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HOUSE BILL 2308

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State of Washington

64th Legislature

2016 Regular Session

By Representative Van De Wege

Prefiled 12/14/15. Read first time 01/11/16. Referred to Committee on Agriculture & Natural Resources.

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

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

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

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

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

17 Class II: Forest practices which have a less than ordinary  
18 potential for damaging a public resource that may be conducted  
19 without submitting an application and may begin five calendar days,  
20 or such lesser time as the department may determine, after written  
21 notification by the operator, in the manner, content, and form as

1 prescribed by the department, is received by the department. However,  
2 the work may not begin until all forest practice fees required under  
3 RCW 76.09.065 have been received by the department. Class II shall  
4 not include forest practices:

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

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

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

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

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

17 (a) Within thirty calendar days from the date the department  
18 receives the application if the application is not subject to  
19 concurrence review by the department of fish and wildlife under RCW  
20 76.09.490; and

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

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

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

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

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

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

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

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

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

34 (2) Except for those forest practices being regulated by local  
35 governmental entities as provided elsewhere in this chapter, no Class  
36 II, Class III, or Class IV forest practice shall be commenced or  
37 continued after January 1, 1975, unless the department has received a  
38 notification with regard to a Class II forest practice or approved an  
39 application with regard to a Class III or Class IV forest practice  
40 containing all information required by RCW 76.09.060 as now or

1 hereafter amended. However, in the event forest practices regulations  
2 necessary for the scheduled implementation of this chapter and RCW  
3 90.48.420 have not been adopted in time to meet such schedules, the  
4 department shall have the authority to regulate forest practices and  
5 approve applications on such terms and conditions consistent with  
6 this chapter and RCW 90.48.420 and the purposes and policies of RCW  
7 76.09.010 until applicable forest practices regulations are in  
8 effect.

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

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

21 (5) Except for those forest practices being regulated by local  
22 governmental entities as provided elsewhere in this chapter, the  
23 department of natural resources shall notify the applicant in writing  
24 of either its approval of the application or its disapproval of the  
25 application and the specific manner in which the application fails to  
26 comply with the provisions of this section or with the forest  
27 practices regulations. Except as provided otherwise in this section,  
28 if the department fails to either approve or disapprove an  
29 application or any portion thereof within the applicable time limit,  
30 the application shall be deemed approved and the operation may be  
31 commenced: PROVIDED, That this provision shall not apply to  
32 applications which are neither approved nor disapproved pursuant to  
33 the provisions of subsection ~~((+7))~~ (8) of this section: PROVIDED,  
34 FURTHER, That if seasonal field conditions prevent the department  
35 from being able to properly evaluate the application, the department  
36 may issue an approval conditional upon further review within sixty  
37 days. Upon receipt of any notification or any satisfactorily  
38 completed application the department shall in any event no later than  
39 two business days after such receipt transmit a copy to the  
40 departments of ecology and fish and wildlife, and to the county,

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

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

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

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

21 ~~((7))~~ (8) For those forest practices regulated by the board and  
22 the department, the department shall not approve portions of  
23 applications to which a county, city, or town objects if:

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

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

31 The department shall either disapprove those portions of such  
32 application or appeal the county, city, or town objections to the  
33 appeals board. If the objections related to (b) of this subsection  
34 are based on local authority consistent with RCW 76.09.240 as now or  
35 hereafter amended, the department shall disapprove the application  
36 until such time as the county, city, or town consents to its approval  
37 or such disapproval is reversed on appeal. The applicant shall be a  
38 party to all department appeals of county, city, or town objections.  
39 Unless the county, city, or town either consents or has waived its  
40 rights under this subsection, the department shall not approve

1 portions of an application affecting such lands until the minimum  
2 time for county, city, or town objections has expired.

3 ~~((+8))~~ (9) For those forest practices regulated by the board and  
4 the department, in addition to any rights under the above paragraph,  
5 the county, city, or town may appeal any department approval of an  
6 application with respect to any lands within its jurisdiction. The  
7 appeals board may suspend the department's approval in whole or in  
8 part pending such appeal where there exists potential for immediate  
9 and material damage to a public resource.

