

# DRAFT

## SUMMARY

Requires State Board of Forestry to obtain concurrence of Environmental Quality Commission before adopting rules related to commission water quality standards.

Changes standard for board adoption of certain rules establishing new or increased standards for forest practices.

## A BILL FOR AN ACT

Relating to forest water quality; amending ORS 527.710, 527.714, 527.765 and 527.770.

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

**SECTION 1.** ORS 527.710 is amended to read:

527.710. (1) In carrying out the purposes of ORS 527.610 to 527.770, 527.990 (1) and 527.992, the State Board of Forestry shall adopt, in accordance with applicable provisions of ORS chapter 183, rules to be administered by the State Forester establishing standards for forest practices in each region or subregion.

(2) The rules shall ensure the continuous growing and harvesting of forest tree species. Consistent with ORS 527.630, the rules shall provide for the overall maintenance of the following resources:

(a) Air quality;

(b) Water resources, including but not limited to sources of domestic drinking water;

(c) Soil productivity; and

(d) Fish and wildlife.

(3)(a) In addition to its rulemaking responsibilities under subsection (2)

of this section, the board shall collect and analyze the best available information and establish inventories of the following resource sites needing protection:

(A) Threatened and endangered fish and wildlife species identified on lists that are adopted, by rule, by the State Fish and Wildlife Commission or are federally listed under the Endangered Species Act of 1973, as amended;

(B) Sensitive bird nesting, roosting and watering sites;

(C) Biological sites that are ecologically and scientifically significant; and

(D) Significant wetlands.

(b) The board shall determine whether forest practices would conflict with resource sites in the inventories required by paragraph (a) of this subsection. If the board determines that one or more forest practices would conflict with resource sites in the inventory, the board shall consider the consequences of the conflicting uses and determine appropriate levels of protection.

(c) Based upon the analysis required by paragraph (b) of this subsection, and consistent with the policies of ORS 527.630, the board shall adopt rules appropriate to protect resource sites in the inventories required by paragraph (a) of this subsection.

(4) Before adopting rules under subsection (1) of this section, the board shall consult with other agencies of this state or any of its political subdivisions that have functions with respect to the purposes specified in ORS 527.630 or programs affected by forest operations. Agencies and programs subject to consultation under this subsection include, but are not limited to:

(a) Air and water pollution programs administered by the Department of Environmental Quality under ORS chapters 468A and 468B and ORS 477.013 and 477.515 to 477.532;

(b) Mining operation programs administered by the Department of Geology and Mineral Industries under ORS 516.010 to 516.130 and ORS chapter 517;

(c) Game fish and wildlife, commercial fishing, licensing and wildlife and

bird refuge tax incentive programs administered by the State Department of Fish and Wildlife under ORS 272.060 and ORS chapters 496, 498, 501, 506 and 509;

(d) Park land, Willamette River Greenway, scenic waterway and recreation trail programs administered by the State Parks and Recreation Department under ORS 358.480 to 358.545, 390.310 to 390.368, 390.805 to 390.925, 390.950 to 390.989 and 390.121;

(e) The programs administered by the Columbia River Gorge Commission under Public Law 99-663 and ORS 196.110 and 196.150;

(f) Removal and fill programs administered by the Department of State Lands under ORS 196.800 to 196.900;

(g) Federal Safe Drinking Water Act programs administered by the Oregon Health Authority under ORS 448.273 to 448.990;

(h) Conservation and conservation tax incentive programs administered by the State Parks and Recreation Department under ORS 273.563 to 273.591;

(i) Open space land tax incentive programs administered by cities and counties under ORS 308A.300 to 308A.330;

(j) Water resources programs administered by the Water Resources Department under ORS 536.220 to 536.540; and

(k) Pesticide control programs administered by the State Department of Agriculture under ORS chapter 634.

