

Introduced: 1/19/76
Referred: Resources

1 IN THE HOUSE

BY M. BEIRNE AND MILLER

2 HOUSE BILL NO. 607

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act creating the Alaska Forest Practices Act."

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

8 * Section 1. AS 38 is amended by adding a new chapter to read:

9 CHAPTER 08. ALASKA FOREST PRACTICES ACT.

10 Sec. 38.08.010. LEGISLATIVE FINDINGS. (a) The legislature finds
11 that the forest resources of the state are among the most valuable of
12 the natural resources of the state and that there is great concern
13 throughout the state relating to their utilization, restoration, and
14 protection.

15 (b) The legislature further finds that the forest resources of
16 the state furnish high quality timber, recreational opportunities, and
17 aesthetic enjoyment while providing watershed protection and maintain-
18 ing fisheries and wildlife.

19 (c) The legislature thus declares that it is the policy of the
20 state to encourage prudent and responsible forest resource management
21 calculated to serve the public's need for timber and other forest
22 products, and provide for the public's need for watershed protection,
23 fisheries and wildlife, aesthetic enjoyment, and recreational oppor-
24 tunities alike in this and future generations.

25 (d) It is not the intent of the legislature by the enactment of
26 this chapter to take private property for public use without payment
27 of just compensation.

28 ARTICLE 1. FOREST PRACTICES BOARD AND ADVISORY COMMITTEES.

29 Sec. 38.08.020. FOREST PRACTICES BOARD. (a) There is created the

1 Forest Practices Board within the Department of Natural Resources
2 consisting of five members appointed by the governor, subject to confir-
3 mation by a majority of the members of the legislature in joint session.

4 (b) Members shall be appointed without regard to political affili-
5 ation and on the basis of their educational and professional qualifi-
6 cations and their general knowledge, interest in, and experience with
7 problems relating to forest management and practices, watershed and fish
8 and game management, forest economics, and land-use planning. One
9 member shall be a professional forester, one member a biologist or soil
10 scientist, one member a professional land planner, and two members from
11 the general public. No member may have a financial interest related to
12 the timber production which profits directly from the supplying, proces-
13 sing, distributing or marketing of timber resources. A person may not
14 be appointed if his membership on the board would provide him with a
15 distinct influence over his financial interests, which influence is
16 unavailable to a nonmember with similar or identical financial inter-
17 ests.

18 (c) Each member of the board shall hold office for four years.
19 Upon initial appointment one member shall be appointed for two years,
20 two members for three years, and two members for four years. Vacancies
21 shall be immediately filled by the governor. The board shall select a
22 chairman from among its members.

23 (d) The board shall hold no less than two meetings a year and may
24 hold other meetings at times and places considered appropriate by the
25 chairman. Three members of the board constitutes a quorum for the
26 transaction of business. However, no less than three members of the
27 board may establish districts, approve regulations, approve, deny or re-
28 voke a permit, adopt stocking standards, define emergencies under sec.
29 290 of this chapter, or appoint forest district technical advisory com-

1 mittees.

2 (e) Members of the board receive travel and per diem as permitted
3 other boards and commissions.

4 (f) A state forester shall be appointed by the governor to act
5 as executive secretary to the board and implement the regulations
6 adopted by the board and carry out other functions designated as his
7 responsibility under this chapter. The board shall utilize the staff
8 of the Department of Natural Resources in the performance of its
9 functions and may employ other technical personnel as necessary and
10 appropriate.

11 Sec. 38.08.030. ESTABLISHMENT OF FOREST DISTRICTS. Within six
12 months after the effective date of this chapter, the board shall divide
13 the state into not less than three and no more than five forest dis-
14 tricts. In establishing these districts, the board shall take into
15 account differing physical characteristics including, but not limited
16 to, climate, soil type, and principal forest types. If possible, the
17 board shall group together lands that have substantially similar char-
18 acteristics and that will best be served by substantially similar regu-
19 lations. Boundaries of the districts may be altered from time to time
20 as the board determines is necessary. At least one public hearing shall
21 be held in representative forest regions of the state prior to the
22 establishment of districts under this section or the alteration of
23 districts which have been established under this section.

24 Sec. 38.08.040. FOREST DISTRICT TECHNICAL ADVISORY COMMITTEES.

25 (a) Within nine months after the effective date of this chapter, the
26 board shall appoint a forest district technical advisory committee in
27 each of the districts created under sec. 30 of this chapter.

28 (b) Each committee consists of nine members, with each member
29 representative of the general public interest. All members shall be

1 appointed on the basis of their educational and professional qualifica-
2 tions and their general knowledge of, and interest and experience in,
3 ecology, soil science, watershed hydrology, range management, silvi-
4 culture and forestry, forest recreation, forest landscape architecture,
5 forest products manufacture, forest industry economics, or fish and
6 wildlife habitat.