10 ~~((+9))~~ (10) For those forest practices regulated by the board  
11 and the department, appeals under this section shall be made to the  
12 appeals board in the manner and time provided in RCW 76.09.205. In  
13 such appeals there shall be no presumption of correctness of either  
14 the county, city, or town or the department position.

15 ~~((+10))~~ (11) For those forest practices regulated by the board  
16 and the department, the department shall, within four business days  
17 notify the county, city, or town of all notifications, approvals, and  
18 disapprovals of an application affecting lands within the county,  
19 city, or town, except to the extent the county, city, or town has  
20 waived its right to such notice.

21 ~~((+11))~~ (12) For those forest practices regulated by the board  
22 and the department, a county, city, or town may waive in whole or in  
23 part its rights under this section, and may withdraw or modify any  
24 such waiver, at any time by written notice to the department.

25 ~~((+12))~~ (13) Notwithstanding subsections (2) through (5) of this  
26 section, forest practices applications or notifications are not  
27 required for exotic insect and disease control operations conducted  
28 in accordance with RCW 76.09.060(8) where eradication can reasonably  
29 be expected.

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

32 (1)(a) Counties planning under RCW 36.70A.040 with a population  
33 greater than one hundred thousand, and the cities and towns within  
34 those counties, where more than a total of twenty-five Class IV  
35 forest practices applications, as defined in RCW 76.09.050(1) Class  
36 IV (a) through (d), have been filed with the department between  
37 January 1, 2003, and December 31, 2005, shall adopt and enforce  
38 ordinances or regulations as provided in subsection (2) of this  
39 section for the following:

1 (i) Forest practices classified as Class I, II, III, and IV that  
2 are within urban growth areas designated under RCW 36.70A.110, except  
3 for forest practices on ownerships of contiguous forest land equal to  
4 or greater than twenty acres where the forest landowner provides, to  
5 the department and the county, city, or town, a written statement of  
6 intent, signed by the forest landowner, not to convert to a use other  
7 than growing commercial timber for ten years. This statement must be  
8 accompanied by either:

9 (A) A written forest management plan acceptable to the  
10 department; or

11 (B) Documentation that the land is enrolled as forest land of  
12 long-term commercial significance under the provisions of chapter  
13 84.33 RCW; and

14 (ii) Forest practices classified as Class IV, outside urban  
15 growth areas designated under RCW 36.70A.110, involving either timber  
16 harvest or road construction, or both on:

17 (A) Forest lands that are being converted to another use; or

18 (B) Lands which, under RCW 76.09.070, are not to be reforested  
19 because of the likelihood of future conversion to urban development;

20 (b) Counties planning under RCW 36.70A.040, and the cities and  
21 towns within those counties, not included in (a) of this subsection,  
22 may adopt and enforce ordinances or regulations as provided in (a) of  
23 this subsection; and

24 (c) Counties not planning under RCW 36.70A.040, and the cities  
25 and towns within those counties, may adopt and enforce ordinances or  
26 regulations as provided in subsection (2) of this section for forest  
27 practices classified as Class IV involving either timber harvest or  
28 road construction, or both on:

29 (i) Forest lands that are being converted to another use; or

30 (ii) Lands which, under RCW 76.09.070, are not to be reforested  
31 because of the likelihood of future conversion to urban development.

32 (2) Before a county, city, or town may regulate forest practices  
33 under subsection (1) of this section, it shall ensure that its  
34 critical areas and development regulations are in compliance with RCW  
35 36.70A.130 and, if applicable, RCW 36.70A.215. The county, city, or  
36 town shall notify the department and the department of ecology in  
37 writing sixty days prior to adoption of the development regulations  
38 required in this section. The transfer of jurisdiction shall not  
39 occur until the county, city, or town has notified the department,  
40 the department of revenue, and the department of ecology in writing

1 of the effective date of the regulations. Ordinances and regulations  
2 adopted under subsection (1) of this section and this subsection must  
3 be consistent with or supplement development regulations that protect  
4 critical areas pursuant to RCW 36.70A.060, and shall at a minimum  
5 include:

6 (a) Provisions that require appropriate approvals for all phases  
7 of the conversion of forest lands, including land clearing and  
8 grading; and

9 (b) Procedures for the collection and administration of permit  
10 and recording fees.

