

12. Washington State Legislature

12.1 Introduction

In 1974, the Washington State Legislature passed the Forest Practices Act declaring that:

“forest land 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” (RCW 76.09.010).

The Act was the state’s first comprehensive law addressing the impacts of forest practices on the environment. The Act also created the Forest Practices Board, which sets the specific standards that are the basis for the Forest Practices Program.

Each year, DNR monitors laws being passed by the Washington State Legislature for those that could impact the Forest Practices Program. The table in section 12.2 describes the laws passed in the 2011 Washington State legislative session that could affect the Forest Practices Program. However, there were no new laws that would result in a change in protection of habitat for the species covered in the Forest Practices HCP.

2011 legislation that most significantly affected the Forest Practices Program included ESHB 1509 which made several changes to the Forestry Riparian Easement Program (FREP) and will result in changes to the rules (chapter 222-21WAC). Also, House Bill 1582 eliminated all references to “lands platted after January 1, 1960” from RCW 76.09.050, which is the statute that defines classes of forest practices. Proposed forest practices on these lands will not automatically be assumed to be conversions to a non-forestry use, and therefore will not automatically be designated as a Class IV-General application.

12.2 Provisions of Selected 2011 Washington State Laws

Selected 2011 Washington State Laws Affecting the Forest Practices Program				
Bill #	Title ("AN ACT relating to ...")	Provisions	Status	Effect*
HB1150	...extending the time in which a small business may correct a violation without a penalty.	<p>This bill applies to small businesses which employ less than 50 employees, as defined in RCW 43.05 (Regulatory Reform).</p> <p>The bill extends the time period from 2 business days to 7 calendar days for a violator to correct a violation before an agency can impose a fine or administrative sanctions. Administrative sanctions are not defined in the bill; the Forest Practices Program believes the bill includes all enforcement actions issued by the Forest Practices Program. Delaying the issuance of an enforcement action by 7 days could allow damages to public resources to continue for that length of time instead of allowing the program to require immediate action through enforcement documents to stop damages to the resource. The delay may also cause the state Department of Ecology to exercise RCW 76.09.100, to petition the Pollution Control Hearings Board to require the Forest Practices Program to issue a Notice to Comply and/or Stop Work Order or issue a civil penalty.</p> <p>However, the bill offers exceptions to the 7-day time period for the following reasons:</p> <ul style="list-style-type: none"> • The Commissioner of Public Lands determines that the effects of the violation presents direct danger to public health, will result in a loss of income or benefits to an employee, poses a potentially significant threat to human health or the environment, or causes serious harm to the public interest; • The violation involves a knowing or willful violation; • The small business committing the violation previously violated a substantially similar requirement; • The Commissioner finds that the 7-day time period is in conflict with federal law or program requirements, such as 	law, effective 7/22/2011	direct, no rule- making required

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Bill #	Title ("AN ACT relating to ...")	Provisions	Status	Effect*
		<p>the Clean Water Act;</p> <ul style="list-style-type: none"> • The owner or operator of the small business committing the violation owns or operates, or owned or operated a different small business which previously violated a substantially similar requirement. <p>The exceptions would allow the Commissioner to determine that the DNR may take appropriate enforcement actions for all forest practices violations with the potential for damage to public health, public resources, or will violate any federal law or program (such as the Clean Water Act).</p>		
ESHB1509	...the Forestry Riparian Easement Program.	<p>This bill makes nine changes to the current Forestry Riparian Easement Program (FREP):</p> <ol style="list-style-type: none"> 1. Defines a qualifying small forest landowner for FREP as a for profit entity meeting the eligibility of a small forest landowner at the time compensation is offered for a forestry riparian easement. [Section 1(2)(b)(ii) and (2)(d)] 2. Expands the definition for qualifying timber to include forest trees associated with an approved Forest Practices Application that cannot be harvested according to Forest Practices Rules on areas of potentially unstable slopes or landforms with the potential to deliver sediment/debris to a public resource or threaten public safety. [Section 1(2)(c)(iii)] 3. Limits compensation for timber on potentially unstable slopes or landforms to \$50,000 in any biennial funding period.[Section 1(8)(a)] 4. Requires DNR Small Forest Landowner Office (SFLO), subject to available appropriated funds, to utilize no more than 50% of the funds to determine the value of forest riparian easements based on the value of the timber on the date the complete Forestry Riparian Easement Program application is received by the DNR. [Section 1(7)(b)] 	law, effective 7/22/2011	direct, rule-making required

