care, and management of trees and associated plants individually, in small groups, or under more naturally forested conditions within cities, counties, and tribal lands.

(11) "Urban and community forestry ordinance" or "urban forestry ordinance" is an ordinance developed by a city, county, or tribe that promotes urban forestry management and care of trees.

(12) "Vulnerable populations" has the same meaning as defined in RCW 19.405.020. [2021 c 209 § 4; 2008 c 299 § 23; 2000 c 11 § 15; 1991 c 179 § 3.]

Findings—Intent—2021 c 209: See note following RCW 76.15.005.

Additional notes found at www.leg.wa.gov

76.15.020 Authority. (1) The department may establish and maintain a program in urban and community forestry to accomplish the purpose stated in RCW 76.15.007. The department may assist cities, counties, and federally recognized tribes in establishing and maintaining urban and community forestry programs and encourage appropriate and improved tree management and care.

(2) The department may advise, encourage, and assist cities, counties, tribes, and other public and private entities in the development and coordination of policies, programs, and activities for the promotion of urban and community forestry.

(3) The department may appoint a committee or council to advise the department in establishing and carrying out a program in urban and community forestry.

(4) The department may assist municipal and county tree maintenance programs by making surplus equipment available on loan where feasible for urban and community forestry programs and cooperative projects.

(5) An owner of private property may opt out of a voluntary urban and community forestry program established by a city, county, or federally recognized tribe pursuant to this chapter. The property owner opting out must provide notice to the city, county, or federally recognized tribe in either written or electronic form. [2021 c 209 § 5; 2008 c 299 § 3; 1991 c 179 § 4.]

Findings—Intent—2021 c 209: See note following RCW 76.15.005.

Additional notes found at www.leg.wa.gov

76.15.030 Funding sources—Fees—Contracts. The department may:

(1) Receive and disburse any and all moneys contributed, allotted, or paid by the United States under authority of any act of congress for the purposes of this chapter;

(2) Receive such gifts, grants, bequests, and endowments and donations of labor, material, seedlings, and equipment from public or private sources as may be made for the purpose of carrying out the provisions of this chapter, and may spend the gifts, grants, bequests, endowments, and donations as well as other moneys from public or private sources;

(3) Charge fees for attendance at workshops and conferences, and for various publications and other materials that the department may prepare;

(4) Enter into agreements and contracts with cities, counties, tribes, nonprofit organizations, and others having urban

and community forestry-related responsibilities. [2021 c 209 § 6; 1991 c 179 § 5.]

Findings—Intent—2021 c 209: See note following RCW 76.15.005.

76.15.040 Primary duty, department's—Cooperation. The department shall assume the primary responsibility of carrying out this chapter and shall cooperate with other private and public, state and federal persons, any agency of another state, the United States, any agency of the United States, or any agency or province of Canada. [1991 c 179 § 6.]

76.15.050 Agreements for urban tree planting. The department may enter into agreements with one or more non-profit organizations whose primary purpose is urban tree planting. The agreements must be directed at furthering public education about and support for urban tree planning, planting, establishment, care, and long-term maintenance, and for obtaining voluntary activities by the local community organizations in tree planting programs. The agreements must ensure these programs are consistent with the purposes of the urban and community forestry program under this chapter. [2021 c 209 § 7; 1993 c 204 § 10.]

Findings—Intent—2021 c 209: See note following RCW 76.15.005.

Findings—1993 c 204: See note following RCW 35.92.390.

76.15.060 Urban tree planting to be encouraged. The department must encourage urban planting and care through establishment and long-term management of trees, encouraging varieties that are site-appropriate and provide the best combination of energy and water conservation, fire safety and other safety, wildlife habitat, stormwater management, and aesthetic value. The department may provide technical assistance in developing programs in tree planting for energy conservation in areas of the state where such programs are most cost-effective. The department must conduct analyses and prioritize target regions for delivery of programs, policies, and activities that include criteria related to human health and salmon recovery data as provided in RCW 76.15.100. [2021 c 209 § 8; 1993 c 204 § 11.]

Findings—Intent—2021 c 209: See note following RCW 76.15.005.

Findings—1993 c 204: See note following RCW 35.92.390.

76.15.090 Evergreen community designation—Department's duties. (1) The department shall manage the application and evaluation of candidates for evergreen community designation.

(2) The department shall develop the criteria for an evergreen community designation program. Under this program, the state may recognize as an evergreen community a city, county, or area of tribal land that has developed an excellent urban forest management program.

(3) Designation as an evergreen community must include no fewer than two graduated steps. The department may require additional graduated steps and establish the minimum requirements for each recognized step.

(a) The first graduated step of designation as an evergreen community includes satisfaction of the following requirements:

(i) The development and implementation of a tree board or tree department;

(ii) The development of a tree care ordinance;

(iii) The implementation of an urban forestry program with an annual budget of at least \$2.00 for every city resident;

(iv) Official recognition of arbor day; and

(v) The completion of or update to an existing urban forest inventory for the city, county, or tribal land, or the formal adoption of an inventory developed for the city, county, or tribe by the department.

(b) The second graduated step of designation as an evergreen community includes the adoption of an urban forestry management plan. The management plan must:

(i) Exceed the minimum standards determined by the department; and

(ii) Incorporate meaningful community engagement from vulnerable populations located in the area so needs and priorities of these communities inform implementation of the plan.

(4) The department shall develop gateway signage and logos for an evergreen community.

(5) The department may consult with the department of commerce in carrying out the requirements of this section. [2021 c 209 § 11; 2008 c 299 § 8.]

Findings—Intent—2021 c 209: See note following RCW 76.15.005.

Additional notes found at www.leg.wa.gov

76.15.100 Analysis—Priority regions—Consultation—Vulnerable populations—Statewide inventory. (1) The department must conduct analyses of the needs and opportunities related to urban forestry in Washington by assessing tree canopy cover and urban forestry inventory data.

(a) The department must utilize existing recent tree canopy study and inventory data when available.

(b) The department may add additional canopy analysis in regions where adequate data is not available through internal analysis and the use of research consultants as needed.

(c) In collaboration with local governments, the department may conduct prioritized inventories of urban forests where adequate data is not available.

(2) The department must identify priority regions for the implementation of urban forestry programs. Priority must be determined through the use and review of analyses and tools including, but not limited to, the following:

(a) Canopy analysis and inventory of urban and community forestry data as determined in subsection (1)(a) of this section;

(b) Health disparity mapping tools that identify highly impacted communities such as the department of health's Washington tracking network. Communities should be identified at the census tract level;

(c) Salmon and orca recovery data including, but not limited to, the Puget Sound partnership action agenda and other regional and statewide salmon and orca recovery plans and efforts, to target program delivery in areas where there are significant opportunities related to salmon and orca habitat and health; and

(d) The department's 20-year forest health strategic plan.

(3) The department may consult with external experts as part of the review and analysis that will determine priority regions for the purposes of this chapter. Consultation may be conducted with experts such as: Other state agencies; a state-

wide organization representing urban and community forestry programs; health experts; salmon recovery experts; and other technical experts as needed.

(4) The department must consult with the appropriate tribes in watersheds where urban forestry work is taking place.

(5) The department shall, through its analysis and consultation, seek to identify areas where urban forestry will generate the greatest confluence of benefits in relation to canopy needs, health disparities, and salmon habitat.

(6) The department must ensure a minimum of 50 percent of the resources used in delivering the policies, programs, and activities of this chapter are benefiting vulnerable populations and are delivered in or within one-quarter mile of highly impacted communities as identified by the tools described in subsection (2)(b) of this section, and scale these resources so the most resources are allocated to the highest impacted communities within these areas. This includes resources for establishing and maintaining new trees as well as maintenance of existing tree canopy.

(7) The department shall conduct a statewide inventory of urban and community forests using urban forest inventory and assessment protocols established by the United States forest service to produce statistically relevant estimates of the quantity, health, composition, and benefits of urban trees and forests. Inventory data must be maintained and periodically updated. [2021 c 209 § 9.]

Findings—Intent—2021 c 209: See note following RCW 76.15.005.

76.15.110 Promotion of urban and community forestry—Department's authority. (1) The department must provide technical assistance and capacity building resources and opportunities to cities, counties, federally recognized tribes, and other public and private entities in the development and coordination of policies, programs, and activities for the promotion of urban and community forestry.

(2) The department may use existing urban and community forestry inventory tools or develop additional tools to assist cities, counties, federally recognized tribes, and other public and private entities to collect urban and community forest tree data that informs urban and community forestry management, planning, and policy development.

(3) The department shall strive to enable Washington cities' urban forest managers to access carbon markets by working to ensure tools developed under this section are compatible with existing and developing urban forest carbon market reporting protocols.

(4) The department may use existing tools to assist communities to develop urban forestry management plans. Management plans may include, but not be limited to, the following elements:

- (a) Inventory and assessment of the jurisdiction's urban and community forests utilized as a dynamic management tool to set goals, implement programs, and monitor outcomes that may be adjusted over time;
- (b) Canopy cover goals;
- (c) Reforestation and tree canopy expansion goals within the city's, town's, and county's boundaries;
- (d) Restoration of public forests;
- (e) Achieving forest stand and diversity goals;

(f) Maximizing vegetated stormwater management with trees and other vegetation that reduces runoff, increases soil infiltration, and reduces stormwater pollution;

(g) Environmental health goals specific to air quality, habitat for wildlife, and energy conservation;

(h) Vegetation management practices and programs to prevent vegetation from interfering with or damaging utilities and public facilities;

(i) Prioritizing planting sites;

(j) Standards for tree selection, siting, planting, and pruning;

(k) Scheduling maintenance and stewardship for new and established trees;

(l) Staff and volunteer training requirements emphasizing appropriate expertise and professionalism;

(m) Guidelines for protecting existing trees from construction-related damage and damage related to preserving territorial views;

(n) Integrating disease and pest management;

(o) Wood waste utilization;

(p) Community outreach, participation, education programs, and partnerships with nongovernment organizations;

(q) Time frames for achieving plan goals, objectives, and tasks;

(r) Monitoring and measuring progress toward those benchmarks and goals;

(s) Consistency with the urban wildland interface codes developed by the state building code council;

(t) Emphasizing landscape and revegetation plans in residential and commercial development areas where tree retention objectives are challenging to achieve; and

(u) Maximizing building heating and cooling energy efficiency through appropriate siting of trees for summer shading, passive solar heating in winter, and for wind breaks.