7 (c) The terms of office of the members shall be for six years.
8 The members of the initial committee shall classify themselves by lot at
9 the first meeting. Three members shall serve three years, three
10 members shall serve four years, and three members shall serve six years.
11 Vacancies shall be filled in the same manner as original appointments.
12 An appointment to a vacancy on a committee occurring before the expira-
13 tion of a term shall be for the remainder of that term, and the person
14 appointed shall be appointed from the appropriate group for the vacant
15 seat.

16 (d) The committees shall meet at least twice a year, and at other
17 times as necessary. All meetings of the committee shall be open to the
18 public, and notice of meetings shall be provided 10 days in advance to
19 persons who request a notice in writing; however, meetings may be held
20 with 24-hour notice, as may be provided by the board in regulations
21 adopted relating to emergency conditions.

22 (e) The appointive members of the committee receive no compensa-
23 tion for their services but are entitled to per diem and travel expenses
24 authorized by law for boards and commissions.

25 Sec. 38.05.050. FUNCTIONS OF COMMITTEES. Each committee shall
26 advise the board in the establishment of forest district forest practice
27 regulations to govern timber operations on lands within the district.
28 The committees shall consult with, and carefully evaluate the recom-
29 mendations of, concerned federal, state, and local governmental entities

1 educational institutions, civic and public interest organizations, and
2 interested private organizations and individuals. Each committee shall
3 seek an optimum of interagency cooperation in identifying problems and
4 proposing solutions.

5 Sec. 38.08.060. MUNICIPAL ORDINANCES. Notwithstanding any pro-
6 vision of this chapter, general law and home rule municipalities have
7 the right, within the reasonable exercise of their police power, to
8 adopt rules and regulations by ordinance which are stricter but not less
9 strict than those provided under this chapter and its regulations.

10 Rules and regulations may include, but are not limited to, matters
11 relating to soil erosion control, protection of stream character and
12 water quality, flood control, stand density control, reforestation
13 methods, mass soil movements, submission of timber harvest plans, loca-
14 tion and grade of roads and skid trails, excavation and fill require-
15 ments, slash and debris disposal, haul routes and schedules, hours and
16 dates of logging, and performance bond requirements.

17 Sec. 38.08.070. BOARD REGULATIONS. (a) Subject to (b) of this
18 section, within six months after the effective date of this chapter, the
19 board shall adopt district forest practice regulations in accordance
20 with the Administrative Procedure Act (AS 44.62) for each forest district
21 in accordance with the findings set out in sec. 10 of this chapter to
22 assure the continuous growing and harvesting of commercial forest tree
23 species and protection of the soil, air, fish and wildlife, and water
24 resources including, but not limited to, streams, lakes, estuaries, and
25 other watercourses.

26 (b) The board may, before the adoption of initial regulations
27 under (a) of this section, adopt interim regulations in accordance with
28 the Administrative Procedure Act necessary for the regulation of
29 timber operations. However, these regulations take effect immediately.

1 upon adoption and expire upon adoption of the final regulations under
2 (a) of this section. If interim regulations are adopted, the time with-
3 in which final regulations shall be adopted is extended to within twelve
4 months from the effective date of this Act.

5 (c) Regulations apply to the conduct of timber operations and
6 shall be used as standards by persons preparing timber harvest plans and
7 include, but are not limited to, measures for fire prevention and con-
8 trol, soil erosion control, water quality and watershed control, flood
9 control, stocking, protection against timber operations which unneces-
10 sarily destroy young timber growth or timber productivity of the soil,
11 prevention and control of damage by forest insects, pests and disease.
12 In developing these regulations, the board shall solicit and consider
13 recommendations from

14 (1) the Department of Fish and Game relating to the protec-
15 tion of fish and wildlife;

16 (2) the Department of Environmental Conservation relating to
17 air and water quality and waste disposal;

18 (3) the division of policy development and planning relating
19 to land use planning; and

20 (4) each forest district technical advisory committee.

21 Sec. 38.08.080. PERMITS. No person may engage in timber opera-
22 tions until he has obtained a permit from the board. The board shall
23 prescribe the form and content of the application for a permit and
24 establish application procedures and a reasonable filing fee.

25 Sec. 38.08.090. GROUNDS FOR DENIAL. The board may deny a permit
26 for any of the following reasons:

27 (1) the applicant is not the real person in interest;

28 (2) a material misrepresentation or false statement in the
29 application;

1 (3) conviction, within one year of the application, of unlaw-
2 fully operating without a permit;

3 (4) a failure or refusal of the applicant to comply with the
4 regulations of the board and the provisions of this chapter within three
5 years before the date of application.

6 Sec. 38.08.100. PERMIT RENEWAL AND TRANSFERABILITY. Permits are
7 valid only during the calendar year for which issued. Applications for
8 renewal may be denied by the board for violations as prescribed by this
9 chapter or if an applicant is in violation of a provision of this
10 chapter and, upon notification, has failed to take appropriate means to
11 correct the violation to the satisfaction of the board. A permit is
12 transferable only under hardship provisions as established by board
13 regulation.

