
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-2874.1/99

ATTY/TYPIST: ML:rmh

BRIEF TITLE:

2 SHB 2091 - H AMD
3 By Representative

4

5 Strike everything after the enacting clause and insert the
6 following:

7 NEW SECTION. Sec. 101. A new section is added to chapter 75.46
8 RCW and codified with the subchapter heading of "salmon recovery
9 planning in areas involving forest practices" to read as follows:

10 (1) The legislature finds that the forests and fish report as
11 defined in RCW 76.09.020 was developed through extensive negotiations
12 with the federal agencies responsible for administering the endangered
13 species act and the clean water act. The legislature further finds
14 that the forestry industry, small landowners, tribal governments, state
15 and federal agencies, and counties have worked diligently for nearly
16 two years to reach agreement on scientifically based changes to the
17 forest practices rules, set forth in the forests and fish report as
18 defined in RCW 76.09.020. The legislature further finds that if
19 existing forest practices rules are amended as proposed in the forests
20 and fish report as defined in RCW 76.09.020, the resulting changes in
21 forest practices (a) will lead to: (i) Salmon habitat that meets
22 riparian functions vital to the long-term recovery of salmon on more
23 than sixty thousand miles of streams in this state; (ii) identification
24 of forest roads contributing to habitat degradation and corrective
25 action to remedy those problems to protect salmon habitat; (iii)
26 increased protection of steep and unstable slopes; and (iv) the
27 implementation of scientifically based adaptive management and
28 monitoring processes for evaluating the impacts of forest practices on
29 aquatic resources, as defined in RCW 76.09.020, and a process for
30 amending the forest practices rules to incorporate new information as
31 it becomes available; (b) will lead to the protection of aquatic
32 resources to the maximum extent practicable consistent with maintaining
33 commercial forest management as an economically viable use of lands
34 suitable for that purpose; and (c) will provide a regulatory climate
35 and structure more likely to keep landowners from converting forest
36 lands to other uses that would be less desirable for salmon recovery.

1 (2) The legislature further finds that the changes in laws and
2 rules contemplated by chapter . . . , Laws of 1999 (this act), taken as
3 a whole, constitute a comprehensive and coordinated program to provide
4 substantial and sufficient contributions to salmon recovery and water
5 quality enhancement in areas impacted by forest practices and are
6 intended to fully satisfy the requirements of the endangered species
7 act (16 U.S.C. Sec. 1531 et seq.) with respect to incidental take of
8 salmon and other aquatic resources and the clean water act (33 U.S.C.
9 Sec. 1251 et seq.) with respect to nonpoint source pollution
10 attributable to forest practices.

11 (3) The legislature finds that coordination is needed between the
12 laws relating to forestry in chapter 76.09 RCW and the state salmon
13 recovery strategy being developed under this chapter. The coordination
14 should ensure that nonfederal forest lands are managed in ways that
15 make appropriate contributions to the recovery of salmonid fish, water
16 quality, and related environmental amenities while encouraging
17 continued investments in those lands for commercial forestry purposes.
18 Specifically, the legislature finds that forest practices rules
19 relating to water quality, salmon, certain other species of fish,
20 certain species of stream-associated amphibians, and their respective
21 habitats should be coordinated with the rules and policies relating to
22 other land uses through the state-wide salmon recovery planning
23 process. The legislature further finds that this subchapter is but one
24 part of a comprehensive salmon strategy as required in this chapter,
25 and this investment in salmon habitat will be of little value if a
26 comprehensive state plan is not completed and fully implemented.

27 (4) The legislature recognizes that the adoption of forest
28 practices rules consistent with the forests and fish report as defined
29 in RCW 76.09.020 will impose substantial financial burdens on forest
30 landowners which, if not partially offset through other changes in the
31 laws and rules governing forestry, could lead to significantly reduced
32 silvicultural investments on nonfederal lands, deterioration in the
33 quality, condition, and amounts of forests on those lands, and long-
34 term adverse effects on fish and wildlife habitat and other
35 environmental amenities associated with well managed forests.
36 Moreover, as the benefits of the proposed revisions to the forest
37 practices rules will benefit the general public, chapter . . . , Laws of
38 1999 (this act) suggests that some of these costs be shared with the
39 general public.