(5) The department may use existing tools to assist communities to develop urban forestry ordinances. Ordinances may include, but not be limited to, the following elements:

(a) Tree canopy cover, density, and spacing;

(b) Tree conservation and retention;

(c) Vegetated stormwater runoff management using native trees and appropriate nonnative, nonnaturalized vegetation;

(d) Clearing, grading, protection of soils, reductions in soil compaction, and use of appropriate soils with low runoff potential and high infiltration rates;

(e) Appropriate tree siting and maintenance for vegetation management practices and programs to prevent vegetation from interfering with or damaging utilities and public facilities;

(f) Native species and nonnative, nonnaturalized species diversity selection to reduce disease and pests in urban forests;

(g) Tree maintenance;

(h) Street tree installation and maintenance;

(i) Tree and vegetation buffers for riparian areas, critical areas, transportation and utility corridors, and commercial and residential areas;

(j) Tree assessments for new construction permitting;

(k) Recommended forest conditions for different land use types;

(l) Variances for hardship and safety;

(m) Variances to avoid conflicts with renewable solar energy infrastructure, passive solar building design, and locally grown produce; and

(n) Permits and appeals.

(6) The department may consult with the department of commerce in the process of providing technical assistance, on issues including, but not limited to, intersections between urban forestry programs and growth management act planning.

(7) The department may use existing and develop additional innovative tools to facilitate successful implementation of urban forestry programs including, but not limited to, comprehensive tool kit packages (tree kits) that can easily be shared, locally adapted, and used by cities, counties, tribes, and community stakeholders.

(8) The department must encourage communities to include participation and input by vulnerable populations through community organizations and members of the public for urban and community forestry plans in the regions where they are based.

(9) Delivery of resources must be targeted based on the analysis and prioritization provided in RCW 76.15.100. [2021 c 209 § 10.]

Findings—Intent—2021 c 209: See note following RCW 76.15.005.

**Chapter 76.36 RCW
MARKS AND BRANDS**

Sections

76.36.010	Definitions.
76.36.020	Forest products to be marked.
76.36.035	Registration of brands—Assignments—Fee—Rules—Penalty.
76.36.060	Impression of mark—Presumption.
76.36.070	Cancellation of registration.
76.36.090	Catch brands.
76.36.100	Right of entry to retake branded products.
76.36.110	Penalty for false branding, etc.
76.36.120	Forgery of mark, etc.—Penalty.
76.36.130	Sufficiency of mark.
76.36.140	Application of chapter to eastern Washington.
76.36.160	Deposit of fees—Use.

76.36.010 Definitions. The words and phrases herein used, unless the same be clearly contrary to or inconsistent with the context of this chapter or the section in which used, shall be construed as follows:

(1) "Booming equipment" includes boom sticks and boom chains.

(2) "Brand" means a unique symbol or mark placed on or in forest products for the purpose of identifying ownership.

(3) "Catch brand" means a mark or brand used by a person as an identifying mark placed upon forest products and booming equipment previously owned by another.

(4) "Department" means the department of natural resources.

(5) "Forest products" means logs, spars, piles, and poles, boom sticks, and shingle bolts and every form into which a fallen tree may be cut before it is manufactured into lumber or run through a sawmill, shingle mill, or tie mill, or cut into cord wood, stove wood, or hewn ties.

(6) "Person" includes the plural and all corporations, foreign and domestic, copartnerships, firms, and associations of persons.

(2022 Ed.)

(7) "Waters of this state" includes any and all bodies of fresh and salt water within the jurisdiction of the state capable of being used for the transportation or storage of forest products, including all rivers and lakes and their tributaries, harbors, bays, bayous, and marshes. [2000 c 11 § 16; 1984 c 60 § 1; 1925 ex.s. c 154 § 1; RRS § 8381-1.]

76.36.020 Forest products to be marked. Persons who wish to identify any of their forest products which will be stored or transported in or on the waters of the state shall place a registered mark or brand in a conspicuous place on each forest product item. Placement of the registered mark or brand is prima facie evidence of ownership over forest product items which have escaped from storage or transportation. Unbranded or unmarked stray logs or forest products become the property of the state when recovered. [1984 c 60 § 2; 1925 ex.s. c 154 § 2; RRS § 8381-2. Prior: 1890 p 110 § 1.]

76.36.035 Registration of brands—Assignments—Fee—Rules—Penalty. (1) All applications for brands, catch brands, renewals, and assignments thereof shall be submitted to and approved by the department prior to use. The department may refuse to approve any brand or catch brand which is identical to or closely resembles a registered brand or catch brand, or is in use by any other person or was not selected in good faith for the marking or branding of forest products. If approval is denied the applicant will select another brand.

(2) The registration for all existing brands or catch brands shall expire on December 31, 1984, unless renewed prior to that date. Renewals or new approved applications shall be for five-year periods or portions thereof beginning on January 1, 1985. On or before September 30, 1984, and September 30th immediately preceding the end of each successive five-year period the department shall notify by mail all registered owners of brands or catch brands of the forthcoming expiration of their brands and the requirements for renewal.

(3) A fee of fifteen dollars shall be charged by the department for registration of all brands, catch brands, renewals or assignments prior to January 1, 1985. Thereafter the fee shall be twenty-five dollars.

(4) Abandoned or canceled brands shall not be reissued for a period of at least one year. The department shall determine the right to use brands or catch brands in dispute by applicants.

(5) The department may adopt and enforce rules implementing the provisions of this chapter.

(6)(a) Except as provided in (b) of this subsection, a violation of any rule adopted by the department under this [the] authority of this section is a misdemeanor.

(b) The department may specify by rule, when not inconsistent with applicable statutes, that violation of a specific rule is an infraction under chapter 7.84 RCW. [2003 c 53 § 370; 1987 c 380 § 18; 1984 c 60 § 8.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

76.36.060 Impression of mark—Presumption. All forest products and booming equipment having impressed thereupon a registered mark or brand are presumed to belong

to the person appearing on the records of the department as the owner of such mark or brand. All forest products having impressed thereupon a registered catch brand are presumed to belong to the owner of the registered catch brand, unless there is impressed thereupon more than one registered catch brand, in which event they are presumed to belong to the owner whose registered catch brand was placed thereupon latest in point of time. [1984 c 60 § 3; 1957 c 36 § 4; 1925 ex.s. c 154 § 6; RRS § 8381-6. Prior: 1890 p 111 § 4.]

76.36.070 Cancellation of registration. The department, upon the petition of the owner of a registered mark or brand, may cancel the registration in which case the mark or brand shall be open to registration by any person subsequently applying therefor. [1984 c 60 § 4; 1957 c 36 § 5; 1925 ex.s. c 154 § 7; RRS § 8381-7.]

76.36.090 Catch brands. A person desiring to use a catch brand as an identifying mark upon forest products or booming equipment purchased or lawfully acquired from another, shall before using it, make application for the registration thereof to the department in the manner prescribed for the registration of other marks or brands as herein required. The provisions contained in this chapter in reference to registration, certifications, assignment, and cancellation, and the fees to be paid to the department shall apply equally to catch brands. The certificate of the department shall designate the mark or brand as a catch brand, and the mark or brand selected by the applicant as a catch brand shall be inclosed [enclosed] in the letter C, which shall identify the mark or brand as, and shall be used only in connection with, a catch brand. [1984 c 60 § 5; 1957 c 36 § 6; 1925 ex.s. c 154 § 9; RRS § 8381-9.]

76.36.100 Right of entry to retake branded products. The owner of any mark or brand registered as herein provided, by himself or herself or his or her duly authorized agent or representative, shall have a lawful right, at any time and in any peaceable manner, to enter into or upon any tidelands, marshes, and beaches of this state and any mill, mill yard, mill boom, rafting, or storage grounds and any forest products or raft or boom thereof, for the purpose of searching for any forest products and booming equipment having impressed thereupon or cut therein a registered mark or brand belonging to him or her and to retake any forest products and booming equipment so found by him or her. [2013 c 23 § 221; 1925 ex.s. c 154 § 10; RRS § 8381-10. Prior: 1901 c 123 § 4.]

