

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5688

53rd Legislature
1993 Regular Session

Passed by the Senate April 20, 1993
YEAS 46 NAYS 1

President of the Senate

Passed by the House April 7, 1993
YEAS 98 NAYS 0

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5688** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5688

AS AMENDED BY THE HOUSE

Passed Legislature - 1993 Regular Session

State of Washington 53rd Legislature 1993 Regular Session

By Senate Committee on Natural Resources (originally sponsored by
Senators Owen, A. Smith and Oke)

Read first time 03/03/93.

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

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 to enforce any final order or~~
9 ~~final decision, ((or to enjoin any forest practices by any person for~~
10 ~~a one year period after such person has failed to comply with a final~~
11 ~~order or a final decision)) and may disapprove for up to one year any~~
12 forest practices application or notification submitted by any person
13 who has failed to comply with a final order or final decision or has
14 failed to pay any civil penalties as provided in RCW 76.09.170. For
15 purposes of this act, the terms "final order" and "final decision"
16 shall mean the same as set forth in RCW 76.09.080, 76.09.090, and
17 76.09.110. The department shall provide written notice of its intent
18 to disapprove an application or notification under this subsection.
19 The department shall forward copies of its notice of intent to

1 disapprove to any affected landowner. The disapproval period shall run
2 from thirty days following the date of actual notice or when all
3 administrative and judicial appellate processes, if any, have been
4 exhausted. Any person provided the notice may seek review from the
5 appeals board by filing a request for review within thirty days of the
6 date of the notice of intent.

7 (2) On request of the department, the attorney general may take
8 action necessary to enforce this chapter, including, but not limited
9 to, seeking penalties, enforcing final orders or decisions, and seeking
10 civil injunctions, show cause orders, or contempt orders.

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

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

28 (1) Every person who (~~(fails to comply with)~~) violates any
29 provision of RCW 76.09.010 through 76.09.280 (~~(as now or hereafter~~
30 amended)) or of the forest practices (~~(regulations)~~) rules, or who

31 converts forest land to a use other than commercial timber operation
32 within three years after completion of the forest practice without the
33 consent of the county, city, or town, shall be subject to a penalty in
34 an amount of not more than (~~(five hundred)) ten thousand dollars for~~

35 every such violation. Each and every such violation shall be a
36 separate and distinct offense. In case of a failure to comply with a
37 (~~(notice pursuant to RCW 76.09.090 as now or hereafter amended or a)~~)
38 stop work order, every day's continuance shall be a separate and

1 distinct violation. Every person who through an act of commission or
2 omission procures, aids or abets in the violation shall be considered
3 to have violated the provisions of this section and shall be subject to
4 the penalty ~~((herein provided for: PROVIDED, That))~~ in this section.
5 No penalty shall be imposed under this section upon any governmental
6 official, an employee of any governmental department, agency, or
7 entity, or a member of any board or advisory committee created by this
8 chapter for any act or omission in his or her duties in the
9 administration of this chapter or of any ~~((regulation promulgated~~
10 thereunder-)) rule adopted under this chapter.

11 (2) The department shall develop and recommend to the board a
12 penalty schedule to determine the amount to be imposed under this
13 section. The board shall adopt by rule, pursuant to chapter 34.05 RCW,
14 such penalty schedule to be effective no later than January 1, 1994.
15 The schedule shall be developed in consideration of the following:

16 (a) Previous violation history;

17 (b) Severity of the impact on public resources;

18 (c) Whether the violation of this chapter or its rules was
19 intentional;

20 (d) Cooperation with the department;

21 (e) Repairability of the adverse effect from the violation; and

22 (f) The extent to which a penalty to be imposed on a forest
23 landowner for a forest practice violation committed by another should
24 be reduced because the owner was unaware of the violation and has not
25 received substantial economic benefits from the violation.

26 (3) The penalty ~~((herein provided for))~~ in this section shall be

27 imposed by a notice in writing, either by certified mail with return

28 receipt requested or by personal service, to the person incurring the

29 same from the department ~~((of natural resources))~~ describing the

30 violation with reasonable particularity. Within fifteen days after the

31 notice is received, the person incurring the penalty may apply in

32 writing to the department for the remission or mitigation of such

33 penalty. Upon receipt of the application, that department may remit or

34 mitigate the penalty upon whatever terms that department in its

35 discretion deems proper, provided the department deems such remission

36 or mitigation to be in the best interests of carrying out the purposes

37 of this chapter. The department ~~((of natural resources))~~ shall have

38 authority to ascertain the facts regarding all such applications in

1 such reasonable manner and under such (~~regulations~~) rule as it may
2 deem proper.

3 (4) Any person incurring (~~any~~) a penalty (~~hereunder~~) under this
4 section may appeal the (~~same~~) penalty to the forest practices appeals
5 board. Such appeals shall be filed within thirty days of receipt of
6 notice imposing any penalty unless an application for remission or
7 mitigation is made to the department. When such an application for
8 remission or mitigation is made, such appeals shall be filed within
9 thirty days of receipt of notice from the department setting forth the
10 disposition of the application for remission or mitigation.

11 (~~Any~~) (5) The penalty imposed (~~hereunder~~) under this section
12 shall become due and payable thirty days after receipt of a notice
13 imposing the same unless application for remission or mitigation is
14 made or an appeal is filed. When such an application for remission or
15 mitigation is made, any penalty incurred (~~hereunder~~) under this
16 section shall become due and payable thirty days after receipt of
17 notice setting forth the disposition of such application unless an
18 appeal is filed from such disposition. Whenever an appeal of (~~any~~)
19 the penalty incurred (~~hereunder~~) is filed, the penalty shall become
20 due and payable only upon completion of all administrative and judicial
21 review proceedings and the issuance of a final decision confirming the
22 penalty in whole or in part.

23 (6) If the amount of any penalty is not paid to the department
24 within thirty days after it becomes due and payable, the attorney
25 general, upon the request of the department, shall bring an action in
26 the name of the state of Washington in the superior court of Thurston
27 county or of any county in which such violator may do business, to
28 recover such penalty. In all such actions the procedure and rules of
29 evidence shall be the same as an ordinary civil action except as
30 otherwise in this chapter provided. In addition to or as an
31 alternative to seeking enforcement of penalties in superior court, the
32 department may bring an action in district court as provided in Title
33 3 RCW, to collect penalties.

34 (7) Penalties imposed under this section for violations associated
35 with a conversion to a use other than commercial timber operation shall
36 be a lien upon the real property of the person assessed the penalty and
37 the department may collect such amount in the same manner provided in
38 chapter 60.04 RCW for mechanics' liens.

1 NEW SECTION. **Sec. 3.** The following portions of this act shall
2 take effect on January 1, 1994: Subsections (1) and (3) through (7) of
3 section 2 of this act.

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