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HOUSE BILL 2658

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State of Washington

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By Representatives Ortiz-Self, Ryu, S. Hunt, Stanford, and Reykdal

Read first time 01/18/16. Referred to Committee on Community Development, Housing & Tribal Affairs.

1 AN ACT Relating to tribal cultural resources protection in the  
2 forest practices act; amending RCW 76.09.010; reenacting and amending  
3 RCW 76.09.020; and adding a new section to chapter 76.09 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 76.09  
6 RCW to read as follows:

7 (1) The legislature declares and recognizes the importance of  
8 tribal cultural resources protection and intends to reinforce the  
9 obligations and commitments of the state made to tribal governments  
10 in the 1987 Washington state timber, fish, and wildlife agreement,  
11 the 1999 forests and fish report, and the cultural resource  
12 protection and management plans adopted by the participating caucuses  
13 of the timber, fish, and wildlife cultural resources roundtable.

14 (2) In order to fulfill the state's commitments to tribal  
15 cultural resources protection, the legislature recognizes that the  
16 state requires that a landowner must meet with a tribe upon the  
17 tribe's request and to incorporate into the application elements of  
18 protection that have been agreed upon between the landowner and the  
19 tribe.

1 (3) The legislature further recognizes that by incorporating the  
2 elements of the landowner and tribal agreement into the application,  
3 the state has enforcement authority over those conditions.

4 **Sec. 2.** RCW 76.09.010 and 2010 c 188 s 3 are each amended to  
5 read as follows:

6 (1) The legislature hereby finds and declares that the forest  
7 land resources are among the most valuable of all resources in the  
8 state; that a viable forest products industry is of prime importance  
9 to the state's economy; that it is in the public interest for public  
10 and private commercial forest lands to be managed consistent with  
11 sound policies of natural resource protection; that coincident with  
12 maintenance of a viable forest products industry, it is important to  
13 afford protection to forest soils, fisheries, wildlife, water  
14 quantity and quality, air quality, recreation, tribal cultural  
15 resources, and scenic beauty.

16 (2) The legislature further finds and declares it to be in the  
17 public interest of this state to create and maintain through the  
18 adoption of this chapter a comprehensive statewide system of laws and  
19 forest practices rules which will achieve the following purposes and  
20 policies:

21 (a) Afford protection to, promote, foster and encourage timber  
22 growth, and require such minimum reforestation of commercial tree  
23 species on forest lands as will reasonably utilize the timber growing  
24 capacity of the soil following current timber harvest;

25 (b) Afford protection to forest soils (~~and~~), public resources,  
26 and tribal cultural resources by utilizing all reasonable methods of  
27 technology in conducting forest practices;

28 (c) Recognize both the public and private interest in the  
29 profitable growing and harvesting of timber;

30 (d) Promote efficiency by permitting maximum operating freedom  
31 consistent with the other purposes and policies stated herein;

32 (e) Provide for regulation of forest practices so as to avoid  
33 unnecessary duplication in such rules;

34 (f) Provide for interagency input and intergovernmental and  
35 tribal coordination and cooperation;

36 (g) Achieve compliance with all applicable requirements of  
37 federal and state law with respect to nonpoint sources of water  
38 pollution from forest practices;

1 (h) To consider reasonable land use planning goals and concepts  
2 contained in local comprehensive plans and zoning regulations;

3 (i) Foster cooperation among managers of public resources, forest  
4 landowners, Indian tribes and the citizens of the state;

5 (j) Develop a watershed analysis system that addresses the  
6 cumulative effect of forest practices on, at a minimum, the public  
7 resources of fish, water, tribal cultural resources, and public  
8 capital improvements of the state and its political subdivisions; and

9 (k) Assist forest landowners in accessing market capital and  
10 financing for the ecosystem services provided to the public as a  
11 result of the protection of public resources.

12 (3) The legislature further finds and declares that it is also in  
13 the public interest of the state to encourage forest landowners to  
14 undertake corrective and remedial action to reduce the impact of mass  
15 earth movements and fluvial processes.

16 (4) The legislature further finds and declares that it is in the  
17 public interest that the applicants for state forest practices  
18 permits should assist in paying for the cost of review and permitting  
19 necessary for the environmental protection of these resources.

20 **Sec. 3.** RCW 76.09.020 and 2012 1st sp.s. c 1 s 212 are each  
21 reenacted and amended to read as follows:

22 The definitions in this section apply throughout this chapter  
23 unless the context clearly requires otherwise.

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

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

29 (3) "Application" means the application required pursuant to RCW  
30 76.09.050.

