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HOUSE BILL 2828

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State of Washington

64th Legislature

2016 Regular Session

By Representatives Stanford, Tarleton, and Morris

Read first time 01/21/16. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to forest practices board rules to decrease risks  
2 to public safety from potentially unstable slopes; amending RCW  
3 76.09.370; reenacting and amending RCW 76.09.020; and creating a new  
4 section.

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

6 NEW SECTION. **Sec. 1.** The purpose of this act is to provide the  
7 forest practices board with the initial and direct authority to make  
8 forest practices rule changes to decrease public safety risks from  
9 potentially unstable slopes. Providing this authority will expedite  
10 the rule changes, ensure that potential threats to public safety are  
11 immediately addressed, decrease risks to public safety and  
12 infrastructure to the maximum extent possible, and ensure that the  
13 forest practices board's resources in developing and adopting the  
14 rules are efficiently deployed.

15 **Sec. 2.** RCW 76.09.020 and 2012 1st sp.s. c 1 s 212 are each  
16 reenacted and amended to read as follows:

17 The definitions in this section apply throughout this chapter  
18 unless the context clearly requires otherwise.

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

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

6 (3) "Application" means the application required pursuant to RCW  
7 76.09.050.

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

16 (5) "Board" means the forest practices board created in RCW  
17 76.09.030.

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

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

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

25 (9) "Date of receipt" has the same meaning as defined in RCW  
26 43.21B.001.

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

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

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

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

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

39 (15) "Forest land" means all land which is capable of supporting  
40 a merchantable stand of timber and is not being actively used for a

1 use which is incompatible with timber growing. Forest land does not  
2 include agricultural land that is or was enrolled in the conservation  
3 reserve enhancement program by contract if such agricultural land was  
4 historically used for agricultural purposes and the landowner intends  
5 to continue to use the land for agricultural purposes in the future.  
6 As it applies to the operation of the road maintenance and  
7 abandonment plan element of the forest practices rules on small  
8 forest landowners, the term "forest land" excludes:

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

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

15 (16) "Forest landowner" means any person in actual control of  
16 forest land, whether such control is based either on legal or  
17 equitable title, or on any other interest entitling the holder to  
18 sell or otherwise dispose of any or all of the timber on such land in  
19 any manner. However, any lessee or other person in possession of  
20 forest land without legal or equitable title to such land shall be  
21 excluded from the definition of "forest landowner" unless such lessee  
22 or other person has the right to sell or otherwise dispose of any or  
23 all of the timber located on such forest land.

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

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

30 (b) Harvesting, final and intermediate;

31 (c) Precommercial thinning;

32 (d) Reforestation;

33 (e) Fertilization;

34 (f) Prevention and suppression of diseases and insects;

35 (g) Salvage of trees; and

36 (h) Brush control.

37 "Forest practice" shall not include preparatory work such as tree  
38 marking, surveying and road flagging, and removal or harvesting of  
39 incidental vegetation from forest lands such as berries, ferns,  
40 greenery, mistletoe, herbs, mushrooms, and other products which

1 cannot normally be expected to result in damage to forest soils,  
2 timber, or public resources.

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

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

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

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

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

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

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

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

31 (26) "Small forest landowner" has the same meaning as defined in  
32 RCW 76.09.450.

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

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

1 (29) "Unconfined channel migration zone" means the area within  
2 which the active channel of an unconfined stream is prone to move and  
3 where the movement would result in a potential near-term loss of  
4 riparian forest adjacent to the stream. Sizeable islands with  
5 productive timber may exist within the zone.

6 (30) "Unconfined stream" means generally fifth order or larger  
7 waters that experience abrupt shifts in channel location, creating a  
8 complex floodplain characterized by extensive gravel bars,  
9 disturbance species of vegetation of variable age, numerous side  
10 channels, wall-based channels, oxbow lakes, and wetland complexes.  
11 Many of these streams have dikes and levees that may temporarily or  
12 permanently restrict channel movement.