(5) In carrying out the provisions of subsection (4) of this section, **except as provided in this subsection** the board shall consider and accommodate the rules and programs of other agencies to the extent deemed by the board to be appropriate and consistent with the purposes of ORS 527.630. **Notwithstanding ORS 527.630 (3), before the board may adopt rules under subsection (1) of this section for the purpose of meeting water quality standards established by the Environmental Quality Commission or any limitations or controls adopted or ordered by the commission or by the Department of Environmental Quality, in addition to consulting with the department as provided in subsection (4)(a) of this section,**

**the board must obtain commission concurrence that the rules adequately meet the water quality standards, limitations and controls.**

(6) The board shall adopt rules to meet the purposes of another agency's regulatory program where it is the intent of the board to administer the other agency's program on forestland and where the other agency concurs by rule. An operation performed in compliance with the board's rules shall be deemed to comply with the other agency's program.

(7)(a) The board may enter into cooperative agreements or contracts necessary in carrying out the purposes specified in ORS 527.630.

(b) The State Forestry Department shall enter into agreements with appropriate state agencies for joint monitoring of the effectiveness of forest practice rules in protecting forest resources and water quality.

(8) If, based upon the study completed pursuant to section 15 (2)(f), chapter 919, Oregon Laws 1991, the board determines that additional rules are necessary to protect forest resources pursuant to ORS 527.630, the board shall adopt forest practice rules that reduce to the degree practicable the adverse impacts of cumulative effects of forest practices on air and water quality, soil productivity, fish and wildlife resources and watersheds. Such rules shall include a process for determining areas where adverse impacts from cumulative effects have occurred or are likely to occur, and may require that a written plan be submitted for harvests in such areas.

(9)(a) The State Forester, in cooperation with the State Department of Fish and Wildlife, shall identify streams for which restoration of habitat would be environmentally beneficial. The State Forester shall select as a priority those streams where restoration efforts will provide the greatest benefits to fish and wildlife, and to streambank and streambed stability.

(b) For those streams identified in paragraph (a) of this subsection, the State Forester shall encourage landowners to enter into cooperative agreements with appropriate state agencies for conduct of restoration activities.

(c) The board, in consultation with appropriate state agencies, shall study and identify methods for restoring or enhancing fish and wildlife populations

through restoration and rehabilitation of sites beneficial to fish and wildlife.

(d) The board shall adopt rules to implement the findings of this subsection.

(10) In addition to its responsibilities under subsections (1) to (3) of this section, the board shall adopt rules to reduce the risk of serious bodily injury or death caused by a rapidly moving landslide directly related to forest practices. The rules shall consider the exposure of the public to these safety risks and shall include appropriate practices designed to reduce the occurrence, timing or effects of rapidly moving landslides. As used in this subsection, "rapidly moving landslide" has the meaning given that term in ORS 195.250.

**SECTION 2.** ORS 527.714 is amended to read:

527.714. (1) The rulemaking authority of the State Board of Forestry under ORS 527.610 to 527.770 consists generally of the following three types of rules:

(a) Rules adopted to implement administration, procedures or enforcement of ORS 527.610 to 527.770 that support but do not directly regulate standards of forest practices.

(b) Rules adopted to provide definitions or procedures for forest practices where the standards are set in statute.

(c) Rules adopted to implement the provisions of ORS 527.710 (2), (3), (6), (8), (9) and (10) that grant broad discretion to the board and that set standards for forest practices not specifically addressed in statute.

(2) When considering the adoption of a rule, and prior to the notice required pursuant to ORS 183.335, the board shall determine which type of rule described in subsection (1) of this section is being considered.

(3) If the board determines that a proposed rule is of the type described in subsection (1)(a) or (b) of this section, or if the proposed rule is designed only to clarify the meaning of rules already adopted or to make minor adjustments to rules already adopted that are of the type described in subsection (1)(c) of this section, rulemaking may proceed in accordance with

ORS 183.325 to 183.410 and is not subject to the provisions of this section.

(4) If the board determines that a proposed rule is of the type described in subsection (1)(c) of this section, and the proposed rule would change the standards for forest practices, the board shall describe in its rule the purpose of the rule and the level of protection that is desired.