76.36.110 Penalty for false branding, etc. Every person is guilty of a gross misdemeanor:

(1) Except boom companies organized as corporations for the purpose of catching or reclaiming and holding or disposing of forest products for the benefit of the owners, and authorized to do business under the laws of this state, who has or takes in tow or into custody or possession or under control, without the authorization of the owner of a registered mark or brand thereupon, any forest products or booming equipment having thereupon a mark or brand registered as required by the terms of this chapter, or, with or without such authorization, any forest products or booming equipment which may

be branded under the terms of this chapter with a registered mark or brand and having no registered mark or brand impressed thereupon or cut therein; or,

(2) Who impresses upon or cut in any forest products or booming equipment a mark or brand that is false, forged or counterfeit; or,

(3) Who interferes with, prevents, or obstructs the owner of any registered mark or brand, or his or her duly authorized agent or representative, entering into or upon any tidelands, marshes or beaches of this state or any mill, mill site, mill yard or mill boom or rafting or storage grounds or any forest products or any raft or boom thereof for the purpose of searching for forest products and booming equipment having impressed thereupon a registered mark or brand belonging to him or her or retaking any forest products or booming equipment so found by him or her; or,

(4) Who impresses or cuts a catch brand that is not registered under the terms of this chapter upon or into any forest products or booming equipment upon which there is a registered mark or brand as authorized by the terms of this chapter or a catch brand, whether registered or not, upon any forest products or booming equipment that was not purchased or lawfully acquired by him or her from the owner. [2003 c 53 § 371; 1994 c 163 § 1; 1984 c 60 § 6; 1925 ex.s. c 154 § 11; RRS § 8381-11. Prior: 1890 p 112 § 8.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

76.36.120 Forgery of mark, etc.—Penalty. Every person is guilty of a class B felony punishable according to chapter 9A.20 RCW who, with an intent to injure or defraud the owner:

(1) Shall falsely make, forge or counterfeit a mark or brand registered as herein provided and use it in marking or branding forest products or booming equipment; or,

(2) Shall cut out, destroy, alter, deface, or obliterate any registered mark or brand impressed upon or cut into any forest products or booming equipment; or,

(3) Shall sell, encumber or otherwise dispose of or deal in, or appropriate to his or her own use, any forest products or booming equipment having impressed thereupon a mark or brand registered as required by the terms of this chapter; or

(4) Shall buy or otherwise acquire or deal in any forest products or booming equipment having impressed thereupon a registered mark or brand. [2003 c 53 § 372; 1925 ex.s. c 154 § 12; RRS § 8381-12. Prior: 1890 p 111 §§ 6, 7.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

76.36.130 Sufficiency of mark. A mark or brand cut in boom sticks with an ax or other sharp instrument shall be sufficient for the purposes of this chapter if it substantially conforms to the impression or drawing and written description on file with the department. [1988 c 128 § 47; 1957 c 36 § 7; 1925 ex.s. c 154 § 13; RRS § 8381-13.]

76.36.140 Application of chapter to eastern Washington. In view of the different conditions existing in the logging industry of this state between the parts of the state lying respectively east and west of the crest of the Cascade mountains, forest products may be put into the water of this

state or shipped on common carrier railroads without having thereon a registered mark or brand, as herein required, within that portion of the state lying east of the crest of the Cascade mountains and composed of the following counties to wit: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima; and the penalties herein provided for failure to mark or brand such forest products shall not apply: PROVIDED, That any person operating within such east portion of the state may select a mark or brand and cause it to be registered with the department pursuant to the terms of this chapter, and use it for the purpose of marking or branding forest products and booming equipment, and, in the event of the registration of such mark or brand and the use of it in marking or branding forest products or booming equipment, the provisions hereof shall apply as to the forest products and booming equipment so marked or branded. [1988 c 128 § 48; 1957 c 36 § 8; 1925 ex.s. c 154 § 14; RRS § 8381-14.]

76.36.160 Deposit of fees—Use. The department shall deposit all moneys received under this chapter in the general fund to be used exclusively for the administration of this chapter by the department. [1984 c 60 § 7; 1957 c 36 § 10.]

Chapter 76.42 RCW

WOOD DEBRIS—REMOVAL FROM NAVIGABLE WATERS

Sections

76.42.010	Removal of debris authorized—Enforcement of chapter—Department of natural resources.
76.42.020	Definitions.
76.42.030	Removal of wood debris—Authorized.
76.42.060	Navigable waters—Unlawful to deposit wood debris into—Exception.
76.42.070	Rules and regulations—Administration of chapter—Authority to adopt and enforce.

Navigation and harbor improvements: Title 88 RCW.

76.42.010 Removal of debris authorized—Enforcement of chapter—Department of natural resources. This chapter authorizes the removal of wood debris from navigable waters of the state of Washington. It shall be the duty of the department of natural resources to administer and enforce the provisions of this chapter. [1973 c 136 § 2.]

76.42.020 Definitions. (1) "Removal" as used in this chapter shall include all activities necessary for the collection and disposal of such wood debris: PROVIDED, That nothing herein provided shall permit removal of wood debris from private property without written consent of the owner.

(2) "Wood debris" as used in this chapter is wood that is adrift on navigable waters or has been adrift thereon and stranded on beaches, marshes, or tidal and shorelands. [2000 c 11 § 17; 1994 c 163 § 2; 1973 c 136 § 3.]

76.42.030 Removal of wood debris—Authorized. The department of natural resources may by contract, license, or permit, or other arrangements, cause such wood debris to be removed by private contractors, department of natural resources employees, or by other public bodies. Nothing contained in this chapter shall prohibit any individual from using

any nonmerchantable wood debris for his or her own personal use. [2013 c 23 § 236; 1994 c 163 § 3; 1973 c 136 § 4.]

76.42.060 Navigable waters—Unlawful to deposit wood debris into—Exception. It shall be unlawful to dispose of wood debris by depositing such material into any of the navigable waters of this state, except as authorized by law including any discharge or deposit allowed to be made under and in compliance with chapter 90.48 RCW and any rules duly adopted thereunder or any deposit allowed to be made under and in compliance with chapter 76.09 or 77.85 RCW and any rules duly adopted under those chapters. Violation of this section shall be a misdemeanor. [2003 c 39 § 37; 1999 sp.s. c 4 § 601; 1973 c 136 § 7.]

Additional notes found at www.leg.wa.gov

76.42.070 Rules and regulations—Administration of chapter—Authority to adopt and enforce. The department of natural resources shall adopt and enforce such rules and regulations as may be deemed necessary for administering this chapter. [1973 c 136 § 8.]

Chapter 76.44 RCW

INSTITUTE OF FOREST RESOURCES

Sections

76.44.010	Institute created.
76.44.020	Administration of institute.
76.44.030	Duties.
76.44.040	Dissemination of research results.
76.44.050	Authority to solicit financial support—Use of funds for the institute's operations and activities.
76.44.070	Addressing issues facing the forest sector.
76.44.080	Policy advisory committee—Membership—Compensation.
76.44.090	Director to coordinate cooperatives and centers.

76.44.010 Institute created. There is hereby created the institute of forest resources of the state of Washington which shall operate under the authority of the board of regents of the University of Washington. [1979 c 50 § 1; 1947 c 177 § 1; Rem. Supp. 1947 § 10831-1.]

Additional notes found at www.leg.wa.gov

76.44.020 Administration of institute. The institute of forest resources shall be administered and directed by the director of the school of forest resources at the University of Washington. [2011 c 187 § 3; 1988 c 81 § 21; 1979 c 50 § 2; 1959 c 306 § 1; 1947 c 177 § 2; Rem. Supp. 1947 § 10831-2.]

Findings—Intent—2011 c 187: "(1) The legislature finds that there are many challenges facing the forest sector, such as climate change, loss of forest cover in rural and urban areas, forest health and fire risks, the development of environmental service markets, the enhancement of habitat and biodiversity, timber and water supply, restoration of forest ecosystems, and the economic health of forest-dependent communities that rely on the retention of working forests.

(2) The legislature further finds that these forest issues, which occur in both rural and urban environments, and the approaches taken to address the issues, transcend the expertise and mission of the University of Washington school of forest resources and the associated centers and cooperatives. While each of these centers and cooperatives contribute expertise and resources, the structure and continuity for the integrated, interdisciplinary approach needed to address these complex issues is lacking.

(3) It is the intent of the legislature for the institute of forest resources to provide the structure and continuity needed by drawing contributions from the associated centers and cooperatives into a more consolidated, collabora-

tive, interdisciplinary, and integrated process that is responsive to the critical issues confronting the forest sector." [2011 c 187 § 1.]

Additional notes found at www.leg.wa.gov

76.44.030 Duties. (1) The institute of forest resources shall pursue coordinated research and education related to the forest sector and its multiple components, including:

(a) Forest conservation, restoration, sustainable management, and utilization;

(b) The evaluation of the economic, ecological, and societal value of forestland in both the rural and urban environment;

(c) The manufacture and marketing of forest products, including timber products, nontimber products, environmental services, and the provision of recreation and aesthetic values.

(2) The institute of forest resources must seek to provide a framework for identifying, prioritizing, funding, and conducting interdisciplinary research critical to the forest sector and the development of integrated, synthesized information and decision support tools that improve the understanding of complex forestry issues for stakeholders, policymakers, and other interested parties.

(3) In pursuit of these objectives, the institute of forest resources is authorized to cooperate, when cooperation advances the objectives listed in this section, with other entities, including but not limited to:

(a) Universities;

(b) State and federal agencies;

(c) Conservation and environmental organizations;

(d) *Community and urban forestry organizations; and

(e) Domestic or foreign industrial and business institutions. [2011 c 187 § 4; 1979 c 50 § 5; 1947 c 177 § 3; Rem. Supp. 1947 § 10831-3.]

*Reviser's note: Chapter 209, Laws of 2021 changed the name of the program in chapter 76.15 RCW from "community and urban forestry" to "urban forest management plan."

Findings—Intent—2011 c 187: See note following RCW 76.44.020.

Additional notes found at www.leg.wa.gov

76.44.040 Dissemination of research results. The results of any research undertaken by the institute or in which the institute participates shall be available to all industries and citizens of the state of Washington and the institute is authorized to disseminate such information. [1979 c 50 § 6; 1947 c 177 § 4; Rem. Supp. 1947 § 10831-4.]

Additional notes found at www.leg.wa.gov

76.44.050 Authority to solicit financial support—Use of funds for the institute's operations and activities. (1) The institute of forest resources may solicit gifts, grants, conveyances, bequests, and devices, including both real or personal property, in trust or otherwise, to be directed to the institute for carrying out the objectives of the institute as provided in this chapter.

(2) The institute of forest resources may solicit contracts for work, financial and in-kind contributions, and support from private industries, interest groups, federal and state sources, and other sources deemed appropriate by the director of the institute.