1 (5) As an integral part of implementing the salmon recovery
2 strategy, chapter . . ., Laws of 1999 (this act) (a) provides direction
3 to the forest practices board, the department of natural resources, and
4 the department of ecology with respect to the adoption, implementation,
5 and enforcement of rules relating to forest practices and the
6 protection of aquatic resources; (b) provides additional enforcement
7 tools to the department of natural resources to enforce the forest
8 practices rules; (c) anticipates the need for adequate and consistent
9 funding for the various programmatic elements necessary to fully
10 implement the strategy over time and derive the long-term benefits; (d)
11 provides for the acquisition by the state of forest lands within
12 certain stream channel migration zones where timber harvest will not be
13 allowed; (e) provides for small landowners to have costs shared for a
14 portion of any extraordinary economic losses attributable to the
15 revisions to the forest practices rules required by chapter . . ., Laws
16 of 1999 (this act); and (f) amends other existing laws to aid in the
17 implementation of the recommendations set forth in the forests and fish
18 report as defined in RCW 76.09.020.

19 **PART II**
20 **RULE MAKING**

21 NEW SECTION. **Sec. 201.** A new section is added to chapter 76.09
22 RCW to read as follows:

23 (1) The legislature finds that the declines of fish stocks
24 throughout much of the state requires immediate action to be taken to
25 help restore these fish runs where possible. The legislature also
26 recognizes that federal and state agencies, tribes, county
27 representatives, and private timberland owners have spent considerable
28 effort and time to develop the forests and fish report. Given the
29 agreement of the parties, the legislature believes that the immediate
30 adoption of emergency rules is appropriate in this particular instance.
31 These rules can implement many provisions of the forests and fish
32 report to protect the economic well-being of the state, and to minimize
33 the risk to the state and landowners to legal challenges. This
34 authority is not designed to set any precedents for the forest
35 practices board in future rule making or set any precedents for other
36 rule-making bodies of the state.

1 (2) The forest practices board is authorized to adopt emergency
2 rules amending the forest practices rules with respect to the
3 protection of aquatic resources, in accordance with RCW 34.05.350,
4 except: (a) That the rules adopted under this section may remain in
5 effect until permanent rules are adopted, or until June 30, 2001,
6 whichever is sooner; (b) notice of the proposed rules must be published
7 in the Washington State Register as provided in RCW 34.05.320; (c) at
8 least one public hearing must be conducted with an opportunity to
9 provide oral and written comments; and (d) a rule-making file must be
10 maintained as required by RCW 34.05.370. In adopting the emergency
11 rules, the board is not required to prepare a small business economic
12 impact statement under chapter 19.85 RCW, prepare a statement
13 indicating whether the rules constitute a significant legislative rule
14 under RCW 34.05.328, prepare a significant legislative rule analysis
15 under RCW 34.05.328, or follow the procedural requirements of the state
16 environmental policy act, chapter 43.21C RCW. The forest practices
17 board may only adopt recommendations contained in the forests and fish
18 report as emergency rules under this section.

19 NEW SECTION. **Sec. 202.** A new section is added to chapter 34.05
20 RCW to read as follows:

21 Emergency rules adopted by the forest practices board pertaining to
22 forest practices and the protection of aquatic resources are subject to
23 this chapter to the extent provided in section 201 of this act.

24 NEW SECTION. **Sec. 203.** A new section is added to chapter 43.21C
25 RCW to read as follows:

26 The duration and process for adopting emergency rules by the forest
27 practices board pertaining to forest practices and the protection of
28 aquatic resources as provided in section 201 of this act are exempt
29 from the procedural requirements of this chapter.

