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**HOUSE BILL 2308**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Representative Van De Wege

AN ACT Relating to applications for forest practices on lands located within the boundaries of master planned resorts established under chapter 36.70A RCW; and amending RCW 76.09.050 and 76.09.240.

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

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

(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 forest lands 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 forest lands 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 forest lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except where the forest landowner provides:

(i) A written statement of intent signed by the forest landowner 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)~~)) (8) 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)(a) For those forest practices regulated by the board and the department, the department may not approve any application for forest practices involving commercial timber harvesting on land located within the boundaries of a master planned resort established under RCW 36.70A.360 or 36.70A.362, except as provided in (b) of this subsection.

(b) The department may approve a forest practices application specified in (a) of this subsection if, after timber is harvested in accordance with the application, the land will be converted to a nonforestry use authorized by all applicable land use and forest practices regulations.

(7) 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)~~)) (8) 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 forest lands 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)~~)) (9) 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)~~)) (10) 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)~~)) (11) 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)~~)) (12) 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)~~)) (13) 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.

**Sec.**  RCW 76.09.240 and 2011 c 207 s 2 are each amended to read as follows:

(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 forest land equal to or greater than twenty acres where the forest landowner provides, to the department and the county, city, or town, a written statement of intent, signed by the forest landowner, 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 forest land 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) Forest lands 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) Forest lands 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 forest lands, 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 forest land 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.

(9)(a) Counties, cities, and towns regulating forest practices as provided in subsections (1) and (2) of this section may not approve any application for forest practices involving commercial timber harvesting on land located within the boundaries of a master planned resort established under RCW 36.70A.360 or 36.70A.362, except as provided in (b) of this subsection.

(b) Counties, cities, and towns may approve a forest practices application specified in (a) of this subsection if, after timber is harvested in accordance with the application, the land will be converted to a nonforestry use authorized by all applicable land use and forest practices regulations.

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