13 (31) "Forest practices rules necessary to protect public safety"  
14 means rules the board determines are reasonably necessary to decrease  
15 risks to public safety from forest practices proposed to be conducted  
16 on potentially unstable slopes and landforms, including, but not  
17 limited to, landslides, debris torrents, and related hazards, that  
18 could potentially trigger delivery of sediment or debris that  
19 threatens people, structures, campgrounds, highways or roads, or  
20 rivers used by recreationalists.

21 **Sec. 3.** RCW 76.09.370 and 1999 sp.s. c 4 s 204 are each amended  
22 to read as follows:

23 (1) The legislature finds that the process that produced the  
24 forests and fish report was instigated by the forest practices board,  
25 the report is the product of considerable negotiations between  
26 several diverse interest groups, and the report has the support of  
27 key federal agencies. When adopting permanent rules under this  
28 section, the forest practices board is strongly encouraged to follow  
29 the recommendations of the forests and fish report, but may include  
30 other alternatives for protection of aquatic resources. If the forest  
31 practices board chooses to adopt rules under this section that are  
32 not consistent with the recommendations contained in the forests and  
33 fish report, the board must notify the appropriate legislative  
34 committees of the proposed deviations, the reasons for the proposed  
35 deviations, and whether the parties to the forests and fish report  
36 still support the agreement. The board shall defer final adoption of  
37 such rules for sixty days of the legislative session to allow for the  
38 opportunity for additional public involvement and legislative  
39 oversight.

1 (2) The forest practices board shall follow the regular rules  
2 adoption process contained in the administrative procedure act,  
3 chapter 34.05 RCW, when adopting permanent rules pertaining to forest  
4 practices and the protection of aquatic resources except as limited  
5 by subsection (1) of this section. The permanent rules must  
6 accomplish the policies stated in RCW 76.09.010 without jeopardizing  
7 the economic viability of the forest products industry.

8 (3) The rules adopted under this section should be as specific as  
9 reasonably possible while also allowing an applicant to propose  
10 alternate plans in response to site-specific physical features.  
11 Alternate plans should provide protection to public resources at  
12 least equal in overall effectiveness by alternate means.

13 (4) Rule making under subsection (2) of this section shall be  
14 completed by June 30, 2001.

15 (5) The board should consider coordinating any environmental  
16 review process under chapter 43.21C RCW relating to the adoption of  
17 rules under subsection (2) of this section with any review of a  
18 related proposal under the national environmental policy act (42  
19 U.S.C. Sec. 4321, et seq.).

20 (6)(a) After the board has adopted permanent rules under  
21 subsection (2) of this section, changes to those rules and any new  
22 rules covering aquatic resources may be adopted by the board but only  
23 if the changes or new rules are consistent with recommendations  
24 resulting from the scientifically based adaptive management process  
25 established by a rule of the board. Any new rules or changes under  
26 this subsection need not be based upon the recommendations of the  
27 adaptive management process if: ~~((a))~~ (i) The board is required to  
28 adopt or modify rules by the final order of any court having  
29 jurisdiction thereof; or ~~((b))~~ (ii) future state legislation  
30 directs the board to adopt or modify the rules.

31 (b) Notwithstanding (a) of this subsection, the board's adaptive  
32 management process is not required for changes in forest practices  
33 rules necessary to protect public safety. The board has the original  
34 and final jurisdiction over these changes.

35 (7)(a) In adopting permanent rules, the board shall incorporate  
36 the scientific-based adaptive management process described in the  
37 forests and fish report which will be used to determine the  
38 effectiveness of the new forest practices rules in aiding the state's  
39 salmon recovery effort. The purpose of an adaptive management process  
40 is to make adjustments as quickly as possible to forest practices

1 that are not achieving the resource objectives. The adaptive  
2 management process shall incorporate the best available science and  
3 information, include protocols and standards, regular monitoring, a  
4 scientific and peer review process, and provide recommendations to  
5 the board on proposed changes to forest practices rules to meet  
6 timber industry viability and salmon recovery.

7 (b) Notwithstanding (a) of this subsection, the board's adaptive  
8 management process is not required for changes in forest practices  
9 rules necessary to protect public safety. The board has the original  
10 and final jurisdiction over these changes.

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