(5) If the board determines that a proposed rule is of the type described in subsection (1)(c) of this section, including a proposed amendment to an existing rule not qualifying under subsection (3) of this section, and the proposed rule would provide new or increased standards for forest practices, the board may adopt such a rule only after determining that the following facts exist and standards are met:

*[(a) If forest practices continue to be conducted under existing regulations, there is monitoring or research evidence that documents that degradation of resources maintained under ORS 527.710 (2) or (3) is likely, or in the case of rules proposed under ORS 527.710 (10), that there is a substantial risk of serious bodily injury or death;]*

**(a) Best available information supports a finding that existing regulations pose a substantial risk of degradation to resources for which maintenance is required under ORS 527.710 (2) or (3) or, if the rules are proposed under ORS 527.710 (10), pose a substantial risk of serious bodily injury or death;**

(b) If the resource to be protected is a wildlife species, the scientific or biological status of a species or resource site to be protected by the proposed rule has been documented using best available information;

(c) The proposed rule reflects available scientific information, the results of relevant monitoring and, as appropriate, adequate field evaluation at representative locations in Oregon;

(d) The objectives of the proposed rule are clearly defined, and the restrictions placed on forest practices as a result of adoption of the proposed rule:

(A) Are to prevent harm or provide benefits to the resource or resource

site for which protection is sought, or in the case of rules proposed under ORS 527.710 (10), to reduce risk of serious bodily injury or death; and

(B) Are directly related to the objective of the proposed rule and substantially advance its purpose;

(e) The availability, effectiveness and feasibility of alternatives to the proposed rule, including nonregulatory alternatives, were considered, and the alternative chosen is the least burdensome to landowners and timber owners, in the aggregate, while still achieving the desired level of protection; and

(f) The benefits to the resource, or in the case of rules proposed under ORS 527.710 (10), the benefits in reduction of risk of serious bodily injury or death, that would be achieved by adopting the rule are in proportion to the degree that existing practices of the landowners and timber owners, in the aggregate, are contributing to the overall resource concern that the proposed rule is intended to address.

(6) Nothing in subsection (5) of this section:

(a) Requires the board to call witnesses;

(b) Requires the board to allow cross-examination of witnesses;

(c) Restricts ex parte communications with the board or requires the board to place statements of such communications on the record;

(d) Requires verbatim transcripts of records of proceedings; or

(e) Requires depositions, discovery or subpoenas.

(7) If the board determines that a proposed rule is of the type described in subsection (1)(c) of this section, and the proposed rule would require new or increased standards for forest practices, as part of or in addition to the economic and fiscal impact statement required by ORS 183.335 (2)(b)(E), the board shall, prior to the close of the public comment period, prepare and make available to the public a comprehensive analysis of the economic impact of the proposed rule. The analysis shall include, but is not limited to:

(a) An estimate of the potential change in timber harvest as a result of the rule;

(b) An estimate of the overall statewide economic impact, including a

change in output, employment and income;

(c) An estimate of the total economic impact on the forest products industry and common school and county forest trust land revenues, both regionally and statewide; and

(d) Information derived from consultation with potentially affected landowners and timber owners and an assessment of the economic impact of the proposed rule under a wide variety of circumstances, including varying ownership sizes and the geographic location and terrain of a diverse subset of potentially affected forestland parcels.

(8) The provisions of this section do not apply to temporary rules adopted by the board.

**SECTION 3.** ORS 527.765 is amended to read:

527.765. (1) The State Board of Forestry shall establish best management practices and other rules applying to forest practices as necessary to ~~[insure]~~ **ensure** that to the maximum extent practicable nonpoint source discharges of pollutants resulting from forest operations on forestlands do not impair the achievement and maintenance of water quality standards established by the Environmental Quality Commission for the waters of the state. ~~[Such]~~ **The** best management practices shall consist of forest practices rules adopted to prevent or reduce pollution of waters of the state. Factors to be considered by the board in establishing best management practices shall include, where applicable, but not be limited to:

(a) Beneficial uses of waters potentially impacted;

(b) The effects of past forest practices on beneficial uses of water;

(c) Appropriate practices employed by other forest managers;

(d) Technical, economic and institutional feasibility; and

(e) Natural variations in geomorphology and hydrology.