11 (3) Activities regulated by counties, cities, or towns as  
12 provided in subsections (1) and (2) of this section shall be  
13 administered and enforced by those counties, cities, or towns. The  
14 department shall not regulate these activities under this chapter.

15 (4) The board shall continue to adopt rules and the department  
16 shall continue to administer and enforce those rules in each county,  
17 city, or town for all forest practices as provided in this chapter  
18 until such a time as the county, city, or town has updated its  
19 development regulations as required by RCW 36.70A.130 and, if  
20 applicable, RCW 36.70A.215, and has adopted ordinances or regulations  
21 under subsections (1) and (2) of this section. However, counties,  
22 cities, and towns that have adopted ordinances or regulations  
23 regarding forest practices prior to July 22, 2011, are not required  
24 to readopt their ordinances or regulations in order to satisfy the  
25 requirements of this section except as necessary to ensure  
26 consistency with Class IV forest practices as defined in RCW  
27 76.09.050.

28 (5) Upon request, the department shall provide technical  
29 assistance to all counties, cities, and towns while they are in the  
30 process of adopting the regulations required by this section, and  
31 after the regulations become effective.

32 (6) For those forest practices over which the board and the  
33 department maintain regulatory authority no county, city,  
34 municipality, or other local or regional governmental entity shall  
35 adopt or enforce any law, ordinance, or regulation pertaining to  
36 forest practices, except that to the extent otherwise permitted by  
37 law, such entities may exercise any:

38 (a) Land use planning or zoning authority: PROVIDED, That  
39 exercise of such authority may regulate forest practices only where  
40 the application submitted under RCW 76.09.060 as now or hereafter



1 amended indicates that the lands are being converted to a use other  
2 than commercial forest product production: PROVIDED, That no permit  
3 system solely for forest practices shall be allowed; that any  
4 additional or more stringent regulations shall not be inconsistent  
5 with the forest practices regulations enacted under this chapter; and  
6 such local regulations shall not unreasonably prevent timber  
7 harvesting;

8 (b) Taxing powers;

9 (c) Regulatory authority with respect to public health; and

10 (d) Authority granted by chapter 90.58 RCW, the "Shoreline  
11 Management Act of 1971."

12 (7) All counties and cities adopting or enforcing regulations or  
13 ordinances under this section shall include in the regulation or  
14 ordinance a requirement that a verification accompany every permit  
15 issued for forest land by that county or city associated with the  
16 conversion to a use other than commercial timber operation, as that  
17 term is defined in RCW 76.09.020, that verifies that the land in  
18 question is not or has not been subject to a notice of conversion to  
19 nonforestry uses under RCW 76.09.060 during the six-year period prior  
20 to the submission of a permit application.

21 (8) To improve the administration of the forest excise tax  
22 created in chapter 84.33 RCW, a county, city, or town that regulates  
23 forest practices under this section shall report permit information  
24 to the department of revenue for all approved forest practices  
25 permits. The permit information shall be reported to the department  
26 of revenue no later than sixty days after the date the permit was  
27 approved and shall be in a form and manner agreed to by the county,  
28 city, or town and the department of revenue. Permit information  
29 includes the landowner's legal name, address, telephone number, and  
30 parcel number.

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

37 (b) Counties, cities, and towns may approve a forest practices  
38 application specified in (a) of this subsection if, after timber is  
39 harvested in accordance with the application, the land will be

1 converted to a nonforestry use authorized by all applicable land use  
2 and forest practices regulations.

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