(3) The institute of forest resources may utilize separately appropriated funds of the University of Washington for the institute's operations and activities. [2011 c 187 § 5; 1979 c 50 § 7; 1947 c 177 § 5; Rem. Supp. 1947 § 10831-5.]

Findings—Intent—2011 c 187: See note following RCW 76.44.020.

Additional notes found at www.leg.wa.gov

76.44.070 Addressing issues facing the forest sector. The legislature finds that there are many issues facing the forest sector, such as climate change, forest health and fire, carbon accounting, habitat and diversity, timber and water supplies, economic competitiveness, and the economic health of forest dependent communities. Enhancing the capability to effectively address these forest issues is critical to the state of Washington. To meet this need, the University of Washington school of forest resources will continue to work with the various interests concerned with the state's forest resources, including the legislature, state and federal governments, environmental organizations, local communities, the timber industry, and tribes, to improve these entities' ability to competitively recruit, educate, and train a high quality workforce. In order to meet these goals, it is important to our state, and in particular the University of Washington, to continue to have strong undergraduate and graduate programs in forestry and natural resources to provide well-trained professionals to meet workforce needs. [2011 c 187 § 2; 2010 c 188 § 2.]

Findings—Intent—2011 c 187: See note following RCW 76.44.020.

Findings—Intent—2010 c 188: "(1) The legislature finds that sustainably managed commercial forestry produces jobs and revenue while also providing clean water, clean air, renewable energy, wildlife habitat, open space, and carbon storage, among other ecological values. For these reasons, maintaining a base of forestlands that may be utilized for sustainably managed commercial forestry is of utmost importance to the state.

(2) The legislature finds that the promotion and fostering of the economic success of the forest products industry with the goal of keeping sustainably managed forestry as a priority land use, and helping to secure the timber managing, growing, harvesting, transporting, and manufacturing jobs is made possible by a vibrant working forestland base.

(3) The legislature further finds that maintaining sustainable working forests is important for the quality of life of all Washingtonians, and that sustainable forest practices can help to maintain and restore the vitality of Washington's communities while also helping to preserve Washington's natural landscapes and ecosystems.

(4) The legislature further finds that it is necessary to assist landowners in gaining access to additional sources of revenue, such as emerging ecosystem services markets, and to help landowners diversify their incomes, improve the ecological functions of their lands, and pass their lands and the lands' associated benefits to future generations.

(5) The legislature further finds that the conservation and restoration of forest ecosystems provide services to the residents of the state that help improve water and habitat quality, help avoid carbon emissions, help address impacts associated with climate change, and help natural resources adapt to these impacts.

(6) The legislature further finds that ecosystem services markets can lead to efficient, innovative, and effective conservation and restoration actions and facilitate improved integration of public and private investment.

(7) Therefore, it is the intent of the legislature to develop tools to facilitate small and industrial forestland owners' access to market capital from existing and emerging ecosystem services markets.

(8) The legislature further intends to enable forestland owners who provide ecosystem services access to financing to protect, restore, and maintain the ecological values provided by protection of public resources." [2010 c 188 § 1.]

76.44.080 Policy advisory committee—Membership—Compensation. (1) The director of the school of forest resources at the University of Washington may, at the discretion of the director, appoint and maintain an eleven-member

ber policy advisory committee to advise the director on policies for the institute of forest resources that are consistent with the institute's objectives as provided in this chapter.

(2) If activated, the membership of the policy advisory committee must represent, to the extent possible, the various interests concerned with the institute of forest resources, including state and federal agencies, tribal governments, conservation and environmental organizations, urban forestry interests, rural communities, industry, and business.

(3) Members of the advisory committee may not receive any salary or other compensation for service on the advisory committee. However, each member may be compensated, at the discretion of the director of the institute, for each day in actual attendance at or traveling to and from meetings of the advisory committee in accordance with RCW 43.03.220 together with travel expenses in accordance with RCW 43.03.050 and 43.03.060. [2011 c 187 § 6.]

Findings—Intent—2011 c 187: See note following RCW 76.44.020.

76.44.090 Director to coordinate cooperatives and centers. The director of the school of forest resources at the University of Washington shall coordinate the various cooperatives and centers within the school of forest resources to promote a holistic, efficient, and integrated approach that broadens the research and outreach programs and addresses issues facing the forest sector. [2011 c 187 § 7.]

Findings—Intent—2011 c 187: See note following RCW 76.44.020.

Chapter 76.48 RCW

SPECIALIZED FOREST PRODUCTS

Sections

76.48.011	Declaration of public interest.
76.48.021	Definitions.
76.48.031	Specialized forest products permits—Required—Inspection.
76.48.041	Contents of authorization, sales invoice, or bill of lading.
76.48.051	Specialized forest products permit—True copy.
76.48.061	Permit requirements.
76.48.071	Validation of forms for verifiable permits and validated permits.
76.48.081	Specialized forest products permits—Expiration—Specifications.
76.48.091	Acceptance and validation of permits—Authorized agents.
76.48.101	Possession of specialized forest products by first or secondary buyer—Display of documentation—Specialty wood processors.
76.48.111	Specialized forest products buyers and huckleberry buyers—Required records.
76.48.121	Display of business license.
76.48.131	Unlawful acts.
76.48.141	False, fraudulent, forged, or stolen specialized forest products permit, sales invoice, bill of lading, etc.—Penalty.
76.48.151	Penalties—Affirmative defense.
76.48.161	Multiple convictions for violating RCW 76.48.141 or 76.48.151—Suspension of privileges to obtain a specialized forest products permit.
76.48.171	Disposition of fines.
76.48.181	Agencies responsible for enforcement of chapter.
76.48.191	Detention of specialized forest products and documentation.
76.48.201	Protection of items seized under RCW 76.48.191—Disposition of items.
76.48.211	Exemptions.
76.48.221	Effect of RCW 76.48.031 with respect to huckleberries.
76.48.231	Department to develop educational material.
76.48.241	Assistance and training for minority groups.
76.48.251	Specialized forest products outreach and education account.
76.48.907	Saving—1967 ex.s. c 47.

76.48.011 Declaration of public interest. (1) It is in the public interest of this state to protect an important natural

(2022 Ed.)

resource and to provide protection to the landowners of the state of Washington from the theft of specialized forest products.

(2) To satisfy this public interest, this chapter is intended to:

- (a) Provide law enforcement with reasonable tools;
- (b) Reasonably protect landowners from theft;
- (c) Ensure that requirements are not unduly burdensome to those harvesting, transporting, possessing, and purchasing specialized forest products;
- (d) Craft requirements that are clear and readily understandable; and
- (e) Establish requirements that are able to be administered and enforced consistently statewide. [2009 c 245 § 2; 1967 ex.s. c 47 § 2. Formerly RCW 76.48.010.]

Finding—Intent—2009 c 245: "(1) The legislature finds that the specialized forest products work group created pursuant to section 2, chapter 392, Laws of 2007 produced a number of consensus recommendations to the legislature as to how the permitting requirements of chapter 76.48 RCW can be improved. In making recommendations, the work group focused on the goals enumerated in RCW 76.48.011.

(2) It is the intent of the legislature to enact those recommendations contained in the report submitted to the legislature from the specialized forest products work group in December 2008 that require statutory modifications.

(3) It is also the intent of the legislature for the department of natural resources, along with other state and local agencies, to take those administrative actions necessary to execute the recommendations contained in the report that do not require statutory changes. When taking administrative actions regarding specialized forest products, those actions should, when appropriate, be conducted consistent with recommendations contained in the report submitted to the legislature from the specialized forest products work group." [2009 c 245 § 1.]

76.48.021 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Artistic cedar product" means a product made from the wood of a cedar tree, including western red cedar, that is not included in the definition of "cedar products" and has been carved, turned, or otherwise manipulated to more than an insignificant degree with the objective intent to be an artistic expression and that would be or is recognized by the applicable local market as having an economic value greater than the value of the raw materials used. Examples of artistic cedar products include, but are not limited to:

- (a) Chainsaw carvings;
- (b) Hand carvings;
- (c) Decorative bowls and boxes.

(2) "Authorization" means a properly completed pre-printed form authorizing the transportation or possession of Christmas trees prepared consistent with RCW 76.48.041.

(3) "Bill of lading" means a written or printed itemized list or statement of particulars pertinent to the transportation or possession of a specialized forest product prepared consistent with RCW 76.48.041.

(4) "Cascara bark" means the bark of a Cascara tree.

(5)(a) "Cedar products" means the following if made from the wood of a cedar tree, including western red cedar:

- (i) Shake and shingle bolts;
- (ii) Fence posts and fence rails;
- (iii) Logs not covered by a valid approved forest practices application or notification under chapter 76.09 RCW; and

(iv) Other pieces measuring fifteen inches or longer.

(b) "Cedar products" does not include those materials identified in the definition of "processed cedar products" or "artistic cedar products."

(6) "Christmas trees" means any evergreen trees including fir, pine, spruce, cedar, and other coniferous species commonly known as Christmas trees. The definition of Christmas trees includes trees with or without the roots intact and the tops of the trees. The definition of Christmas trees does not include trees without limbs or branches.

(7) "Cut or picked evergreen foliage" means evergreen boughs, huckleberry foliage, salal, fern, Oregon grape, rhododendron, mosses, bear grass, and other cut or picked evergreen products. "Cut or picked evergreen foliage" does not include cones, berries, any foliage that does not remain green year-round, seeds, or any plant listed on the state noxious weed list under RCW 17.10.080.

(8) "Department" means the department of natural resources.

(9) "First specialized forest products buyer" means the first person that receives any specialized forest products after they leave the harvest site.

(10) "Harvest" means to separate, by cutting, prying, picking, peeling, breaking, pulling, splitting, or otherwise removing, a specialized forest product. "Harvest" includes both removing a specialized forest product from its original physical connection with the land and collecting a specialized forest product that has been previously separated from the land.

