

Enrolled House Bill 2165

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor John A. Kitzhaber for State Forestry Department)

CHAPTER

AN ACT

Relating to written plans for forest operations; amending ORS 527.670 and 527.700.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 527.670 is amended to read:

527.670. (1) The State Board of Forestry shall designate the types of operations for which notice shall be required under this section.

[(2) The board shall determine by rule what types of operations require a written plan.]

[(3) The board's determination under subsection (2) of this section shall require a written plan for operations:]

(2) The board shall identify by rule the types of operations that require a written plan.

(3) In addition to any other types of operations identified by the board, the board shall adopt rules to require a written plan for the following:

(a) **An operation that occurs** within *[one hundred]* 100 feet of a stream determined by the State Forester to be used by fish or for domestic use, unless:

(A) The board, by rule, provides that a written plan is not required because the *[proposed]* operation will be conducted according to a general vegetation retention prescription described in administrative rule; *[, or unless]*

(B) The operation will not directly affect the riparian management area and the State Forester, acting under authority granted by a board rule, waives the written plan requirement; or

(C) The operation will be conducted pursuant to a stewardship agreement entered into under ORS 541.423. *[: or]*

(b) **An operation that occurs within 100 feet of a resource site that is inventoried under ORS 527.710 (3) as a significant wetland but is not classified by board rule as an estuary, unless:**

(A) **The board, by rule, provides that a written plan is not required because the operation will be conducted according to a general vegetation retention prescription described in administrative rule;**

(B) The operation will not directly affect the riparian management area and the State Forester, acting under authority granted by a board rule, waives the written plan requirement; or

(C) **The operation will be conducted pursuant to a stewardship agreement entered into under ORS 541.423.**

[(b)] **(c) An operation that occurs** within *[three hundred]* **300** feet of a resource site inventoried *[pursuant to ORS 527.710 (3)(a)]* **under ORS 527.710 (3), other than a site described in paragraph (b) of this subsection,** unless the operation:

(A) Will be conducted pursuant to a stewardship agreement entered into under ORS 541.423; and

(B) Is consistent with the purposes and policies of any relevant Safe Harbor Agreements or Candidate Conservation Agreements entered into between the State of Oregon and agencies of the United States Government, pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531 et seq.) and federal regulations.

(4) The distances set forth in subsection (3)*[(a) and (b)]* of this section are solely for the purpose of defining an area within which a hearing may be requested under ORS 527.700 and not the area to be protected by the board's rules adopted pursuant to ORS 527.710 (3)(c).

(5) For the purpose of determining the distances set forth in subsection (3)*[(a) and (b)]* of this section "site" means the specific resource site and not any additional buffer area.

(6) An operator, timber owner or landowner, before commencing an operation, shall notify the State Forester. The notification shall be on forms provided by the State Forester and shall include the name and address of the operator, timber owner and landowner, the legal description of the operating area, and any other information considered by the State Forester to be necessary for the administration of the rules promulgated by the board pursuant to ORS 527.710. Promptly upon receipt of such notice, the State Forester shall *[send]* **provide** a copy of the notice to whichever of the operator, timber owner or landowner did not submit the notification. The State Forester shall *[send]* **provide** a copy of notices involving chemical applications to persons within 10 miles of the chemical application who hold downstream surface water rights pursuant to ORS chapter 537, if such a person has requested that notification in writing. The board shall adopt rules specifying the information to be contained in the notice. All information filed with the State Forester pertaining to chemical applications shall be public record.

(7) An operator, timber owner or landowner*[, whichever]* **that** filed *[the]* **an** original notification*[,]* shall notify the State Forester of any subsequent change in the information contained in the notification.

(8) Within *[three]* **six** working days of receipt of a notice or a written plan filed under subsection (6) or (7) of this section, the State Forester shall *[send]* **make** a copy of the notice or written plan **available** to any person who requested of the State Forester in writing that the person be *[sent]* **provided with** copies of notice and written plan and who has paid any applicable fee established by the State Forester for such service. The State Forester may establish a fee for *[sending]* **providing** copies of notices and written plans under this subsection not to exceed the actual and reasonable costs. In addition, the State Forester shall *[send]* **provide** a copy of the notification to the Department of Revenue and the county assessor for the county in which the operation is located, at times and in a manner determined through written cooperative agreement by the parties involved.

(9) Persons may submit written comments pertaining to the operation to the State Forester within 14 calendar days of the date the notice or written plan was filed with the State Forester under subsection (2), (6) or (7) of this section. Notwithstanding the provisions of this subsection, the State Forester may waive any waiting period for operations not requiring a written plan under subsection (3) of this section, except those operations involving aerial application of chemicals.

(10) If an operator, timber owner or landowner is required to submit a written plan of operations to the State Forester under subsection (3) of this section:

(a) The State Forester shall review a written plan and may provide comments to the person who submitted the written plan;

(b) The State Forester may not provide any comments concerning the written plan earlier than 14 calendar days following the date that the written plan was filed with the State Forester nor later than 21 calendar days following the date that the written plan was filed; and

(c) Provided that notice has been provided as required by subsection (6) of this section, the operation may commence on the date that the State Forester provides comments or, if no comments

are provided within the time period established in paragraph (b) of this subsection, at any time after 21 calendar days following the date that the written plan was filed.

(11)(a) Comments provided by the State Forester, or by the board under ORS 527.700 (6), to the person who submitted the written plan are for the sole purpose of providing advice to the operator, timber owner or landowner regarding whether the operation described in the written plan is likely to comply with ORS 527.610 to 527.770 and rules adopted thereunder. Comments provided by the State Forester or the board do not constitute an approval of the written plan or operation.