30 NEW SECTION. **Sec. 204.** A new section is added to chapter 76.09
31 RCW to read as follows:

32 (1) The legislature finds that the process that produced the
33 forests and fish report was instigated by the forest practices board,
34 the report is the product of considerable negotiations between several
35 diverse interest groups, and the report has the support of key federal
36 agencies. When adopting permanent rules under this section, the forest

1 practices board is strongly encouraged to follow the recommendations of
2 the forests and fish report, but may include other alternatives for
3 protection of aquatic resources. If the forest practices board chooses
4 to adopt rules under this section that are not consistent with the
5 recommendations contained in the forests and fish report, the board
6 must notify the appropriate legislative committees of the proposed
7 deviations, the reasons for the proposed deviations, and whether the
8 parties to the forests and fish report still support the agreement.
9 The board shall defer final adoption of such rules for sixty days of
10 the legislative session to allow for the opportunity for additional
11 public involvement and legislative oversight.

12 (2) The forest practices board shall follow the regular rules
13 adoption process contained in the administrative procedure act, chapter
14 34.05 RCW, when adopting permanent rules pertaining to forest practices
15 and the protection of aquatic resources except as limited by subsection
16 (1) of this section. The permanent rules must accomplish the policies
17 stated in RCW 76.09.010 without jeopardizing the economic viability of
18 the forest products industry.

19 (3) The rules adopted under this section should be as specific as
20 reasonably possible while also allowing an applicant to propose
21 alternate plans in response to site-specific physical features.
22 Alternate plans should provide protection to public resources at least
23 equal in overall effectiveness by alternate means.

24 (4) Rule making under subsection (2) of this section shall be
25 completed by June 30, 2001.

26 (5) The board should consider coordinating any environmental review
27 process under chapter 43.21C RCW relating to the adoption of rules
28 under subsection (2) of this section with any review of a related
29 proposal under the national environmental policy act (42 U.S.C. Sec.
30 4321, et seq.).

31 (6) After the board has adopted permanent rules under subsection
32 (2) of this section, changes to those rules and any new rules covering
33 aquatic resources may be adopted by the board but only if the changes
34 or new rules are consistent with recommendations resulting from the
35 scientifically based adaptive management process established by a rule
36 of the board. Any new rules or changes under this subsection need not
37 be based upon the recommendations of the adaptive management process
38 if: (a) The board is required to adopt or modify rules by the final

1 order of any court having jurisdiction thereof; or (b) future state
2 legislation directs the board to adopt or modify the rules.

3 (7) In adopting permanent rules, the board shall incorporate the
4 scientific-based adaptive management process described in the forests
5 and fish report which will be used to determine the effectiveness of
6 the new forest practices rules in aiding the state's salmon recovery
7 effort. The purpose of an adaptive management process is to make
8 adjustments as quickly as possible to forest practices that are not
9 achieving the resource objectives. The adaptive management process
10 shall incorporate the best available science and information, include
11 protocols and standards, regular monitoring, a scientific and peer
12 review process, and provide recommendations to the board on proposed
13 changes to forest practices rules to meet timber industry viability and
14 salmon recovery.

15 NEW SECTION. **Sec. 205.** A new section is added to chapter 76.09
16 RCW to read as follows:

17 Prior to the adoption of permanent rules as required by chapter
18 . . ., Laws of 1999 (this act) and no later than January 1, 2000, the
19 board shall report to the appropriate legislative committees regarding
20 the substance of emergency rules that have been adopted under chapter
21 . . ., Laws of 1999 (this act). In addition, the report shall include
22 information on changes made to the forests and fish report after
23 February 22, 1999, and an update on the status of the adoption of
24 permanent rules, including the anticipated substance of the rules and
25 the anticipated date of final adoption. The board shall additionally
26 provide a report to the appropriate legislative committees by January
27 1, 2001.

28 On January 1, 2006, the board shall provide a summary to the
29 appropriate legislative committees regarding modifications made to the
30 forests and fish report made after January 1, 2000, and to the
31 permanent rules according to the adaptive management process as set
32 forth in the forests and fish report.

