
HOUSE BILL 2828

State of Washington

64th Legislature

2016 Regular Session

By Representative Stanford

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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