14 Sec. 38.08.110. PERMIT SUSPENSION OR REVOCATION. After a hearing
15 before the board, a permit may be suspended or revoked by the board for
16 any of the reasons specified in sec. 90 of this chapter, for refusal to
17 allow inspections, or for a violation of a regulation of the board.

18 Sec. 38.08.120. DELEGATION OF AUTHORITY TO STATE FORESTER. The
19 board may delegate its authority under secs. 20 - 120 of this chapter,
20 other than the adoption of regulations, to the state forester.

21 ARTICLE 2. TIMBER HARVEST PLANS.

22 Sec. 38.08.130. TIMBER HARVEST PLAN. No person may conduct timber
23 operations unless a timber harvest plan has been submitted for the
24 operation to the state forester under secs. 130 - 290 of this chapter.
25 This plan is required in addition to the permit required in sec. 80 of
26 this chapter.

27 Sec. 38.08.140. FILING OF PLAN AND CONTENTS. The timber harvest
28 plan shall be filed with the state forester in writing by a person who
29 owns, leases, or otherwise controls or operates on all or a portion of

1 land on which the harvest of timber is planned. The plan shall be a
2 public record and shall include the following information:

3 (1) the name and address of the timber owner;

4 (2) the name and address of the timber operator;

5 (3) a description of the land on which the work is proposed
6 to be done, including a United States Geological Survey quadrangle map
7 or its equivalent indicating the location of all streams, all proposed
8 and existing logging truck roads, and the boundaries of all site I
9 classification timberlands to be stocked in accordance with the provisions
10 of sec. 300(b)(2), (c) and (d) of this chapter and any other site clas-
11 sifications if the board establishes specific minimum stocking standards
12 for other site classifications;

13 (4) a description of the silvicultural methods to be applied,
14 including the type of logging equipment to be used;

15 (5) an outline of the methods to be used to avoid excessive
16 accelerated erosion from timber operations to be conducted within the
17 proximity of a stream;

18 (6) special provisions, if any, to protect any unique or
19 critical area within the area of timber operations;

20 (7) the expected dates of commencement and completion of
21 timber operations;

22 (8) any other information the board may require;

23 (9) an outline of the intended stocking plan for the area in
24 which timber is to be harvested.

25 Sec. 38.08.150. NOTICE OF FILING. Notice of the filing of a tim-
26 ber harvest plan shall be made by the state forester to any person who
27 requests in writing that he be notified of the filing of timber harvest
28 plans.

29 Sec. 38.08.160. APPLICATION OF TIMBER HARVEST PLANS TO LAND.

1 Timber harvest plans are applicable to a specific piece of land or lands
2 and shall be based upon the characteristics of the land as vegetation
3 type, soil stability, topography, geology, climate, and stream character-
4 istics.

5 Sec. 38.08.170. AVAILABILITY FOR PUBLIC INSPECTION; TRANSMISSION
6 OF COPIES. Upon receipt of the timber harvest plan, the state forester
7 shall place it, or a copy of it, in a file available for public inspec-
8 tion, and shall transmit a copy to the Department of Fish and Game, the
9 Department of Environmental Conservation, and any municipality in which
10 the land subject to the timber harvest plan is located.

11 Sec. 38.08.180. DETERMINATION OF COMPLIANCE OF PLAN WITH REGULA-
12 TIONS; RETURN OF PLAN; PUBLIC HEARING; TIME FOR ACTION. The state
13 forester shall have 15 days from the date the initial inspection is
14 completed or, if the state forester determines that the inspection need
15 not be made, 15 days from the date of filing, as specified in sec. 480
16 of this chapter, or a longer period as may be mutually agreed upon by
17 the state forester and the person submitting the timber harvest plan, to
18 review the plan to determine if it is in conformance with the regu-
19 lations of the board and with the provisions of this chapter. If the
20 state forester determines that the plan is not in conformance with the
21 regulations of the board or with provisions of this chapter, he shall
22 return the plan, stating his reasons and advising the person submitting
23 the plan of his right to a hearing before the board, and no timber
24 operations may commence. A person to whom a plan is returned may,
25 within 10 days after the receipt of the plan, request of the board a
26 public hearing before the board. The board shall schedule a public
27 hearing to review the plan to determine if it is in conformance with the
28 regulations of the board and the provisions of this chapter. Timber
29 operations shall await board approval of the plan. Board action shall

1 occur within 30 days from the filing of the appeal, or a longer period
2 as may be mutually agreed upon by the board and the person filing the
3 appeal. If the state forester does not act within 15 days, or a longer
4 period as may be mutually agreed upon by the state forester and the
5 person submitting the timber harvest plan, timber operations may com-
6 mence under the plan, and all provisions of the plan shall be followed
7 as provided in this chapter.