(b) If the State Forester or the board does not comment on a written plan, the failure to comment does not mean that an operation carried out in conformance with the written plan complies with ORS 527.610 to 527.770 or rules adopted thereunder nor does the failure to comment constitute a rejection of the written plan or operation.

(c) [*In the event that*] **If** the State Forester or board determines that an enforcement action may be appropriate concerning the compliance of a particular operation with ORS 527.610 to 527.770 or rules adopted [*thereunder*] **under ORS 527.610 to 527.770**, the State Forester or board shall consider, but are not bound by, comments that the State Forester provided under this section or comments that the board provided under ORS 527.700.

(12) [*When*] **If** the operation is required **under rules described in subsection (3) of this section** to have a written plan [*under subsection (3) of this section*] and comments have been timely filed under subsection (9) of this section pertaining to the operation requiring a written plan, the State Forester shall:

(a) [*Send*] **Provide** a copy of the State Forester's review and comments, if any, to persons who submitted timely written comments under subsection (9) of this section pertaining to the operation; and

(b) [*Send*] **Provide** to the operator, timber owner and landowner a copy of all timely comments submitted under subsection (9) of this section.

SECTION 2. ORS 527.700 is amended to read:

527.700. (1) Any operator, timber owner or landowner affected by any finding or order of the State Forester issued under ORS 527.610 to 527.770 and 527.992 may request a hearing within 30 days after issuance of the order. The hearing shall be commenced within 14 days after receipt of the request for hearing and a final order shall be issued within 28 days of the request for the hearing unless all parties agree to an extension of the time limit.

(2) The State Board of Forestry may delegate to the administrative law judge the authority to issue final orders on matters under this section. Hearings provided under this section shall be conducted as contested case hearings under ORS 183.413 to 183.470. The board may establish such rules as it deems appropriate to carry out the provisions of this section. Appeals from final hearing orders under this section shall be provided in ORS 183.482, except that the comments of the board or the State Forester concerning a written plan are not reviewable orders under ORS 183.480.

(3) Any person adversely affected or aggrieved by an operation described in subsection (4) of this section may file a written request to the board for a hearing if the person submitted written comments pertaining to the operation within the time limits established under ORS 527.670 (9).

(4) A request for hearing may be filed under subsection (3) of this section only if a written plan was required [*pursuant to*] **by rules adopted under** ORS 527.670 (3).

(5) A request for hearing filed under subsection (3) of this section shall be filed within 14 calendar days of the date the State Forester completed review of the written plan and issued any comments. Copies of the complete request shall be served, within the 14-day period, on the operator, timber owner and landowner. The request shall include:

(a) A copy of the written plan on which the person is requesting a hearing;

(b) A copy of the comments pertaining to the operation that were filed by the person requesting the hearing;

(c) A statement that shows the person is adversely affected or aggrieved by the operation and has an interest which is addressed by the Oregon Forest Practices Act or rules adopted thereunder; and

(d) A statement of facts that establishes that the operation is of the type described in ORS 527.670 (3).

(6) If the board finds that the person making the request meets the requirement of subsection (5)(c) of this section, the board shall set the matter for hearing within 21 calendar days after receipt of the request for hearing. The operator, timber owner and landowner shall be allowable parties to the hearing. The person requesting the hearing may raise, in the hearing, only those issues that the person raised in written comments filed under ORS 527.670 (9) relating to conformity with the rules of the board. The board shall issue its own comments, which may affirm, modify or rescind comments of the State Forester, if any, on the written plan within 45 days after the request for hearing was filed, unless all parties agree to an extension of the time limit. The comments of the board or of the State Forester concerning a written plan are not reviewable orders under ORS 183.480.

(7) The board may award reasonable attorney fees and expenses to each of the prevailing parties against any other party who the board finds presented a position without probable cause to believe the position was well-founded, or made a request primarily for a purpose other than to secure appropriate action by the board.

(8)(a) Upon the written request of a person requesting a hearing under subsection (3) of this section, a stay of the operation subject to the hearing may be granted upon a showing that:

(A) Commencement or continuation of the operation will constitute a violation of the rules of the board;

(B) The person requesting the stay will suffer irreparable injury if the stay is not granted; and

(C) The requirements of subsections (3), (4) and (5) of this section are met.

(b) If the board grants the stay, it shall require the person requesting the stay to give an undertaking which may be in the amount of the damages potentially resulting from the stay, but in any event shall not be less than \$15,000. The board may impose other reasonable requirements pertaining to the grant of the stay. The board shall limit the effect of the stay to the specific geographic area or elements of the operation for which the person requesting the stay has demonstrated a violation of the rules and irreparable injury under paragraph (a) of this subsection.

(c) If the board determines in its comments that the written plan pertaining to the operation for which the stay was granted is likely to result in compliance with ORS 527.610 to 527.770 or the rules of the board, the board may award reasonable attorney fees and actual damages in favor of each of the prevailing parties, to the extent incurred by each, against the person requesting the stay.

(9) If the board rescinds or modifies the comments on the written plan as submitted by the State Forester pertaining to any operation, the board may award reasonable attorney fees and costs against the state in favor of each of the prevailing parties.

(10) As used in this section, "person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character.

Passed by House March 15, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate May 2, 2011

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2011

Approved:

.....M,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

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Kate Brown, Secretary of State