33 **PART III**
34 **DEFINITIONS**

35 **Sec. 301.** RCW 76.09.020 and 1974 ex.s. c 137 s 2 are each amended
36 to read as follows:

1 For purposes of this chapter:

2 (1) "Adaptive management" means reliance on scientific methods to
3 test the results of actions taken so that the management and related
4 policy can be changed promptly and appropriately.

5 (2) "Appeals board" (~~(shall)~~) means the forest practices appeals
6 board created by RCW 76.09.210.

7 (~~((2))~~) (3) "Aquatic resources" includes water quality, salmon,
8 other species of the vertebrate classes Cephalaspidomorphi and
9 Osteichthyes identified in the forests and fish report, the Columbia
10 torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent
11 salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander
12 (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dumni*), the
13 Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus*
14 *truei*), and their respective habitats.

15 (4) "Commissioner" (~~(shall)~~) means the commissioner of public
16 lands.

17 (~~((3))~~) (5) "Contiguous" (~~(shall)~~) means land adjoining or touching
18 by common corner or otherwise. Land having common ownership divided by
19 a road or other right of way shall be considered contiguous.

20 (~~((4))~~) (6) "Conversion to a use other than commercial timber
21 operation" (~~(shall)~~) means a bona fide conversion to an active use
22 which is incompatible with timber growing and as may be defined by
23 forest practices (~~(regulations)~~) rules.

24 (~~((5))~~) (7) "Department" (~~(shall)~~) means the department of natural
25 resources.

26 (~~((6))~~) (8) "Forest land" (~~(shall)~~) means all land which is capable
27 of supporting a merchantable stand of timber and is not being actively
28 used for a use which is incompatible with timber growing.

29 (~~((7))~~) (9) "Forest landowner" (~~(shall)~~) means any person in actual
30 control of forest land, whether such control is based either on legal
31 or equitable title, or on any other interest entitling the holder to
32 sell or otherwise dispose of any or all of the timber on such land in
33 any manner: PROVIDED, That any lessee or other person in possession of
34 forest land without legal or equitable title to such land shall be
35 excluded from the definition of "forest landowner" unless such lessee
36 or other person has the right to sell or otherwise dispose of any or
37 all of the timber located on such forest land.

38 (~~((8))~~) (10) "Forest practice" (~~(shall)~~) means any activity
39 conducted on or directly pertaining to forest land and relating to

1 growing, harvesting, or processing timber, including but not limited
2 to:

- 3 (a) Road and trail construction;
- 4 (b) Harvesting, final and intermediate;
- 5 (c) Precommercial thinning;
- 6 (d) Reforestation;
- 7 (e) Fertilization;
- 8 (f) Prevention and suppression of diseases and insects;
- 9 (g) Salvage of trees; and
- 10 (h) Brush control.

11 "Forest practice" shall not include preparatory work such as tree
12 marking, surveying and road flagging, and removal or harvesting of
13 incidental vegetation from forest lands such as berries, ferns,
14 greenery, mistletoe, herbs, mushrooms, and other products which cannot
15 normally be expected to result in damage to forest soils, timber, or
16 public resources.

17 ~~((+9))~~ (11) "Forest practices ~~((regulations" shall))~~ rules" means
18 any rules ~~((promulgated))~~ adopted pursuant to RCW 76.09.040.

19 ~~((+10))~~ (12) "Forests and fish report" means the forests and fish
20 report to the board dated February 22, 1999.

21 (13) "Application" ~~((shall))~~ means the application required
22 pursuant to RCW 76.09.050.

23 ~~((+11))~~ (14) "Operator" ~~((shall))~~ means any person engaging in
24 forest practices except an employee with wages as his or her sole
25 compensation.

26 ~~((+12))~~ (15) "Person" ~~((shall))~~ means any individual, partnership,
27 private, public, or municipal corporation, county, the department or
28 other state or local governmental entity, or association of individuals
29 of whatever nature.