8 Sec. 38.08.190. CONFORMITY WITH STANDARDS AND REQUIREMENTS. A
9 timber harvest plan shall conform to all standards and requirements
10 which are in effect at the time the plan takes effect. Except for
11 stocking standards in effect at the time of commencement of timber
12 operations under a timber harvest plan, which shall remain in effect
13 for any timber harvested under the plan, all timber operations shall
14 conform to changes or modifications of standards and requirements
15 made thereafter unless, before the adoption of the changes or modifica-
16 tions, substantial liabilities for timber operations have been incurred
17 in good faith and in reliance upon the standards in effect at the time
18 the plan became effective and the adherence to the new changes or
19 modifications would cause unreasonable additional expense to the owner
20 or operator, in the determination of the state forester.

21 Sec. 38.08.200. REPORT OF DEVIATIONS FROM PLAN. The person who
22 prepared the timber harvest plan shall report to the owner and operator
23 if there are deviations of any sort from the plan which in his judgment
24 threaten the attainment of the resource conservation standards or com-
25 pliance with regulations adopted under this chapter.

26 Sec. 38.08.210. DISCIPLINARY ACTION FOR MATERIAL MISSTATEMENT IN
27 FILING OF PLAN OR REPORT. If the board finds that a material misstate-
28 ment was made in the filing of a timber harvest plan or report under
29 this chapter, it may take disciplinary action as provided under sec. 470

1 of this chapter against the person who prepared the plan or the owner or
2 operator.

3 Sec. 38.08.220. PERSONS EXEMPT FROM PROVISIONS OF CHAPTER. (a)
4 The board may exempt from the provisions of this chapter or portions
5 of it any person engaged in forest management whose activities are
6 limited to the planting, growing, nurturing, shaping, shearing, removal,
7 or harvest of immature trees for Christmas trees or other ornamental
8 purposes or of dead, dying or diseased trees of any size, on determining
9 the exemption is consistent with the purposes of this chapter.

10 (b) The board shall publish a list of each exemption granted
11 under this section in at least three newspapers of general circulation
12 in the state not less than once a year.

13 Sec. 38.08.230. WORK COMPLETION REPORT. Within one month after
14 completion of the work described in the timber harvest plan, excluding
15 work for stocking, a report shall be filed by the timber owner or his
16 agent with the state forester that all work except stocking has been
17 completed. The report shall state the anticipated completion date for
18 stocking the area in which timber was harvested and whether a change has
19 been made in the stocking plan since the initial outline of the stocking
20 plan was filed.

21 Sec. 38.08.240. DETERMINATION THAT WORK, EXCLUDING STOCKING,
22 PROPERLY COMPLETED; REPORT; CORRECTIVE ACTION. Within six months after
23 the receipt of the work completion report specified in sec. 230 of
24 this chapter, the state forester shall determine, by inspection, whether
25 the work described in the timber harvest plan, excluding stocking, has
26 been properly completed in conformity with the regulations of the
27 board and standards of this chapter. If it has been so completed and
28 the intending plan for stocking is adequate, the state forester shall
29 issue a report of satisfactory completion of all items except stocking.

1 If not, the state forester shall take corrective action as he considers
2 appropriate in accordance with the provisions of secs. 470 - 540 of this
3 chapter.

4 Sec. 38.08.250. REPORT OF STOCKING; PROCEDURE FOR MEASURING
5 STOCKING. Within five years after completion of timber operations on
6 an area covered by a timber harvest plan, a final stocking report shall
7 be filed by the timber owner or his agent with the state forester. In
8 measuring the stocking a standardized sampling procedure approved by
9 the board shall be employed, designed to measure the number of trees
10 and their dispersion, subject to defined probabilities of error.

11 Sec. 38.08.260. DETERMINATION THAT STOCKING PROPERLY COMPLETED.
12 Within six months after the receipt of the final stocking report, the
13 state forester shall determine, by inspection, whether the stocking has
14 been properly completed. If so, he shall issue a report of satisfactory
15 completion of stocking. If not, he shall take corrective action as he
16 considers appropriate in accordance with the provisions of secs. 470 -
17 540 of this chapter.

18 Sec. 38.08.270. DURATION OF PLAN. Every timber harvest plan
19 described in secs. 130 - 300 of this chapter is effective for a period
20 of not more than three years, except that stocking work may continue more
21 than three years, but shall be completed no more than five years after
22 the conclusion of the work described in the timber harvest plan.

23 Sec. 38.08.280. AMENDMENT OF PLAN. (a) Amendments to the
24 original timber harvest plan may be submitted detailing proposed changes
25 from the original plan. Subject to (b) of this section, deviations
26 from the original plan may not be undertaken until an amendment has
27 been filed with and approved by the state forester in accordance with
28 the provisions of secs. 180 and 190 of this chapter. An amendment may
29 not extend the effective period of the plan.

1 (b) The board shall specify by regulation those minor deviations
2 which may be undertaken by an operator without submission of an amended
3 plan and which shall subsequently be reported to the state forester,
4 and provide for the manner of reporting deviations under this section.