31 (4) "Aquatic resources" includes water quality, salmon, other  
32 species of the vertebrate classes Cephalaspidomorphi and Osteichthyes  
33 identified in the forests and fish report, the Columbia torrent  
34 salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander  
35 (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton*  
36 *olympian*), the Dunn's salamander (*Plethodon dunnii*), the Van Dyke's  
37 salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and  
38 their respective habitats.

1 (5) "Board" means the forest practices board created in RCW  
2 76.09.030.

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

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

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

10 (9) "Date of receipt" has the same meaning as defined in RCW  
11 43.21B.001.

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

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

15 (12) "Ecosystem services market" means a system in which  
16 providers of ecosystem services can access financing or market  
17 capital to protect, restore, and maintain ecological values,  
18 including the full spectrum of regulatory, quasiregulatory, and  
19 voluntary markets.

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

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

24 (15) "Forest land" means all land which is capable of supporting  
25 a merchantable stand of timber and is not being actively used for a  
26 use which is incompatible with timber growing. Forest land does not  
27 include agricultural land that is or was enrolled in the conservation  
28 reserve enhancement program by contract if such agricultural land was  
29 historically used for agricultural purposes and the landowner intends  
30 to continue to use the land for agricultural purposes in the future.  
31 As it applies to the operation of the road maintenance and  
32 abandonment plan element of the forest practices rules on small  
33 forest landowners, the term "forest land" excludes:

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

36 (b) Cropfields, orchards, vineyards, pastures, feedlots, fish  
37 pens, and the land on which appurtenances necessary to the  
38 production, preparation, or sale of crops, fruit, dairy products,  
39 fish, and livestock exist.

1 (16) "Forest landowner" means any person in actual control of  
2 forest land, whether such control is based either on legal or  
3 equitable title, or on any other interest entitling the holder to  
4 sell or otherwise dispose of any or all of the timber on such land in  
5 any manner. However, any lessee or other person in possession of  
6 forest land without legal or equitable title to such land shall be  
7 excluded from the definition of "forest landowner" unless such lessee  
8 or other person has the right to sell or otherwise dispose of any or  
9 all of the timber located on such forest land.

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

13 (a) Road and trail construction, including forest practices  
14 hydraulic projects that include water crossing structures, and  
15 associated activities and maintenance;

16 (b) Harvesting, final and intermediate;

17 (c) Precommercial thinning;

18 (d) Reforestation;

19 (e) Fertilization;

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

21 (g) Salvage of trees; and

22 (h) Brush control.

23 "Forest practice" shall not include preparatory work such as tree  
24 marking, surveying and road flagging, and removal or harvesting of  
25 incidental vegetation from forest lands such as berries, ferns,  
26 greenery, mistletoe, herbs, mushrooms, and other products which  
27 cannot normally be expected to result in damage to forest soils,  
28 timber, or public resources.

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

32 (19) "Forest practices rules" means any rules adopted pursuant to  
33 RCW 76.09.040.

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

39 (21) "Forest trees" does not include hardwood trees cultivated by  
40 agricultural methods in growing cycles shorter than fifteen years if

1 the trees were planted on land that was not in forest use immediately  
2 before the trees were planted and before the land was prepared for  
3 planting the trees. "Forest trees" includes Christmas trees, but does  
4 not include Christmas trees that are cultivated by agricultural  
5 methods, as that term is defined in RCW 84.33.035.

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

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

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

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

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

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

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

26 (29) "Tribal cultural resources" means the ancient and spiritual,  
27 present and future cultural materials, objects, or sites that are  
28 significant to and perpetuate the living culture and history of  
29 federally recognized tribes as identified by the tribe. Areas of  
30 tribal cultural resources may be identified to be areas of land that  
31 have been recorded by the department of archaeology and historic  
32 preservation as areas of high probability that an archaeological site  
33 is present.

34 (30) "Tribal cultural resources protection" means enforcement of  
35 elements of agreed upon plans resulting from the required tribal-  
36 landowner meetings under WAC 222-20-120(2). Those elements must be  
37 enforceable conditions of the forest practices act. When those  
38 conditions are violated, both the department and the department of  
39 archaeology and historic preservation may take enforcement actions  
40 and require remedies under corresponding state laws.

1        (31) "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+)~~) (32) "Unconfined stream" means generally fifth order or  
7 larger waters that experience abrupt shifts in channel location,  
8 creating a 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.

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