H-3557.1

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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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Harvesting, final and intermediate;

(c) Precommercial thinning;

(d) Reforestation;

(e) Fertilization;

(f) Prevention and suppression of diseases and insects;

(g) Salvage of trees; and

(h) Brush control.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7)(a) In adopting permanent rules, the board shall incorporate the scientific-based adaptive management process described in the forests and fish report which will be used to determine the effectiveness of the new forest practices rules in aiding the state's salmon recovery effort. The purpose of an adaptive management process is to make adjustments as quickly as possible to forest practices that are not achieving the resource objectives. The adaptive management process shall incorporate the best available science and information, include protocols and standards, regular monitoring, a scientific and peer review process, and provide recommendations to the board on proposed changes to forest practices rules to meet timber industry viability and salmon recovery.

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

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