5 Sec. 38.08.290. EMERGENCY NOTICE. Notwithstanding any other
6 provision of this chapter, in an emergency a timber owner or operator,
7 or his authorized representative may file an emergency notice with the
8 state forester that shall allow immediate commencement of timber opera-
9 tions, subject to the approval of the state forester. The emergency
10 notice shall include a declaration, under penalty of perjury, that a
11 bona fide emergency exists which requires immediate harvest activities.
12 Emergencies shall be defined only by the board and may include, but need
13 not be limited to, the necessity to harvest in order to remove fire-
14 killed or damaged timber, or insect-or disease-infected timber, or to
15 undertake emergency repairs to roads.

16 ARTICLE 3. RESOURCE STOCKING STANDARDS.

17 Sec. 38.08.300. ENUMERATION OF ACCEPTABLE STOCKING STANDARDS. (a)
18 The purpose of this section is to specify resource conservation standards
19 for timber operations and insure that a cover of trees of commercial
20 species of at least comparable economic value, sufficient to utilize
21 adequately the suitable and available growing space, is maintained or
22 established after timber operations.

23 (b) The following resource conservation standards define minimum
24 acceptable stocking, and an area covered by a timber harvest plan shall
25 be classified as acceptably stocked if any of the following condi-
26 tions exist within five years after completion of timber operations:

27 (1) the area contains an average point count of 300 per acre,
28 to be computed as follows:

29 (A) each countable tree which is not more than four

1 inches in diameter at breast height to count as one;

2 (B) each countable tree over four inches and not more
3 than 12 inches in diameter at breast height to count as three;

4 (C) each countable tree over 12 inches in diameter at
5 breast height to count as six;

6 (2) the average residual basal area, measured in stems one
7 inch or larger in diameter is at least 85 square feet per acre, except
8 that in site II classification or lower the minimum average residual
9 basal area shall be 50 square feet per acre;

10 (3) it is determined by the board that adequate reforestation
11 will occur by natural processes.

12 (c) The board may encourage selection, shelterwood, or other types
13 of management of timber where consistent with the biological require-
14 ments of the tree species and may regulate the size and shape of areas
15 in which even-age management of timber is utilized.

16 (d) Timber harvested between the effective date of this Act and
17 the adoption of stocking standards under this section shall be clas-
18 sified as adequately stocked if, as a result of stocking which has taken
19 place subsequent to the harvest, the minimum standards specified in this
20 section are met. Rock outcroppings and other areas not normally suit-
21 able for timber shall not be considered as requiring stocking and are
22 exempt from stocking provisions.

23 Sec. 38.08.310. ADOPTION OF HIGHER STANDARDS. The resource con-
24 servation standards relating to stocking enumerated in sec. 300 of this
25 chapter constitute minimum interim requirements, and these shall be the
26 standards to which all timber harvest plans shall conform unless the
27 board adopts higher stocking standards for each district. The board
28 shall, by January 1, 1978, adopt permanent standards for each district,
29 after a public hearing, which are equal to or stricter than the standards

1 of this chapter and shall report those standards to the legislature by
2 February 1, 1978. The board may adopt higher minimum permanent standards
3 of stocking if, in the opinion of the board, growing conditions, tree
4 species, site quality, or other factors justify the stricter standards
5 and if such action is consistent with the purposes of secs. 300 - 370 of
6 this chapter.

7 Sec. 38.08.320. AREA ACCEPTABLY STOCKED BY RESTOCKING SUBSEQUENT
8 TO HARVEST. Notwithstanding the provisions of sec. 300 of this chapter,
9 on any lands which the state forester has determined do not meet the
10 minimum acceptable stocking standards, before any timber harvest activi-
11 ties which may take place on the lands between the effective date of
12 this chapter and the adoption of permanent stocking standards under sec.
13 330 of this chapter, an area shall be classified as acceptably stocked
14 if, as a result of restocking which has taken place subsequent to the
15 harvest, it contains at least five countable trees for each tree which
16 has been harvested.

17 Sec. 38.08.330. ADOPTION OF PERMANENT STANDARDS. Before Janu-
18 ary 1, 1978 the board shall, after a public hearing, adopt permanent
19 stocking standards applicable to lands where the growing timber does not
20 meet the acceptable stocking standards as specified in sec. 300 of this
21 chapter.

22 Sec. 38.08.340. DEVELOPMENT OF STANDARDS FOR DAMAGED TIMBER.
23 Notwithstanding the provisions of secs. 300 - 330 of this chapter, the
24 board shall adopt regulations before January 1, 1978 which specify
25 standards of stocking to be maintained or established after timber
26 operations on lands which have been substantially damaged by fire,
27 insects, disease, wind, flood, or other substantial damage caused by an
28 act of God, and may provide for an extended period of time during which
29 stocking shall be properly completed on those lands. In developing

1 standards the board shall consider circumstances that affect the feasi-
2 bility of restoring the productivity of the lands.

3 Sec. 38.08.350. ADOPTION OF REGULATIONS FOR FIRE PROTECTION ZONE.

4 In order to reduce the incidence and spread of fire on timberlands, the
5 board shall adopt regulations for the fire protection zone as that zone
6 is defined by the board, including, but not limited to, land along
7 either side of the rights-of-way along public roads in widths to be
8 determined by regulations of the board in various areas, and in other
9 areas as the board considers necessary, to govern the disposal of solid
10 nonforest wastes and slash created by timber operations.