(11) "Harvest site" means each location where one or more persons are engaged in harvesting specialized forest products close enough to each other that communication can be conducted with an investigating law enforcement officer in a normal conversational tone.

(12) "Huckleberry" means the following species of edible berries, if they are not nursery grown: Big huckleberry (*Vaccinium membranaceum*), Cascade blueberry (*Vaccinium deliciosum*), evergreen huckleberry (*Vaccinium ovatum*), red huckleberry (*Vaccinium parvifolium*), globe huckleberry (*Vaccinium globulare*), oval-leaf huckleberry (*Vaccinium ovalifolium*), Alaska huckleberry (*Vaccinium alaskaense*), dwarf huckleberry (*Vaccinium caespitosum*), western huckleberry (*Vaccinium occidentale*), bog blueberry (*Vaccinium uliginosum*), dwarf bilberry (*Vaccinium myrtillus*), and grouse whortleberry (*Vaccinium scoparium*).

(13) "Landowner" means, with regard to real property, the private owner, the state of Washington or any political subdivision, the federal government, or a person who by deed, contract, or lease has authority to harvest and sell the specialized forest products of the property. "Landowner" does not include the purchaser or successful high bidder at a public or private timber sale.

(14) "Native ornamental trees and shrubs" means any trees or shrubs which are not nursery grown and which have been removed from the ground with the roots intact.

(15) "Permittee" means a person who is authorized by a permit issued consistent with this chapter to harvest, possess, and transport specialized forest products or to sell huckleberries.

(16) "Permitter" means the landowner of the land from where specialized forest products were, or are planned to be, harvested under a permit issued consistent with this chapter.

(17) "Person" includes the plural and all corporations, foreign or domestic, copartnerships, firms, and associations of persons.

(18) "Processed cedar products" means products made from the wood of a cedar tree, including western red cedar, that have undergone more than an insignificant degree of value-added processing and are not included in the definition of "cedar products." Examples of processed cedar products include, but are not limited to:

- (a) Shakes;
- (b) Shingles;
- (c) Hop poles;
- (d) Pickets; and
- (e) Stakes.

(19) "Sales invoice" means a written or printed itemized list or statement of particulars pertinent to the transportation or possession of a specialized forest product prepared consistent with RCW 76.48.041.

(20) "Secondary specialized forest products buyer" means any person who receives any specialized forest products after the transaction with the first specialized forest products buyer.

(21) "Specialized forest products" means the following:

- (a) Specialty wood;
- (b) More than five Christmas trees;
- (c) More than five native ornamental trees and shrubs;
- (d) More than twenty pounds of cut or picked evergreen foliage;
- (e) More than five pounds of Cascara bark; and
- (f) More than five United States gallons of wild edible mushrooms.

(22) "Specialized forest products permit" or "permit" means a printed document and all attachments completed in compliance with the requirements of this chapter and includes both validated permits and verifiable permits.

(23) "Specialty wood" means:

- (a) A cedar product; or
- (b) Englemann spruce, Sitka spruce, big leaf maple, or western red alder that:
 - (i) Is in logs, chunks, slabs, stumps, or burls;
 - (ii) Is capable of being cut into a segment that is without knots in a portion of the surface area at least nineteen inches long and seven and a [one-] quarter inches wide when measured from the outer surface toward the center;
 - (iii) Measures:
 - (A) Nineteen inches or longer;
 - (B) Greater than one and three-quarter inches thick; and
 - (C) Seven and one-quarter inches or greater in width;

and

(iv) Is being harvested or transported from areas not associated with the concurrent logging of timber stands:

(A) Under a forest practices application approval or notification received by the department under chapter 76.09 RCW; or

(B) Under a contract or permit issued by an agency of the United States government.

(24) "Specialty wood processor" means any person who purchases, takes, or retains possession of specialty wood for later sale in the same or modified form following removal and delivery from the land where harvested.

(25) "Transportation" means the physical conveyance of specialized forest products outside or off of a harvest site by any means.

(26) "True copy" means a replica of a specialized forest products permit reproduced as provided in RCW 76.48.051.

(27) "Validated permit" means a permit that is validated as required under this chapter prior to the harvest, transportation, or possession of specialized forest products.

(28) "Verifiable permit" means a permit that contains the required information allowing a law enforcement officer to verify the validity of the information contained on the permit but that does not require validation prior to the harvest, transportation, or possession of specialized forest products.

(29) "Wild edible mushrooms" means edible mushrooms not cultivated or propagated by domestic means. [2009 c 245 § 3; 2008 c 191 § 9; 2007 c 392 § 3; 2005 c 401 § 1; 2000 c 11 § 18; 1995 c 366 § 1; 1992 c 184 § 1; 1979 ex.s. c 94 § 1; 1977 ex.s. c 147 § 1; 1967 ex.s. c 47 § 3. Formerly RCW 76.48.020.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Additional notes found at www.leg.wa.gov

76.48.031 Specialized forest products permits—Required—Inspection. (1) Except as provided in RCW 76.48.211, a completed specialized forest products permit issued under this chapter is required prior to engaging in the following activities:

(a) Harvesting any specialized forest products from any lands, including his or her own land.

(b) Possessing or transporting any specialized forest products, unless the person has in his or her possession either of the following in lieu of a permit:

(i) A true copy of the permit;

(ii) If the person is transporting the specialized forest product from a location other than the harvest site or is a first or secondary specialized forest products buyer, a sales invoice, bill of lading, or, for the possession and transportation of Christmas trees only, an authorization if a copy of the authorization has been filed prior to the harvest of the Christmas trees with the sheriff's office for the county in which the Christmas trees are to be harvested;

(iii) A bill of lading or documentation issued in or by another state, a Canadian province, or the federal government indicating the true origin of the specialized forest products as being outside of Washington; or

(iv) If the products were harvested within the operational area defined by a valid forest practices application or notification under chapter 76.09 RCW, a sequentially numbered load ticket generated by the landowner or the landowner's agent that includes, at a minimum, all information required on a bill of lading and the forest practices application number.

(c) Selling, or offering for sale, any amount of raw or unprocessed huckleberries, regardless if the huckleberries were harvested with the consent of the landowner, unless the possessor of the huckleberries being offered for sale is able to show that the huckleberries originated on land owned by the United States forest service and displays a valid permit from the United States forest service that lawfully entitles the possessor to harvest the huckleberries in question.

(2022 Ed.)

(2)(a) Unless otherwise designated by the permittor as provided in this subsection, a permit or true copy must be readily available for inspection at each harvest site.

(b) An individual permit or true copy must be carried and made readily available for inspection by each individual permittee at a harvest site if the permittor designated an individual permit or true copy as an additional condition or limitation specified on the permit under RCW 76.48.081. [2009 c 245 § 4; 2008 c 191 § 3; 2005 c 401 § 3; 1995 c 366 § 5; 1992 c 184 § 2; 1979 ex.s. c 94 § 5; 1977 ex.s. c 147 § 5; 1967 ex.s. c 47 § 7. Formerly RCW 76.48.060.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Additional notes found at www.leg.wa.gov

76.48.041 Contents of authorization, sales invoice, or bill of lading. An authorization, sales invoice, or bill of lading must specify the following in order to satisfy the requirements of this chapter:

(1) The date of the product's transportation.

(2) The amount and type of specialized forest products being transported.

(3) The name and address of the person receiving the specialized forest products.

(4) The name and address of the first or secondary specialized forest products buyer, specialty wood processor, or other person from where the specialized forest products are being transported.

(5) The name of the driver transporting the specialized forest products.

(6) The license plate number of the vehicle transporting the specialized forest product. [2009 c 245 § 5; 1979 ex.s. c 94 § 7; 1967 ex.s. c 47 § 9. Formerly RCW 76.48.080.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

76.48.051 Specialized forest products permit—True copy. (1) A true copy of a specialized forest products permit is valid if:

(a) The copy is reproduced by a copy machine capable of effectively reproducing the permit information required under RCW 76.48.081; and

(b)(i) The permittee has provided an original signature in the space provided on the face of the copy.

(ii) An actual signature of the permittor is also required for a true copy to be valid if the permittor indicates on the space provided for signatures on the original permit that the actual signature of the permittor is required for the validation of any copies.

(2) A true copy is effective until the expiration date of the underlying permit unless an earlier date is provided by the signatories to the copy.

(3) Either signatory to a permit may condition the use of the true copy for only harvesting, only possessing, only transporting, or a combination of harvesting, possessing, and transporting the associated specialized forest products by indicating the limitations of the true copy on the permit or the copy.

(4) Any permittee issuing a true copy must record and retain for one year the following information:

(a) The date the true copy is issued;

(b) The license plate number and make and model of the vehicle to be used with the true copy;

(c) The name and address of the person receiving the true copy;

(d) The unique number assigned to a valid state identification document issued to the person; and

(e) The expiration date of the true copy. [2009 c 245 § 6.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

76.48.061 Permit requirements. (1)(a) Except for the sale of huckleberries, the permit requirements of RCW 76.48.031 may be satisfied with either a validated permit or a verifiable permit. The decision to use a validated or verifiable permit must be made and agreed upon jointly by the permittee and the permittor.

(b) For the sale of huckleberries, only a validated permit satisfies the requirements of RCW 76.48.031.

(2)(a) Forms for both validated permits and verifiable permits must be provided by the department and be made available in reasonable quantities through county sheriff offices and other locations deemed appropriate by the department.

(b) In designing the forms, the department shall ensure that:

(i) All mandatory requirements of this chapter are satisfied;

(ii) The type of permit is clearly marked on the form;

(iii) Each permit is separately numbered and the issuance of the permits are by unique numbers; and

(iv) The form is designed in a manner allowing a permittor to require his or her signature on all true copies as provided in RCW 76.48.051.

(3) Permit forms must be completed in triplicate for each property and in each county in which specialized forest products are proposed to be harvested or huckleberries sold.