30 ~~((+13))~~ (16) "Public resources" ~~((shall))~~ means water, fish and
31 wildlife, and in addition shall mean capital improvements of the state
32 or its political subdivisions.

33 ~~((+14))~~ (17) "Timber" ~~((shall))~~ means forest trees, standing or
34 down, of a commercial species, including Christmas trees.

35 ~~((+15))~~ (18) "Timber owner" ~~((shall))~~ means any person having all
36 or any part of the legal interest in timber. Where such timber is
37 subject to a contract of sale, "timber owner" shall mean the contract
38 purchaser.

1 which credit was claimed was not harvested under a forest practices
2 notification filed or application approved under RCW 76.09.050 and
3 subject to enhanced aquatic resources requirements.

4 (3) As used in this section, a forest practice notification or
5 application is subject to enhanced aquatic resource requirements if it
6 includes, in whole or in part, riparian area, wetland, or steep or
7 unstable slope from which the operator is limited, by rule adopted
8 under sections 201 through 204 of this act, or any federally approved
9 habitat conservation plan or department of natural resources approved
10 watershed analysis, from harvesting timber, or if a road is included
11 within or adjacent to the area covered by such notification or
12 application and the road is covered by a road maintenance plan approved
13 by the department of natural resources under rules adopted under
14 chapter 76.09 RCW, the forest practices act, or a federally approved
15 habitat conservation plan.

16 (4) For forest practices notification or applications submitted
17 after January 1, 2000, the department of natural resources shall
18 indicate whether the notification or application is subject to enhanced
19 aquatic resource requirements and, unless notified of a contrary
20 determination by the forest practices appeals board, the department of
21 revenue shall use such indication in determining the credit to be
22 allowed against the tax assessed under RCW 84.33.041. The department
23 of natural resources shall develop revisions to the form of the forest
24 practices notifications and applications to provide a space for the
25 applicant to indicate and the department of natural resources to
26 confirm or not confirm, whether the notification or application is
27 subject to enhanced aquatic resource requirements. For forest
28 practices notifications or applications submitted before January 1,
29 2000, the applicant may submit the approved notification or application
30 to the department of natural resources for confirmation that the
31 notification or application is subject to enhanced aquatic resource
32 requirements. Upon any such submission, the department of natural
33 resources will within thirty days confirm or deny that the notification
34 or application is subject to enhanced aquatic resource requirements and
35 will forward separate evidence of each confirmation to the department
36 of revenue. Unless notified of a contrary ruling by the forest
37 practices appeals board, the department of revenue shall use the
38 separate confirmations in determining the credit to be allowed against
39 the tax assessed under RCW 84.33.041.

1 (5) A refusal by the department of natural resources to confirm
2 that a notification or application is subject to enhanced aquatic
3 resources requirements may be appealed to the forest practices appeals
4 board under RCW 76.09.220.

5 (6) A person receiving approval of credit must keep records
6 necessary for the department of revenue to verify eligibility under
7 this section.

8 **PART V**

9 **SMALL FOREST LANDOWNERS**

10 NEW SECTION. **Sec. 501.** A new section is added to chapter 76.13
11 RCW to read as follows:

12 (1) The legislature finds that increasing regulatory requirements
13 continue to diminish the economic viability of small forest landowners.
14 The concerns set forth in section 101 of this act about the importance
15 of sustaining forestry as a viable land use are particularly applicable
16 to small landowners because of the location of their holdings, the
17 expected complexity of the regulatory requirements, and the need for
18 significant technical expertise not readily available to small
19 landowners. The further reduction in harvestable timber owned by small
20 forest landowners as a result of the rules to be adopted under section
21 201 of this act will further erode small landowners' economic viability
22 and willingness or ability to keep the lands in forestry use and,
23 therefore, reduce the amount of habitat available for salmon recovery
24 and conservation of other aquatic resources, as defined in RCW
25 76.09.020.