11 Sec. 38.08.360. PREVENTION, RETARDATION AND CONTROL OF SOIL
12 EROSION. The board shall conduct investigations of soil characteristics
13 and erosion rates and of the instruments, techniques and procedures
14 available for use in monitoring soil loss as will facilitate the devel-
15 opment and application of soil resource conservation standards, and
16 shall, by January 1, 1978, make public, reports obtained as a result of
17 the investigations, including a determination if possible of permissible
18 levels of soil loss. The board shall adopt regulations for each forest
19 district to govern timber operations that may cause significant soil
20 disturbance.

21 Sec. 38.08.370. ADOPTION OF REGULATIONS FOR PROTECTION OF BENE-
22 FICIAL USES OF WATERS. The board, in consultation with the Department
23 of Environmental Conservation and the Department of Fish and Game, shall
24 adopt regulations for control of timber operations which will result or
25 threaten to result in unreasonable effects on the beneficial uses of the
26 waters of the state. Regulations shall include provisions for

27 (1) the disposal of petroleum products, sanitary wastes,
28 refuse, and cleaning agents in proper dumps or waste treatment facili-
29 ties to prevent them from entering streams;

1 (2) construction of logging road and tractor trail stream
2 crossings to assure substantially unimpaired flow of water and to assure
3 free passage of fish both upstream and downstream;

4 (3) minimizing damage to unmerchantable streamside vegetation;

5 (4) minimizing damage to streambeds or banks resulting from
6 skidding or hauling logs through, across, or into streams, by operating
7 tractors or other heavy equipment in or near streambeds, or by con-
8 struction of log landings or logging roads in or near the channels of
9 streams;

10 (5) control of slash, debris, fill, and side cast earth,
11 resulting from timber operations, which may be carried into streams;

12 (6) establishing minimum widths of timberland strips along
13 water bodies, within which timber harvesting is prohibited.

14 ARTICLE 4. CONVERSION.

15 Sec. 38.08.380. CONVERSION APPLICATION. A person who owns lands
16 on which commercial timber is located which is to be devoted to a use
17 other than the growing of timber shall file an application for conver-
18 sion with the board. The board shall, by regulation, prescribe the
19 procedures for the form and content of the application.

20 Sec. 38.08.390. APPROVAL OF APPLICATION AS CONDITIONED UPON GRANTING
21 OF REZONING OR USE PERMIT. Approval of an application for conversion
22 shall be conditioned upon the granting of the necessary rezoning or use
23 permit if rezoning or a use permit is required. No timber may be cut
24 under an approved conversion except under the provisions of sec. 130 of
25 this chapter, excluding requirements for stocking and methods of silvi-
26 culture, except that no timber harvest plan need be prepared, and no
27 timber operations may commence until the granting of the rezoning or use
28 permit as may be required and until the conversion permit is recorded in
29 the recorder's office in the municipality in which the land is located

1 or, if in the unorganized borough, the Department of Natural Resources.

2 Sec. 38.08.400. AFFIDAVIT OF INTENT TO CONVERT. The application
3 shall be accompanied by an affidavit by the applicant that the applicant
4 has a present bona fide intent to convert the land to a use other than
5 timber growing. The board may require such additional proof of intent
6 to convert as it considers necessary.

7 Sec. 38.08.410. GROUNDS FOR DENIAL OF CONVERSION PERMIT. The
8 board shall deny a timberland conversion permit for any of the following
9 reasons:

10 (1) the applicant is not the real person in interest;

11 (2) a material misrepresentation or false statement in the
12 application;

13 (3) the applicant does not have a bona fide intention to
14 convert the land;

15 (4) the failure or refusal of the applicant to comply with
16 the regulations of the board and the provisions of this chapter.

17 Sec. 38.08.420. HEARING. A person whose application for a timber-
18 land conversion permit has been denied is entitled to a hearing before
19 the board. After the hearing the decision of the board is final.

20 Sec. 38.08.430. APPROVAL OF APPLICATION UPON FINDING OF BONA FIDE
21 INTENTION TO CONVERT. If the board finds the applicant does have a bona
22 fide intention to convert the land, it shall approve the application,
23 authorizing the applicant to cut and remove timber, if he otherwise
24 complies with this chapter.

25 Sec. 38.08.440. REVOCATION OF PERMIT. If at any time the board
26 finds that the applicant has failed to conform to the intent to convert,
27 as set out in the application and proof, the board may revoke the permit
28 and require full compliance with this chapter. A permit revocation
29 shall be recorded in the same manner as the original permit.

1 Sec. 38.08.450. DELEGATION OF AUTHORITY AND RESPONSIBILITIES TO
2 STATE FORESTER. The board may, by regulation, delegate its authority
3 and responsibilities under secs. 380 - 460 of this chapter to the state
4 forester.