(2) The board shall consult with the **Department of Environmental Quality and the** ~~[Environmental Quality]~~ commission in adoption and review of best management practices and other rules to address nonpoint source discharges of pollutants resulting from forest operations on forestlands. **Be-**



1 **fore the board may adopt rules under this section, the board must**  
2 **obtain commission concurrence that the rules adequately meet the**  
3 **achievement and maintenance of the water quality standards estab-**  
4 **lished by the commission. The prohibition in ORS 468B.110 (2) does not**  
5 **apply to a commission concurrence described in this subsection.**

6 (3)(a) Notwithstanding ORS 183.310 (8), upon written petition for  
7 rulemaking under ORS 183.390 of any interested person or agency, the board  
8 shall review the best management practices adopted pursuant to this section.  
9 In addition to all other requirements of law, the petition must allege with  
10 reasonable specificity that nonpoint source discharges of pollutants resulting  
11 from forest operations being conducted in accordance with the best manage-  
12 ment practices are a significant contributor to violations of such standards.

13 (b) Except as provided in paragraph (c) of this subsection, if the board  
14 determines that forest operations being conducted in accordance with the  
15 best management practices are neither significantly responsible for partic-  
16 ular water quality standards not being met nor are a significant contributor  
17 to violations of such standards, the board shall issue an order dismissing the  
18 petition.

19 (c) If the petition for review of best management practices is made by the  
20 [*Environmental Quality*] commission, the board shall not terminate the re-  
21 view without the concurrence of the commission, unless the board com-  
22 mences rulemaking in accordance with paragraph (e) of this subsection.

23 (d) If a petition for review is dismissed, upon conclusion of the review,  
24 the board shall issue an order that includes findings regarding specific  
25 allegations in the petition and shall state the board's reasons for any con-  
26 clusions to the contrary.

27 (e) If, pursuant to review, the board determines that best management  
28 practices should be reviewed, the board shall commence rulemaking pro-  
29 ceedings for that purpose. Rules specifying the revised best management  
30 practices must be adopted not later than two years from the filing date of  
31 the petition for review unless the board, with concurrence of the [*Environ-*

1 *mental Quality*] commission, finds that special circumstances require addi-  
 2 tional time. **The board may not adopt a rule under this paragraph**  
 3 **unless the board consults with the Department of Environmental**  
 4 **Quality and the commission and obtains commission concurrence as**  
 5 **described in subsection (2) of this section.**

6 (f) Notwithstanding the time limitation established in paragraph (e) of  
 7 this subsection, at the request of the [*Environmental Quality*] commission,  
 8 the board shall take action as quickly as practicable to prevent significant  
 9 damage to beneficial uses identified by the commission while the board is  
 10 revising its best management practices and rules as provided for in this  
 11 section.

12 **SECTION 4.** ORS 527.770 is amended to read:

13 527.770. (1) **Except as provided in subsections (3) and (4) of this sec-**  
 14 **tion,** a forest operator conducting, or in good faith proposing to conduct,  
 15 operations in accordance with best management practices currently in effect  
 16 [*shall*] **may** not be considered in violation of any water quality standards.

17 (2) When the State Board of Forestry adopts new best management prac-  
 18 tices and other rules applying to forest operations, [*such*] **the** rules shall  
 19 apply to all current or proposed forest operations upon [*their effective*  
 20 *dates*] **the rules taking effect.**

21 (3) [*However, nothing in this section prevents*] **Subsection (1) of this**  
 22 **section does not prevent** enforcement of water quality standards against  
 23 a forest operator conducting operations after the time provided in ORS  
 24 527.765 (3)(e) for adoption of revised best management practices if the board  
 25 either has not adopted revised management practices or has not made a  
 26 finding that such revised best management practices are not required.

27 (4) **Best management practices described in this section must be**  
 28 **adopted by the board by rule. Before adopting the rule, the board shall**  
 29 **consult with the Department of Environmental Quality and the Envi-**  
 30 **ronmental Quality Commission and must obtain commission concur-**  
 31 **rence that the rule adequately meets the achievement and**

1 **maintenance of the water quality standards established by the com-**  
2 **mission.**

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