Selected 2011 Washington State Laws Affecting the Forest Practices Program

Bill #	Title ("AN ACT relating to ...")	Provisions	Status	Effect*
		<p>5. Changes the starting date of the 50-year easement from the date the forest practice application pertaining to the easement area is received to the date the completed riparian easement application is received. [Section 1(4)]</p> <p>6. Expands the authority for the DNR to reimburse qualifying landowners for the preparation costs of a forestry riparian easement (e.g. adding geotechnical reports).[Section 2]</p> <p>7. Requires DNR to submit to the Governor, before November 1 of each even-numbered year, a list of all forestry riparian easements to be funded. This list must include the date of each application, the type of qualifying timber, estimates of the value of the easement and aerial photograph maps of the easement area. The Governor then determines which applications are to be funded by submitting the list in a capital budget request to the legislature. The Governor or the legislature may remove an application if there is evidence the applicant is a non-qualifying landowner.</p> <p>8. Requires DNR to collect full reimbursement for a funded forestry riparian easement from the selling landowner if the land containing the purchased easement is sold to a non-qualifying landowner within the first 10 years after compensation. [Section 5]</p> <p>9. Directs the chair of the Forest Practices Board to form a group of stakeholders to investigate and recommend potential new long-term funding sources for the Forestry Riparian Easement Program and report to the legislature by October 31, 2011. Group will disband after July 31, 2012. [Section 6]</p> <p>HB 1509 had one substitute and one engrossed substitute bill. Changes from the original version to the substitute and engrossed substitute are as follows:</p>		

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Bill #	Title ("AN ACT relating to ...")	Provisions	Status	Effect*
		<ol style="list-style-type: none"> 1. Removes from the eligibility requirements for qualifying small forest landowners: <ul style="list-style-type: none"> • The requirement to have a forest stewardship plan or forest certification on the land the easement occupies. • The requirement to have owned the property the easement occupies before July 1, 2011 or be a descendant of the owner. 2. Expands the definition for qualifying timber to include timber associated with potentially unstable landforms with potential to deliver debris to a public resource <u>or threaten public safety</u>. 3. Changes the limit for compensation to a small forest landowner for timber associated with potentially unstable slopes from \$100,000 in a four-year period to \$50,000 in any biennial funding period. 4. Limits DNR, when funding is available, to spend no more than 50% of the available appropriated funds to determine the value of qualifying timber for completed forestry riparian easement applications. 5. Changes the starting date that the 50-year forest riparian easement term will begin from the date the easement is acquired to the date the completed easement application is received by DNR. 6. Requires the selling landowner to reimburse the state for the full riparian easement compensation if the land the easement occupies is sold to a non-qualifying landowner within the first 10 years after compensation. 7. Requires DNR to submit to the Governor, before November 1 of each even-numbered year, a list of all forest riparian easements proposed for funding. This list must include the date of each easement application, the type of qualifying timber, estimates of the value of the riparian easement, and aerial photograph maps of the easement area. 		

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Bill #	Title ("AN ACT relating to ...")	Provisions	Status	Effect*
HB 1582	... Forest Practices Applications leading to conversion of land for development purposes.	<p>The bill removes the phrases "lands platted after January 1, 1960" and "lands that have or are being converted" from the statute defining classes of forest practices, and replaces them with language that all forest lands that are being converted to another use are Class IV Forest Practices Applications. The bill establishes in the Forest Practices Statutes that:</p> <ol style="list-style-type: none"> 1. Class II Forest Practices Applications shall not include forest practices on forest lands that are being converted to another use. 2. Class IV-General (forest conversion) Forest Practices Applications are forest practices other than those contained in Class I or II on forest lands that: <ul style="list-style-type: none"> • are being converted to another use; • are likely to be converted to urban development (within Urban Growth Areas); and • involve any timber harvest or road construction activities on forest land within Urban Growth Areas except where the forest landowner provides one of the two opt-outs. 	law, effective 7/22/2011	direct, rule-making required
SB5500	...rule making process for state economic policy.	<p>Bill amends the Regulatory Fairness Act (RCW 19.85.030 and 19.85.070) relating to the small business economic impact statement.</p> <p>Agencies with rule making authority "MUST adopt methods and procedures which will insure that economic IMPACTS AND values will be give consideration in the rule making process."</p> <p>When the agency determines that there are disproportionate impacts to small businesses if a rule is adopted, then the agency would be required to consider information from small businesses if the agency has received any information from small businesses on probable cost impacts.</p>	law, effective 7/22/2011	indirect