5 Sec. 38.08.460. WHEN PUBLIC AGENCY NOT REQUIRED TO SUBMIT TIMBER
6 HARVEST PLAN OR FILE APPLICATION FOR CONVERSION. Notwithstanding
7 secs. 380 - 460 or sec. 130 of this chapter, no public agency is re-
8 quired to submit a timber harvest plan or file an application for con-
9 version with the board if the purpose of its timber operations is to
10 construct or maintain a right-of-way on its own or on any other public
11 property. However, the public agency shall notify the state forester of
12 its intention under this section within 15 days of commencing the opera-
13 tion.

14 ARTICLE 5. PENALTIES AND ENFORCEMENT.

15 Sec. 38.08.470. PENALTIES. A person who violates a provision
16 of this chapter or regulation of the board is guilty of a misdemeanor
17 and is punishable, upon conviction, by a fine of not more than \$25,000,
18 or by imprisonment for not more than one year, or by both. Each unlaw-
19 ful act constitutes a separate offense.

20 Sec. 38.08.480. INSPECTIONS. The state forester shall provide
21 for an initial inspection of timber operations within 10 days after
22 the date of filing of the timber harvest plan, or a longer period as
23 may be mutually agreed upon by the state forester and the person sub-
24 mitting the plan, except that the inspection need not be made if the
25 state forester determines that it would not add substantive information
26 he considers necessary to enforce the provisions of this chapter. The
27 state forester shall provide for inspections as follows:

- 28 (1) during the period of commencement of timber operations;
29 (2) when timber operations are well underway;

1 (3) following completion of timber operations;

2 (4) at such other times as he considers necessary to enforce
3 the provisions of this chapter.

4 Sec. 38.08.490. ACTION TO ENJOIN VIOLATIONS. The state forester
5 may bring an action to enjoin the violation, or threatened violation,
6 of any provision of this chapter or the regulations of the board. The
7 court may, upon a finding that immediate and irreparable harm is
8 threatened to soil resources or the water of the state by virtue of
9 erosion, pollution or contamination, order the defendant to take
10 appropriate emergency corrective action, authorize the state forester
11 to order the defendant to take such action, or authorize the state
12 forester to take emergency action to correct a violation of this
13 chapter. Any expenses incurred by the state forester in taking action
14 in conformity with the order shall be a lien upon the property upon
15 which the action was taken when notice of the lien is recorded. The
16 lien is subject to the provisions of sec. 510 of this chapter.

17 Sec. 38.08.500. ORDER FOR CONTINUANCE OF OPERATIONS. If upon a
18 hearing to show cause why a preliminary injunction should not be issued,
19 or upon a hearing of a motion for a preliminary injunction, or if the
20 court finds in an action that the defendant is violating, threatens to
21 violate, or has violated, a provision of this chapter or regulation of
22 the board, the court may not only order the discontinuance of any timber
23 operations in which a violation has occurred, is threatening to occur,
24 or is occurring, but may also enjoin any further timber operations by
25 the defendant in this state until the violations complained of have been
26 corrected or until satisfactory provisions have been approved by the
27 court for the violations to be corrected at a specified date. A defendant
28 in these proceedings may enter into a written agreement with the state
29 forester assuring that the defendant will resume operations in compliance

1 with the provisions of this chapter or the regulations of the board and
2 correct the violations on reasonable terms and conditions as the state
3 forester may require. Upon approval by the court, a temporary restrain-
4 ing order, preliminary injunction, or permanent injunction may include
5 or be amended to include an order that a defendant entering into the
6 agreement comply with the terms of the agreement as a condition of
7 engaging in any timber operations enjoined by the temporary restraining
8 order, preliminary injunction, or permanent injunction. The court may
9 require a cash deposit or bond payable to the state in an amount that
10 the court considers proper to insure correction of a violation in
11 accordance with the agreement or any other provisions required by the
12 court.

13 Sec. 38.08.510. NOTICE AND LIEN. (a) Before taking corrective
14 action, other than under sec. 490 of this chapter, the state forester
15 shall serve a written notice upon the person responsible for the viola-
16 tion. The notice shall include a statement of the corrective action to
17 be taken, a date not less than 30 days after the date of service of the
18 notice by which the corrective action is to be taken, and a statement
19 that if the corrective action is not taken on or before the date speci-
20 fied the state forester may take corrective action and charge the person
21 for the costs as specified in sec. 520 of this chapter. The notice
22 shall also include a statement that if the person disagrees for any
23 reason with the proposed corrective action or with the assessment of the
24 costs of it he may, within 10 days after the service of the notice,
25 request of the board a public hearing before the board.

26 (b) The state forester may record the notice in each municipality
27 in which the land in violation is located, together with a statement
28 that any and all expenses incurred by the state forester in taking
29 corrective action under the provisions of this chapter shall be a lien

1 against the land. Upon satisfactory proof that corrective action has
2 been completed, the state forester shall record a notice to that effect.