26 (2) The legislature finds that the concerns identified in
27 subsection (1) of this section should be addressed by establishing
28 within the department of natural resources a small forest landowner
29 office that shall be a resource and focal point for small forest
30 landowner concerns and policies. The legislature further finds that a
31 forestry riparian easement program shall be established to acquire
32 easements from small landowners along riparian and other areas of value
33 to the state for protection of aquatic resources. The legislature
34 further finds that small forest landowners should have the option of
35 alternate management plans or alternate harvest restrictions on smaller
36 harvest units that may have a relatively low impact on aquatic
37 resources. The small forest landowner office should be responsible for

1 assisting small landowners in the development and implementation of
2 these plans or restrictions.

3 **Sec. 502.** RCW 76.13.010 and 1991 c 27 s 3 are each amended to read
4 as follows:

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply (~~((throughout this chapter))~~) to RCW 76.13.005,
7 76.13.007, 76.13.020, and 76.13.030.

8 (1) "Department" means the department of natural resources.

9 (2) "Landowner" means an individual, partnership, private, public
10 or municipal corporation, Indian tribe, state agency, county, or local
11 government entity, educational institution, or association of
12 individuals of whatever nature that own nonindustrial forests and
13 woodlands.

14 (3) "Nonindustrial forests and woodlands" are those suburban
15 acreages and rural lands supporting or capable of supporting trees and
16 other flora and fauna associated with a forest ecosystem, comprised of
17 total individual land ownerships of less than five thousand acres and
18 not directly associated with wood processing or handling facilities.

19 (4) "Stewardship" means managing by caring for, promoting,
20 protecting, renewing, or reestablishing or both, forests and associated
21 resources for the benefit of the landowner, the natural resources and
22 the citizens of Washington state, in accordance with each landowner's
23 objectives, best management practices, and legal requirements.

24 (5) "Cooperating organization" means federal, state, and local
25 agencies, colleges and universities, landowner assistance
26 organizations, consultants, forest resource-related industries, and
27 environmental organizations which promote and maintain programs
28 designed to provide information and technical assistance services to
29 nonindustrial forest and woodland owners.

30 NEW SECTION. **Sec. 503.** A new section is added to chapter 76.13
31 RCW to read as follows:

32 (1) The department of natural resources shall establish and
33 maintain a small forest landowner office. The small forest landowner
34 office shall be a resource and focal point for small forest landowner
35 concerns and policies, and shall have significant expertise regarding
36 the management of small forest holdings, governmental programs

1 applicable to such holdings, and the forestry riparian easement
2 program.

3 (2) The small forest landowner office shall administer the
4 provisions of the forestry riparian easement program created under
5 section 504 of this act. With respect to that program, the office
6 shall have the authority to contract with private consultants that the
7 office finds qualified to perform timber cruises of forestry riparian
8 easements.

9 (3) The small forest landowner office shall assist in the
10 development of small landowner options through alternate management
11 plans or alternate harvest restrictions appropriate to small
12 landowners. The small forest landowner office shall develop criteria
13 to be adopted by the forest practices board in a manual for alternate
14 management plans or alternate harvest restrictions. These alternate
15 plans or alternate harvest restrictions shall meet riparian functions
16 while requiring less costly regulatory prescriptions. At the
17 landowner's option, alternate plans or alternate harvest restrictions
18 may be used to further meet riparian functions.

19 The small landowner office shall evaluate the cumulative impact of
20 such alternate management plans or alternate harvest restrictions on
21 essential riparian functions at the subbasin or watershed level. The
22 small forest landowner office shall adjust future alternate management
23 plans or alternate harvest restrictions in a manner that will minimize
24 the negative impacts on essential riparian functions within a subbasin
25 or watershed.

