

# SENATE BILL REPORT

## SB 5896

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As of February 19, 1999

**Title:** An act relating to forest practices as they affect the recovery of salmon and other aquatic resources.

**Brief Description:** Contributing to salmon and water quality enhancement in areas impacted by forest practices.

**Sponsors:** Senators Jacobsen, Oke, Loveland, Swecker, Hale, T. Sheldon, Rasmussen, Rossi, Haugen, West and Winsley; by request of Governor Locke.

**Brief History:**

**Committee Activity:** Natural Resources, Parks & Recreation: 2/22/99.

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### SENATE COMMITTEE ON NATURAL RESOURCES, PARKS & RECREATION

**Staff:** Vic Moon (786-7469)

**Background:** The Forest Practices Board and the Forest Practices Act were established by the Legislature in 1974. The timber, fish and wildlife agreement was made in 1986 between groups representing the state agencies, including the Department of Natural Resources, the Department of Wildlife, the Department of Ecology, the Department of Fisheries, and large and small forest landowners, the environmental community and the tribes. Federal agencies have been participants during the last two years. A comprehensive plan to address salmon and other aquatic species has been developed by some of the timber, fish and wildlife agreement participants. The plan includes legislation and a document upon which rules are to be based. The legislation and rules address the recovery of salmon and other aquatic species on approximately 10 million acres of forest lands regulated under the Forest Practices Act.

**Summary of Bill:** The changes in laws and rules contemplated by this bill constitute a comprehensive and coordinated program to provide substantial and sufficient contributions to salmon and water quality enhancement in areas impacted by forest practices as well as to fully satisfy the requirements of the Federal Endangered Species Act and the Federal Clean Water Act.

The Legislature finds that coordination is needed between the laws relating to forestry and the state salmon recovery program. The Legislature finds that the forestry section is one part of a comprehensive salmon strategy and that proposed forest practice rules will result in a forest salmon habitat which is vital to long-term recovery of the species.

The Legislature finds that identification of forest roads contributing to habitat degradation is needed and corrective action is necessary. The Legislature also finds that increased protection is needed for steep and unstable forest slopes and that the implementation of a

scientifically based adaptive management and monitoring process is necessary to evaluate the impacts of forest practices on aquatic resources.

Direction is given to the Forest Practices Board, the Department of Natural Resources and the Department of Ecology by the act. The Forest Practices Act is amended to authorize interim forest practice rules consistent with the elements of the Forest and Fish Report. Adoption of the interim rules does not require compliance with the Forest Practices Act as it is now written, with the Administrative Procedure Act, with the Small Business Economic Impact Act, or with provisions of the Regulatory Fairness Act or the State Environmental Policy Act.

Aquatic resources– is defined to include salmon and some species of salamanders and frogs. Public safety– is defined for the purposes of this act to mean reducing the risk to the public-at-large from the danger of snow avalanches, which will be identified in consultation with the Department of Transportation or a local government, and from landslides or debris torrents triggered by forest practices.

The final forest practices rules to be adopted by the Forest Practices Board must be consistent with the Forest and Fish Report which is adopted by reference. The Forest Practices Board must amend rules through its normal rulemaking process to be consistent with the recommendations of the report. Following the completion of its environmental and economic review and receipt of public comments, a supermajority (which is nine of 12 members) of the board members are required to determine that a deviation from the recommendations of the Forest and Fish Report is necessary, and that deviation is necessary to prevent material damage to a public resource and can be adopted without jeopardizing the economic viability of the timber industry. The rules must be adopted within 24 months of the effective date of the act. The rules should be as specific as the Board of Forest Practices can reasonably make them, but should also allow for alternative plans in response to site specific physical features. Future changes to the rules must be consistent with the adaptive management process prescribed in the Forest and Fish Report.

Forest landowners are entitled to fair compensation for lands and timber set aside for the protection of aquatic species. The share calculations for distributions from the timber harvest tax gives a county 66 percent and the state 34 percent.

A small forest landowner office must be created in the Department of Natural Resources and the office is the focal point for the forestry riparian easement program, which is established to acquire easements from small landowners. An advisory committee is established to assist the small forest landowner office and must consist of at least five people, including representatives of natural resource agencies and small forest landowners. The members are appointed by the Governor based on recommendations of the authors of the Forest and Fish Report.

The Forest Practices Board is authorized to adopt a forestry riparian easement program to purchase 55 year-long easements from small forest landowners. The liability of the state and private entities is limited by the recognition that trees may blow down, fall into, or otherwise cause damage or injury to public improvements, private property and persons. When any land covered by the rules is transferred, the seller must notify the buyer of the existence of the continuing obligation of forest land management required by the act.

Additional enforcement for the Department of Natural Resources is included allowing their methods to disapprove forest practices, recover attorney fees, and require that financial assurances be given by significant violators. The Department of Natural Resources is allowed to obtain administrative inspection warrants and to bring inspection teams onto private property. The Department of Natural Resources is given authority to collect interest costs and attorney fees when civil penalties are not paid in a timely manner.

The Forest Practices Board is required to adopt rules that allow for the development of watershed analysis. Forest practice rules relating to water quality may be adopted after reaching agreement with the director of the Department of Ecology or the director's designee. The director or the director's designee of the Department of Fish and Wildlife may serve on the Forest Practices Board but that seat must terminate automatically after two years if the Legislature finds that the department has not made substantial progress toward integrating the Hydraulics Act and the Forest Practices Act.

The Department of Natural Resources' obligations under the State Environmental Policy Act (SEPA) are limited so that the department does not need SEPA justification for road maintenance and abandonment plans, the approval of eastside clearcut harvests, the acquisitions of stream channel migration zone lands or for acquisitions of conservation easements.

The Legislature finds that the Forest and Fish Report has been enacted on the assumption that the federal government makes assurances that the bill constitutes compliance with the Federal Endangered Species Act and the Federal Clean Water Act with respect to the species defined in the bill. The Governor is given authority to negotiate with federal officials to obtain assurances and a procedure is included to rescind the requirements of the act if federal assurances are not given.

**Appropriation:** None.

**Fiscal Note:** Requested on February 11, 1999.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.