(4)(a) Within five business days after the signature of the permittor on the form for a verifiable permit, as required in RCW 76.48.081, the original permit form must be provided by the permittee to the sheriff of the county in which the specialized forest products are to be harvested. The permittee may provide the permit form in a manner convenient to the permittee and the sheriff's office, including in-person presentation or by mail. If mailed, the permit form must be post-marked within the time window established under this subsection.

(b) Upon full completion, as provided in RCW 76.48.081, the permit form for a validated permit must, except for permits to sell huckleberries, be mailed or presented for validation to the sheriff of the county in which the specialized forest products are to be harvested. Validated permits relating to the sale of huckleberries may be validated by the sheriff of any county in the state.

(5) Two copies of the permit must be retained by the permittee, of which one copy must be given or mailed to the permittor by the permittee. The original permit must be retained in the office of the county sheriff for the purposes of verifying the permit, if necessary.

(6) All permits expire no later than the end of the calendar year in which they are issued.

(7) Permits provided under this section are subject to any other conditions or limitations that the permittor may specify.

(8) Before a permit form is accepted or validated by a sheriff, sufficient personal identification may be required to reasonably identify the person mailing or presenting the permit form. The sheriff may conduct other investigations as deemed necessary to determine the validity of the information alleged on the form.

(9) In the event a single land ownership is situated in two or more counties, a permit form must be completed, as provided in this section, for the portions of the ownership situated in each county.

(10) Permits that are validated by or provided to a sheriff's office under this section must be maintained by that office for a length of time determined by the appropriate records retention schedule. [2009 c 245 § 7.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

76.48.071 Validation of forms for verifiable permits and validated permits. (1) Forms for a verifiable permit become valid for the purposes of RCW 76.48.031 upon the completion of all information required by RCW 76.48.081.

(2) Forms for a validated permit become valid for the purposes of RCW 76.48.031 upon the validation of the form by the appropriate county sheriff. [2009 c 245 § 8.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

76.48.081 Specialized forest products permits—Expiration—Specifications. (1) A specialized forest products permit form may not be validated or accepted for verification by a sheriff unless the permit satisfies the requirements of this section.

(2) A properly completed permit form shall include:

(a) The date of its execution and expiration;

(b) The name, address, up to three telephone numbers, and signature of the permittee and permittor;

(c) The type of specialized forest products to be harvested or transported;

(d) The approximate amount or volume of specialized forest products to be harvested or transported;

(e)(i) For validated permits only, the parcel number or the legal description of the property from which the specialized forest products are to be harvested or transported;

(ii) For verifiable permits only:

(A) The parcel number for where the harvesting is to occur, unless the owner of the parcel actually lives at the parcel and the parcel's boundaries comprise an area one acre in size or smaller;

(B) The address of the property where the harvesting is to occur if the owner of the property lives at the parcel and the parcel's boundaries comprise an area less than one acre;

(C) The name of the county where the harvesting is to occur; and

(D) An accurate report or statement from the county assessor of the county where the specialized forest products are to be harvested that provides clear evidence that the permittor named on the verifiable permit is the owner of the parcel named on the permit;

(f) A description by local landmarks of where the harvesting is to occur, or from where the specialized forest products are to be transported;

(g) For specialty wood, a copy of a map or aerial photograph, with defined permitted boundaries, included as an attachment to the permit;

(h)(i) For validated permits, a copy of a valid picture identification of the permittee on the copy of the permit form that is presented to the sheriff; and

(ii) For verifiable permits, the unique number assigned to a valid state identification document for both the permittee and permittor; and

(i) The details of any other condition or limitation which the permittor may specify.

(3) For permits intended to satisfy the requirements of RCW 76.48.031 relating to the sale of huckleberries, the permit:

(a) Must, in addition to the requirements of subsection (2) of this section, also contain information relating to where the huckleberries were, or plan to be, harvested, and the approximate amount of huckleberries that are going to be offered for sale; and

(b) Must include a statement designed to inform the possessor that permission from the landowner is still required prior to the harvesting of huckleberries. [2009 c 245 § 9; 2008 c 191 § 2; 2005 c 401 § 2; 1995 c 366 § 4; 1979 ex.s. c 94 § 4; 1977 ex.s. c 147 § 4; 1967 ex.s. c 47 § 6. Formerly RCW 76.48.050.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Additional notes found at www.leg.wa.gov

76.48.091 Acceptance and validation of permits—Authorized agents. (1) County sheriffs may contract with other entities to serve as authorized agents to accept and validate permits under RCW 76.48.061. Entities that a county sheriff may contract with include the department, the United States forest service, the bureau of land management, local police departments, and other entities as decided upon by the county sheriffs' departments.

(2) An entity that contracts with a county sheriff to serve as an authorized agent under this section may make reasonable efforts to verify the information provided on the permit form such as the legal description or parcel number of the area where harvesting is to occur.

(3) All processes and requirements applicable to county sheriffs under RCW 76.48.061 also apply to entities contracted under this section. [2009 c 245 § 10; 1995 c 366 § 15. Formerly RCW 76.48.062.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Additional notes found at www.leg.wa.gov

76.48.101 Possession of specialized forest products by first or secondary buyer—Display of documentation—Specialty wood processors. (1) It is unlawful for any first or secondary specialized forest products buyer, or for any other person, to purchase, take possession of, or retain specialized forest products subsequent to the harvesting and prior to the retail sale of the products unless the supplier of the product displays:

(a) An apparently valid permit required by RCW 76.48.031;

(b) A true copy of an apparently valid permit; or

(c) When applicable:

(i) A bill of lading, authorization, sales invoice, or a government-issued documentation, prepared consistent with RCW 76.48.031 indicating the true origin of the specialized forest products as being outside of Washington;

(ii) If the products were harvested within the operational area defined by a valid forest practices application or notification under chapter 76.09 RCW, a sequentially numbered load ticket generated by the landowner or the landowner's agent that includes, at a minimum, all information required on a bill of lading and the forest practices application number; or

(iii) A statement claiming the products offered for sale are otherwise exempt from the permit requirements of this chapter under RCW 76.48.211.

(2) In addition to the requirements of RCW 76.48.111, specialty wood processors are required to ensure that a bill of lading, authorization, or sales invoice accompanies all specialty wood upon the receipt of the specialty wood into or the shipping of the specialty wood out of the property of the specialty wood processor. [2009 c 245 § 11; 2005 c 401 § 7; 1979 ex.s. c 94 § 9; 1977 ex.s. c 147 § 11. Formerly RCW 76.48.094.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

76.48.111 Specialized forest products buyers and huckleberry buyers—Required records. (1)(a) First and secondary specialized forest products buyers and huckleberry buyers are required to record:

(i) If the person is a first specialized forest product buyer, the permit number or, if applicable, a sequentially numbered load ticket generated by the landowner or the landowner's agent that includes, at a minimum, all information required on a bill of lading and the forest practices application or notification number if the seller claims the specialized forest product in question is exempt from the permit requirements of this chapter, as provided in RCW 76.48.211, due to its harvest within the operational area defined by a valid forest practices application or notification under chapter 76.09 RCW;

(ii) Whether or not the products were accompanied by a bill of lading, authorization, or sales invoice;

(iii) The type of specialized forest product purchased, and, if applicable, an indication that huckleberries were purchased;

(iv) The name of the seller;

(v) The amount of specialized forest product or huckleberries purchased;

(vi) The date of delivery;

(vii) The name of the person driving the vehicle in which the specialized forest products were transported to the buyer, as confirmed by a visual inspection of the applicable driver's license, unless the buyer has previously recorded the driver's information in an accessible record; and

(viii) Except for transactions involving Christmas trees, the license plate number of the vehicle in which the specialized forest products were transported to the buyer.

(b) First and secondary specialized forest products buyers shall keep a record of this information, along with any accompanying bill of lading, sales invoice, or authorization, for a period of one year from the date of purchase and must make the records available for inspection upon demand by

enforcement officials authorized under RCW 76.48.181 to enforce this chapter.

(c) In lieu of a permit number or forest practices identification and load ticket number, the buyer may, when applicable, note that the seller claims that the products offered for sale are exempt from the permit requirements of this chapter under RCW 76.48.211, or were lawfully transported into Washington from out of state. All other information required by this section must be recorded.

(2) This section does not apply to buyers of specialized forest products at the retail sales level.

(3) Records of buyers of specialized forest products and huckleberries collected under this section may be made available to colleges and universities for the purpose of research. [2009 c 245 § 12; 2008 c 191 § 4; 2005 c 401 § 6; 2000 c 11 § 19; 1995 c 366 § 14. Formerly RCW 76.48.085.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Additional notes found at www.leg.wa.gov

76.48.121 Display of business license. Every first or secondary specialized forest products buyer purchasing specialty wood and every specialty wood processor must prominently display the business license issued under RCW 19.02.070 and endorsed with the respective licenses or registrations or a copy of the business license at each location where the buyer or processor receives specialty wood if the first or secondary specialized forest products buyer or specialty wood processor is required to possess a license incorporated into the business licensing system created in chapter 19.02 RCW. [2013 c 144 § 49; 2011 c 298 § 34; 2009 c 245 § 13; 2005 c 401 § 9; 1995 c 366 § 9; 1979 ex.s. c 94 § 11; 1977 ex.s. c 147 § 13. Formerly RCW 76.48.098.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 298: See notes following RCW 19.02.020.

