
SENATE BILL 5688

State of Washington 53rd Legislature 1993 Regular Session

By Senators Owen, A. Smith and Oke

Read first time 02/09/93. Referred to Committee on Natural Resources.

1 AN ACT Relating to civil enforcement of forest practices
2 violations; amending RCW 76.09.140 and 76.09.170; and prescribing
3 penalties.

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

5 **Sec. 1.** RCW 76.09.140 and 1975 1st ex.s. c 200 s 8 are each
6 amended to read as follows:

7 (1) ~~The department ((of natural resources, through the attorney~~
8 ~~general,)) may take ((any necessary)) action necessary to enforce any~~
9 ~~final order or final decision, or ((to enjoin any forest practices by~~
10 ~~any person for a one year period after such person has failed to comply~~
11 ~~with a final order or a final decision)) may deny a forest practices~~
12 ~~application or notification submitted by the person for one year from~~
13 ~~the date of a final order or final decision.~~

14 (2) On request of the department, the attorney general shall:

15 (a) File suit to collect a penalty assessed by the department;

16 (b) Seek a civil injunction, show cause order, or contempt order;

17 (c) File suit asking the court to enforce a final order or decision
18 of the department or the forest practices appeals board; and

1 (d) Take other legal action appropriate and necessary for the
2 enforcement of the provisions of this chapter.

3 (~~(2)~~) (3) A county may bring injunctive, declaratory, or other
4 actions for enforcement for forest practice activities within its
5 jurisdiction in the superior court as provided by law against the
6 department, the forest land owner, timber owner or operator to enforce
7 the forest practice regulations or any final order of the department,
8 or the appeals board(~~(:—PROVIDED, That)~~). No civil or criminal
9 penalties shall be imposed for past actions or omissions if such
10 actions or omissions were conducted pursuant to an approval or
11 directive of the department of natural resources(~~(:—AND PROVIDED~~
12 FURTHER, That such actions shall)). Injunctions, declaratory actions,
13 or other actions for enforcement under this subsection may not be
14 commenced unless the department fails to take appropriate action after
15 ten days written notice to the department by the county of a violation
16 of the forest practices ((regulations)) rules or final orders of the
17 department or the appeals board.

18 **Sec. 2.** RCW 76.09.170 and 1975 1st ex.s. c 200 s 9 are each
19 amended to read as follows:

20 (1) Every person who fails to comply with any provision of RCW
21 76.09.010 through 76.09.280 as now or hereafter amended or of the
22 forest practices regulations shall be subject to a penalty in an amount
23 of not more than (~~five hundred~~) ten thousand dollars per day for
24 every such violation. Each and every such violation shall be a
25 separate and distinct offense. In case of a failure to comply with a
26 notice pursuant to RCW 76.09.090 (~~(as now or hereafter amended)~~) or a
27 stop work order, every day's continuance shall be a separate and
28 distinct violation. Every person who through an act of commission or
29 omission procures, aids or abets in the violation shall be considered
30 to have violated the provisions of this section and shall be subject to
31 the penalty (~~(herein provided for:—PROVIDED, That)~~) in this section.
32 No penalty shall be imposed under this section upon any governmental
33 official, an employee of any governmental department, agency, or
34 entity, or a member of any board or advisory committee created by this
35 chapter for any act or omission in his or her duties in the
36 administration of this chapter or of any ((~~regulation promulgated~~
37 thereunder-)) rule adopted under this chapter.

1 (2) The department may adopt by rule a schedule to determine the
2 amount of penalties as described in subsection (1) of this section.
3 The schedule shall include consideration of, but shall not be limited
4 to the following: Cooperation, prior knowledge, and extent of relative
5 adverse effect to public resources and repairability of the adverse
6 effect from the violation.

7 (3) The penalty (~~herein~~) in this section provided (~~for~~) shall
8 be imposed by a notice in writing, either by certified mail with return
9 receipt requested or by personal service, to the person incurring the
10 same from the department of natural resources describing the violation
11 with reasonable particularity. Within fifteen days after the notice is
12 received, the person incurring the penalty may apply in writing to the
13 department for the remission or mitigation of such penalty. Upon
14 receipt of the application, that department may remit or mitigate the
15 penalty upon whatever terms that department in its discretion deems
16 proper, provided the department deems such remission or mitigation to
17 be in the best interests of carrying out the purposes of this chapter.
18 The department of natural resources shall have authority to ascertain
19 the facts regarding all such applications in such reasonable manner and
20 under such (~~regulations~~) rule as it may deem proper.

21 (4) Any person incurring any penalty hereunder may appeal the same
22 to the forest practices appeals board. Such appeals shall be filed
23 within thirty days of receipt of notice imposing any penalty unless an
24 application for remission or mitigation is made to the department.
25 When such an application for remission or mitigation is made, such
26 appeals shall be filed within thirty days of receipt of notice from the
27 department setting forth the disposition of the application.

28 (5) Any penalty imposed hereunder shall become due and payable
29 thirty days after receipt of a notice imposing the same unless
30 application for remission or mitigation is made or an appeal is filed.
31 When such an application for remission or mitigation is made, any
32 penalty incurred hereunder shall become due and payable thirty days
33 after receipt of notice setting forth the disposition of such
34 application unless an appeal is filed from such disposition. Whenever
35 an appeal of any penalty incurred hereunder is filed, the penalty shall
36 become due and payable only upon completion of all review proceedings
37 and the issuance of a final decision confirming the penalty in whole or
38 in part.

1 (6) If the amount of any penalty is not paid to the department
2 within thirty days after it becomes due and payable, the attorney
3 general, upon the request of the department, shall bring an action in
4 the name of the state of Washington in the superior court of Thurston
5 county or of any county in which such violator may do business, to
6 recover such penalty. In all such actions the procedure and rules of
7 evidence shall be the same as an ordinary civil action except as
8 otherwise in this chapter provided. In addition to or as an
9 alternative to seeking enforcement of penalties in superior court, the
10 department may bring an action in district court as provided in Title
11 3 RCW, to enforce a final order or final decision.

12 (7) The department of natural resources may provide notice either
13 by certified mail with return receipt requested or by personal service
14 on either the forest land owner or timber owner, or both, describing
15 the penalty with reasonable particularity and indicating that either
16 the forest land owner or timber owner, or both, may seek remission or
17 mitigation under subsection (3) of this section or appeal the penalty
18 as provided in subsection (4) of this section. Upon the expiration of
19 the appeal period, the amount of the penalty shall become a lien on the
20 forest land and the department may collect the amount.

21 (8) Penalties imposed or assessed under this chapter shall be and
22 are declared to be a lien respectively upon the real property of the
23 person notified of the penalty or a bond posted by the person as
24 required by the department or forest practice rules. The lien shall
25 have priority to and shall be fully paid and satisfied before a
26 mortgage, judgment, debt, obligation, or responsibility to or with
27 which said real property is or may become charged or liable.

28 (9) In addition to penalties imposed under this chapter, the court,
29 in its discretion may award reasonable attorneys' fees and costs of
30 enforcing a penalty as provided in this chapter.

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