3 (c) The state forester may at any time release all or a portion of
4 the property subject to the lien from the lien or subordinate it to
5 other liens and encumbrances, if he determines that the amount owed is
6 sufficiently secured by a lien on other property or that the release or
7 subordination of the lien will not jeopardize the collection of the
8 amount owed. A certificate by the state forester to the effect that any
9 property has been released from the lien or that the lien has been
10 subordinated to other liens and encumbrances is conclusive evidence that
11 the property has been released or that the lien has been subordinated as
12 provided in the certificate.

13 Sec. 38.08.520. EXPENSES AS DEBT RECOVERABLE IN CIVIL ACTION. The
14 expenses incurred by the state forester in taking corrective action
15 under this chapter shall be increased by \$250 or 10 per cent, whichever
16 sum is higher, as administrative costs and shall constitute a debt of
17 the person responsible, and if not paid within 10 days after written
18 demand for it may be recovered by the state in a civil action.

19 Sec. 38.08.530. IMMUNITY FROM LIABILITY FOR TRESPASS. No member
20 of the board, the state forester, or any other person authorized by
21 the board or the state forester to enter upon any lands for the purpose
22 of taking corrective action under this chapter is liable in a civil
23 action for trespass for any acts which are necessary to carry out the
24 provisions of this chapter.

25 Sec. 38.08.540. ANNUAL REPORT. The state forester shall report
26 annually to the board and the legislature on the enforcement and pen-
27 alties applied under this chapter.

28 ARTICLE 6. DEFINITIONS.

29 Sec. 38.08.550. DEFINITIONS. In this chapter

1 (1) "act of God" means an act of nature which is unforesee-
2 able in kind or degree;

3 (2) "board" means the Forest Practices Board;

4 (3) "cutover land" means land which has borne a crop of
5 commercial timber from which at least 70 per cent of the merchantable
6 original growth timber stand has been removed or destroyed by logging,
7 fire, insects, or tree diseases and which is now supporting, or capable
8 of growing, a crop of commercial timber or other forest products, and
9 which has not been converted to other commercial or agricultural use;

10 (4) "district" means a forest district;

11 (5) "permit" means a permit to engage in timber operations,
12 issued under this chapter;

13 (6) "slash" means branches or limbs less than four inches
14 in diameter, and bark and split products debris left on the ground as
15 a result of timber operations;

16 (7) "timberland" means land, other than land owned by the
17 federal government, which is available for, and capable of growing,
18 a crop of trees of any commercial species used to produce lumber and
19 other forest products, including Christmas trees, as determined by the
20 board on a district basis after consultation with the advisory com-
21 mittees and other interested parties;

22 (8) "timber operator" means a person who is engaged in timber
23 operations himself or who contracts with others to conduct timber
24 operations on his behalf, except a person who is engaged in timber
25 operations as an employee with wages as his sole compensation;

26 (9) "timber operations" means the cutting or removal or both
27 of timber or other solid wood forest products, including Christmas trees,
28 from timberlands for commercial purposes, together with all the work
29 incidental to it, including but not limited to construction and mainte-

1 nance of roads, fuel breaks, firebreaks, stream crossings, landings,
2 skid trails, beds for the falling of trees, and fire hazard abatement,
3 but excluding preparatory work such as treemarking, surveying, or road-
4 flagging; removal or harvest of incidental vegetation from timberlands,
5 such as berries, ferns, greenery, mistletoe, herbs, and other products,
6 which action cannot normally be expected to result in a threat to
7 forest, air, water or soil resources, does not constitute timber
8 operations;

9 (10) "timber owner" means a person who owns commercial timber,
10 timberland, cutover land, or timber rights, including Christmas tree
11 rights, on lands of another except a federal agency;

12 (11) "basal area per acre" means the sum of the cross-section-
13 al areas at breast height of the tree stems of commercial species of
14 comparable economic value to those that were harvested from the area per
15 acre;

16 (12) "countable tree" means a tree that can be used in calcu-
17 lating the degree of stocking under the following criteria:

18 (A) the tree must be in place at least two growing
19 seasons;

20 (B) the tree must be live and healthy;

21 (C) the tree must have at least one-third of its length
22 in live crown;

23 (D) the tree must be a commercial species from a local
24 seed source or a seed source which will produce commercial trees
25 physiologically suited for the area involved and which are of com-
26 parable economic value to those that were harvested from the area;

27 (13) "stocking" means a measure of the degree to which space
28 is occupied by well-distributed countable trees;

29 (14) "site classification" means the classification of pro-

1 ductive potential of timberland into one of five classes by board
2 regulations, consistent with normally accepted forestry practices; site
3 I shall denote sites of highest productivity, site II and site III shall
4 denote sites of intermediate productivity potential, and site IV and
5 site V shall denote sites of lowest productivity potential;

6 (15) "fuel break" means a strip of modified fuel to provide
7 a line from which to work in the control of fire;

8 (16) "stream" means a natural watercourse as designated by a
9 solid line or dash and three dots symbol shown on the largest scale
10 United States Geological Survey map most recently published.

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