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Additional notes found at www.leg.wa.gov

76.48.131 Unlawful acts. It is unlawful for any person to:

(1) Sell or attempt to sell huckleberries, or harvest, possess, or transport specialized forest products in violation of RCW 76.48.031;

(2) Engage in activities or phases of harvesting specialized forest products not authorized by a permit under this chapter;

(3) Harvest specialized forest products in any lesser quantities than those specified in RCW 76.48.031 without first obtaining permission from the landowner or the landowner's authorized agent or representative; or

(4) Harvest huckleberries in any amount using a rake, mechanical device, or any other method that damages the huckleberry bush. [2009 c 245 § 14; 2007 c 392 § 4; 1995 c 366 § 2; 1979 ex.s. c 94 § 2; 1977 ex.s. c 147 § 2; 1967 ex.s. c 47 § 4. Formerly RCW 76.48.030.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Additional notes found at www.leg.wa.gov

76.48.141 False, fraudulent, forged, or stolen specialized forest products permit, sales invoice, bill of lading, etc.—Penalty. (1) It is unlawful for any person, upon official inquiry, investigation, or other authorized proceedings,

to:

(a) Offer as genuine any paper, document, or other instrument in writing purporting to be a specialized forest products permit, true copy of a permit, authorization, sales invoice, bill of lading, or other document required under this chapter; or

(b) To make any representation of authority to possess or conduct harvesting or transporting of specialized forest products, or to conduct the sale of huckleberries, with knowledge that the representation of authority is in any manner false, fraudulent, forged, or stolen.

(2) It is unlawful for any person to produce a document for a first or secondary specialized forest products buyer purporting to be a true and genuine permit when delivering or attempting to deliver a specialized forest product with knowledge that the document is in any manner false, fraudulent, forged, or stolen.

(3) Any person who knowingly or intentionally violates this section is guilty of a class C felony punishable by imprisonment in a state correctional institution for a maximum term fixed by the court of not more than five years or by a fine of not more than five thousand dollars, or by both imprisonment and fine. [2009 c 245 § 15; 2008 c 191 § 7; 2003 c 53 § 373; 1995 c 366 § 12; 1979 ex.s. c 94 § 14; 1977 ex.s. c 147 § 9; 1967 ex.s. c 47 § 13. Formerly RCW 76.48.120.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

76.48.151 Penalties—Affirmative defense. (1) Except as provided in RCW 76.48.141, a person who violates a provision of this chapter is guilty of a gross misdemeanor punishable by a fine of not more than one thousand dollars, imprisonment in the county jail for up to three hundred sixty-four days, or by both a fine and imprisonment.

(2) In any prosecution for a violation of this chapter's requirements to obtain or possess a specialized forest products permit, true copy, bill of lading, authorization, or sales invoice, it is an affirmative defense, if established by the defendant by a preponderance of the evidence, that:

(a) The specialized forest products were harvested from the defendant's own land; or

(b) The specialized forest products were harvested with the permission of the landowner. [2011 c 96 § 56; 2009 c 245 § 16; 2007 c 392 § 1; 1995 c 366 § 13; 1977 ex.s. c 147 § 10; 1967 ex.s. c 47 § 14. Formerly RCW 76.48.130.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Additional notes found at www.leg.wa.gov

76.48.161 Multiple convictions for violating RCW 76.48.141 or 76.48.151—Suspension of privileges to obtain a specialized forest products permit. (1) The court presiding over the conviction of any person for a violation of RCW 76.48.141 or 76.48.151 who has been convicted of violating either RCW 76.48.141 or 76.48.151 at least two other times shall order up to a three-year suspension of that person's privilege to obtain a specialized forest products permit under this chapter.

(2) If a court issues a suspension under this section after a conviction involving the misuse of a permit with a specified permittor, the legislature requests that the court notify the permittor listed on the permit of the suspension.

(3) Nothing in this section limits the ability of a court to order the suspension of any privileges related to specialized forest products as a condition of probation regardless of whether the person has any past convictions. [2009 c 245 § 17.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

76.48.171 Disposition of fines. All fines collected for violations of this chapter shall be paid into the general fund of the county treasury of the county in which the violation occurred and distributed equally among the district courts in the county, the county sheriff's office, and the state treasurer. The portion of the revenue provided to the state treasurer must be distributed to the specialized forest products outreach and education account created in RCW 76.48.251. [2009 c 245 § 18; 2005 c 401 § 12; 1977 ex.s. c 147 § 15. Formerly RCW 76.48.140.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

76.48.181 Agencies responsible for enforcement of chapter. (1) Primary enforcement responsibility of this chapter belongs with county sheriffs. However, other entities that may enforce this chapter include:

- (a) The department;
- (b) The Washington state patrol;
- (c) County or municipal police forces;
- (d) Authorized personnel of the United States forest service; and
- (e) Authorized personnel of the department of fish and wildlife.

(2) The legislature encourages county sheriffs' offices to enter into interlocal agreements with these other agencies in order to receive additional assistance with their enforcement responsibilities. [2009 c 245 § 19; 1995 c 366 § 3; 1994 c 264 § 51; 1988 c 36 § 49; 1979 ex.s. c 94 § 3; 1977 ex.s. c 147 § 3; 1967 ex.s. c 47 § 5. Formerly RCW 76.48.040.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Additional notes found at www.leg.wa.gov

76.48.191 Detention of specialized forest products and documentation. (1) A law enforcement officer may take into custody and detain for a reasonable time any specialized forest products, authorizations, sales invoices, bills of lading, other documents, and vehicles in which the specialized forest products were transported if, under official inquiry, investigation, or other authorized proceeding regarding specialized forest products not covered by a valid permit or other acceptable document as provided in this chapter, the inspecting law enforcement officer has probable cause to believe that the specialized forest products were obtained in violation of this chapter until the true origin of the specialized forest products can be determined.

(2) A law enforcement officer may retain a specialized forest products permit, true copy of a permit, authorization, sales invoice, bill of lading, or other document required under this chapter if the officer reasonably suspects that the docu-

ment is forged in violation of RCW 76.48.141, fraudulent, or stolen, until the authenticity of the document can be verified.

(3)(a) If no arrest is made at the conclusion of the official inquiry, investigation, or other authorized proceeding for a violation of this chapter or another state law, all materials detained under this section must be returned to the person or persons from whom the materials were taken.

(b)(i) If an arrest does follow the inquiry, investigation, or authorized proceeding, and the law enforcement officer has probable cause to believe that a person is selling or attempting to sell huckleberries, or is harvesting, in possession of, or transporting specialized forest products in violation of this chapter, any specialized forest products or huckleberries found at the time of arrest may be seized.

(ii) If the specialized forest product triggering the arrest is specialty wood, the law enforcement officer may also seize any equipment, vehicles, tools, or paperwork associated with the arrest.

(c) Materials seized under this chapter are subject to the provisions of RCW 76.48.201. [2009 c 245 § 20.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

76.48.201 Protection of items seized under RCW 76.48.191—Disposition of items. (1)(a) Reasonable protection must be provided for any equipment, vehicles, tools, paperwork, huckleberries, or specialized forest products seized under RCW 76.48.191 during the period of adjudication unless the court before which the arrested person is ordered to appear orders the disposal of any or all of the seized materials.

(b) Given the perishable nature of huckleberries and specialized forest products, the seizing agency may sell the product at fair market value and retain all proceeds until a final disposition of the case has been reached.

(2) Upon any disposition of the case by the court, the court shall:

(a) Make a reasonable effort to return all materials seized under RCW 76.48.191 to its lawful owner or owners; or

(b) Order the disposal of or return of any or all materials seized under this section, including tools, vehicles, equipment, paperwork, or specialized forest products.

(3) If the court orders the disposal of seized materials, it may:

(a) Pay the proceeds of any sale of seized specialized forest products or huckleberries, less any reasonable expenses of the sale, to the lawful owner; or

(b) Pay the proceeds of any sale of seized tools, equipment, or vehicles, less any reasonable expenses of the sale or, if applicable, towards any outstanding court costs, and then to the lawful owner or owners.

(4) If, for any reason, the proceeds of any sale of materials seized under this section cannot be provided to the lawful owner, the proceeds of the sale, less reasonable expenses relating to the sale, shall be paid to the treasurer of the county in which the violation occurred for deposit into the county general fund and for distribution equally among the district courts in the county, the county sheriff's office, and the state treasurer. The portion of the revenue provided to the state treasurer must be distributed to the specialized forest products outreach and education account created in RCW 76.48.251.

(5) The owner or owners of materials seized under RCW 76.48.191 must be offered an opportunity to appeal an order for the disposal of the seized materials.

(6) The return of materials seized under RCW 76.48.191, or the payment of the proceeds of any sale of products seized to the owner, shall not preclude the court from imposing any fine or penalty upon the violator for the violation of the provisions of this chapter. [2009 c 245 § 21; 2008 c 191 § 6; 2005 c 401 § 11; 1995 c 366 § 11; 1979 ex.s. c 94 § 13; 1977 ex.s. c 147 § 8; 1967 ex.s. c 47 § 12. Formerly RCW 76.48.110.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Additional notes found at www.leg.wa.gov

76.48.211 Exemptions. Except as otherwise conditioned, this chapter does not apply to:

(1) Nursery grown products.

(2) The following products when harvested within the operational areas as defined by a valid forest practices application or notification under chapter 76.09 RCW, and when the person harvesting is able to provide a sequentially numbered load ticket provided by the landowner or the landowner's agent that includes, at a minimum, all information required on a bill of lading and the forest practices application or notification number, or under a contract or permit issued by an agency of the United States government:

(a) Logs;

(b) Speciality wood;

(c) Cut or picked evergreen foliage;

(d) Poles;

(e) Pilings; or

(f) Other major forest products from which substantially all of the limbs and branches have been removed.

(3) Noncommercial harvest, transportation, or possession by the landowner, the landowner's agent, representative, or lessee of specialized forest products originating from property belonging to the landowner.

(4) Harvest, transportation, or possession of specialized forest products by:

(a) A governmental entity or the entity's agent for the purposes of clearing or maintaining the governmental entity's right-of-way or easement; or

(b) A public or regulated utility or the utility's agent for the purpose of clearing or maintaining the utility's right-of-way or easement. [2009 c 245 § 22; 2005 c 401 § 10; 1995 c 366 § 10; 1979 ex.s. c 94 § 12; 1977 ex.s. c 147 § 7; 1967 ex.s. c 47 § 11. Formerly RCW 76.48.100.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Additional notes found at www.leg.wa.gov

76.48.221 Effect of RCW 76.48.031 with respect to huckleberries. (1) Nothing in RCW 76.48.031 creates a requirement that a specialized forest products permit is required for an individual to harvest, possess, or transport huckleberries.

(2) Compliance with RCW 76.48.031 allows an individual to sell, or offer for sale, raw or unprocessed huckleberries. Possession of a specialized forest products permit does not create a right or privilege to harvest huckleberries. Huckleberries may be harvested only with the permission of the landowner and under the terms and conditions established

between the landowner and the harvester. [2009 c 245 § 23; 2008 c 191 § 1. Formerly RCW 76.48.210.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

76.48.231 Department to develop educational material. (1) Subject to the availability of funds in the specialized forest products outreach and education account established under RCW 76.48.251, the department shall develop educational material, including printed information, for law enforcement, forestland owners, and specialized forest products permittees, buyers, and processors specific to this chapter.

(2) The department is encouraged to foster partnerships with federal agencies, other state agencies, universities, local governments, and private interests in order to minimize educational and outreach expenses. [2009 c 245 § 24; 2005 c 401 § 13. Formerly RCW 76.48.150.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

76.48.241 Assistance and training for minority groups. (1) Minority groups have long been participants in the specialized forest products and huckleberry harvesting industry. The legislature encourages agencies serving minority communities, community-based organizations, refugee centers, social service agencies, agencies and organizations with expertise in the specialized forest products and huckleberry harvesting industries, and other interested groups to work cooperatively to accomplish the following purposes:

(a) To provide assistance and make referrals on translation services and to assist in translating educational materials, laws, and rules regarding specialized forest products and huckleberries;

(b) To hold clinics to teach techniques for effective picking; and

(c) To work with both minority and nonminority permittees in order to protect resources and foster understanding between minority and nonminority permittees.

(2) To the extent practicable within their existing resources, the department, the state commission on Asian Pacific American affairs created in RCW 43.117.030, and the state commission on Hispanic affairs created in RCW 43.115.020 are encouraged to coordinate efforts under this chapter. [2009 c 245 § 25; 2008 c 191 § 8; 1995 c 366 § 17. Formerly RCW 76.48.200.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Additional notes found at www.leg.wa.gov

76.48.251 Specialized forest products outreach and education account. The specialized forest products outreach and education account is created in the custody of the state treasurer. All receipts from RCW 76.48.171 and 76.48.201, any legislative appropriations, private donations, or any other private or public source directed to the account must be deposited in the account. Expenditures from the account may only be used by the department for funding activities under RCW 76.48.231 and 76.48.241. Only the commissioner of public lands or the commissioner's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an

appropriation is not required for expenditures. [2009 c 245 § 26.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

76.48.907 Saving—1967 ex.s. c 47. This chapter is not intended to repeal, supersede, or modify any provision of existing law. [2009 c 245 § 28; 1967 ex.s. c 47 § 16. Formerly RCW 76.48.910.]

Chapter 76.52 RCW

COOPERATIVE FOREST MANAGEMENT SERVICES ACT

Sections

76.52.010	Short title.
76.52.020	Contracts with landowners.
76.52.030	Extending department forest management services to landowners.
76.52.040	Disposition of funds from landowners.

76.52.010 Short title. This chapter shall be known and cited as the "cooperative forest management services act." [1979 c 100 § 1.]

76.52.020 Contracts with landowners. The department of natural resources may, by agreement, make available to forestland owners, equipment, materials, and personnel for the purpose of more intensively managing or protecting the land when the department determines that such services are not otherwise available at a cost which would encourage the landowner to so avail himself or herself, and that the use of department equipment, materials, or personnel will not jeopardize the management of state lands or other programs of the department. The department shall enter into a contractual agreement with the landowner for services rendered and shall recover the costs thereof. [2013 c 23 § 237; 1979 c 100 § 2.]

76.52.030 Extending department forest management services to landowners. The department may, by agreement, extend forest management services to private lands as a condition of carrying out such services on state lands when the private lands are adjacent to or in close proximity to the state lands being treated. The agreement shall include provisions requiring the parties to pay all costs attributable to the conducting of the services on their respective lands. [1979 c 100 § 3.]

76.52.040 Disposition of funds from landowners. Costs recovered by the department as a result of extending forest management practices to private lands shall be credited to the program or programs providing the services. The department will report by December 31 of each odd numbered year up to and including 1985 to the house and senate natural resources committees the private acres treated as a result of this chapter. [1979 c 100 § 4.]

(2022 Ed.)

Chapter 76.56 RCW CENTER FOR INTERNATIONAL TRADE IN FOREST PRODUCTS

Sections

76.56.010	Center for international trade in forest products created at the University of Washington.
76.56.020	Duties.
76.56.030	Director—Appointment.
76.56.040	Use of center's programs, research, and advisory services—Schedule of fees.
76.56.050	Solicitation of financial contributions and support—Annual report—Use of other funds.

76.56.010 Center for international trade in forest products created at the University of Washington. There is created a center for international trade in forest products at the University of Washington in the college of forest resources, which shall be referred to in this chapter as "the center." The center shall operate under the authority of the board of regents of the University of Washington. [1985 c 122 § 1.]

76.56.020 Duties. The center shall:

(1) Coordinate the University of Washington's college of forest resources' faculty and staff expertise to assist in:

(a) The development of research and analysis for developing policies and strategies which will expand forest-based international trade, including a major focus on secondary manufacturing;

(b) The development of technology or commercialization support for manufactured products that will meet the evolving needs of international customers;

(c) The development of research and analysis on other factors critical to forest-based trade, including the quality and availability of raw wood resources; and

(d) The coordination, development, and dissemination of market and technical information relevant to international trade in forest products, including a major focus on secondary manufacturing;

(2) Further develop and maintain computer databases on worldwide forest products production and trade in order to monitor and report on trends significant to the Northwest forest products industry and support the center's research functions; and coordinate this system with state, federal, and private sector efforts to insure a cost-effective information resource that will avoid unnecessary duplication;

(3) Monitor international forest products markets and assess the status of the state's forest products industry, including the competitiveness of small and medium-sized secondary manufacturing firms in the forest products industry, which for the purposes of this chapter shall be firms with annual revenues of twenty-five million or less, and including the increased exports of Washington-produced products of small and medium-sized secondary manufacturing firms;

(4) Provide high quality research and graduate education and professional nondegree training in international trade in forest products in cooperation with the University of Washington's graduate school of business administration, the school of law, the Jackson school of international studies, the Northwest policy center of the graduate school of public administration, and other supporting academic units;

(5) Develop cooperative linkages with the international marketing program for agricultural commodities and trade at Washington State University, the international trade project of the United States forest service, the department of natural resources, the *department of community, trade, and economic development, the small business export finance assistance center, and other state and federal agencies to avoid duplication of effort and programs;

(6) Cooperate with personnel from the state's community and technical colleges in their development of wood products manufacturing and wood technology curriculum and offer periodic workshops on wood products manufacturing, wood technology, and trade opportunities to community colleges and private educators and trainers;

(7) Provide for public dissemination of research, analysis, and results of the center's programs to all groups, including direct assistance groups, through technical workshops, short courses, international and national symposia, cooperation with private sector networks and marketing associations, or other means, including appropriate publications;

(8) Establish an executive policy board, including representatives of small and medium-sized businesses, with at least fifty percent of its business members representing small businesses with one hundred or fewer employees and medium-sized businesses with one hundred to five hundred employees. The executive policy board shall also include a representative of the community and technical colleges, representatives of state and federal agencies, and a representative of a wood products manufacturing network or trade association of small and medium-sized wood product manufacturers. The executive policy board shall provide advice on: Overall policy direction and program priorities, state and federal budget requests, securing additional research funds, identifying priority areas of focus for research efforts, selection of projects for research, and dissemination of results of research efforts; and

(9) Establish advisory or technical committees for each research program area, to advise on research program area priorities, consistent with the international trade opportunities achievable by the forest products sector of the state and region, to help ensure projects are relevant to industry needs, and to advise on and support effective dissemination of research results. Each advisory or technical committee shall include representatives of forest products industries that might benefit from this research.

Service on the committees and the executive policy board established in subsections (8) and (9) of this section shall be without compensation but actual travel expenses incurred in connection with service to the center may be reimbursed from appropriated funds in accordance with RCW 43.03.050 and 43.03.060. [1994 c 282 § 1; 1992 c 121 § 1; 1987 c 195 § 16; 1985 c 122 § 2.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Additional notes found at www.leg.wa.gov

76.56.030 Director—Appointment. The center shall be administered by a director appointed by the dean of the college of forest resources of the University of Washington. The director shall be a member of the professional staff of that college. [1985 c 122 § 3.]

76.56.040 Use of center's programs, research, and advisory services—Schedule of fees. The governor, the legislature, state agencies, and the public may use the center's programs, research, and advisory services as may be needed. The center shall establish a schedule of fees for actual services rendered. [1985 c 122 § 4.]

76.56.050 Solicitation of financial contributions and support—Annual report—Use of other funds. The center shall aggressively solicit financial contributions and support from the forest products industry, federal and state agencies, and other granting sources or through other arrangements to assist in conducting its activities. Subject to RCW 40.07.040, the center shall report annually to the governor and the legislature on its success in obtaining funding from nonstate sources and on its accomplishments in meeting the provisions of this chapter. It may also use separately appropriated funds of the University of Washington for the center's activities. [1994 c 282 § 2; 1987 c 505 § 74; 1985 c 122 § 5.]

Additional notes found at www.leg.wa.gov