26 (4) An advisory committee is established to assist the small forest
27 landowner office in developing policy and recommending rules to the
28 forest practices board. The advisory committee shall consist of seven
29 members, including a representative from the department of ecology, the
30 department of fish and wildlife, and a tribal representative. Four
31 additional committee members shall be small forest landowners who shall
32 be appointed by the commissioner of public lands from a list of
33 candidates submitted by the board of directors of the Washington farm
34 forestry association or its successor organization. The association
35 shall submit more than one candidate for each position. Appointees
36 shall serve for a term of four years. The small forest landowner
37 office shall review draft rules or rule concepts with the committee
38 prior to recommending such rules to the forest practices board. The
39 office shall reimburse nongovernmental committee members for reasonable

1 expenses associated with attending committee meetings as provided in
2 RCW 43.03.050 and 43.03.060.

3 (5) By December 1, 2000, the small forest landowner office shall
4 provide a report to the board and the legislature containing:

5 (a) Estimates of the amounts of nonindustrial forests and woodlands
6 in holdings of twenty acres or less, twenty-one to one hundred acres,
7 one hundred to one thousand acres, and one thousand to five thousand
8 acres, in western Washington and eastern Washington, and the number of
9 persons having total nonindustrial forest and woodland holdings in
10 those size ranges;

11 (b) Estimates of the number of parcels of nonindustrial forests and
12 woodlands held in contiguous ownerships of twenty acres or less, and
13 the percentages of those parcels containing improvements used: (i) As
14 primary residences for half or more of most years; (ii) as vacation
15 homes or other temporary residences for less than half of most years;
16 and (iii) for other uses;

17 (c) The watershed administrative units in which significant
18 portions of the riparian areas or total land area are nonindustrial
19 forests and woodlands;

20 (d) Estimates of the number of forest practices applications and
21 notifications filed per year for forest road construction,
22 silvicultural activities to enhance timber growth, timber harvest not
23 associated with conversion to nonforest land uses, with estimates of
24 the number of acres of nonindustrial forests and woodlands on which
25 forest practices are conducted under those applications and
26 notifications; and

27 (e) Recommendations on ways the board and the legislature could
28 provide more effective incentives to encourage continued management of
29 nonindustrial forests and woodlands for forestry uses in ways that
30 better protect salmon, other fish and wildlife, water quality, and
31 other environmental values.

32 (6) By December 1, 2002, and every four years thereafter, the small
33 forest landowner office shall provide to the board and the legislature
34 an update of the report described in subsection (5) of this section,
35 containing more recent information and describing:

36 (a) Trends in the items estimated under subsection (5)(a) through
37 (d) of this section;

38 (b) Whether, how, and to what extent the forest practices act and
39 rules contributed to those trends; and

1 (c) Whether, how, and to what extent: (i) The board and
2 legislature implemented recommendations made in the previous report;
3 and (ii) implementation of or failure to implement those
4 recommendations affected those trends.

5 NEW SECTION. **Sec. 504.** A new section is added to chapter 76.13
6 RCW to read as follows:

7 (1) The legislature finds that the state should acquire easements
8 along riparian and other sensitive aquatic areas from small forest
9 landowners willing to sell or donate such easements to the state
10 provided that the state will not be required to acquire such easements
11 if they are subject to unacceptable liabilities. The legislature
12 therefore establishes a forestry riparian easement program.

13 (2) The definitions in this subsection apply throughout this
14 section and sections 501 and 503 of this act unless the context clearly
15 requires otherwise.

16 (a) "Forestry riparian easement" means an easement covering
17 qualifying timber granted voluntarily to the state by a small forest
18 landowner.

19 (b) "Qualifying timber" means those trees covered by a forest
20 practices application that the small forest landowner is required to
21 leave unharvested under the rules adopted under sections 201 and 204 of
22 this act or that is made uneconomic to harvest by those rules, and for
23 which the small landowner is willing to grant the state a forestry
24 riparian easement. "Qualifying timber" is timber within or bordering
25 a commercially reasonable harvest unit as determined under rules
26 adopted by the forest practices board.

27 (c) "Small forest landowner" means a landowner meeting all of the
28 following characteristics: (i) A forest landowner as defined in RCW
29 76.09.020 whose interest in the land and timber is in fee or who has
30 rights to the timber to be included in the forestry riparian easement
31 that extend at least fifty years from the date the forest practices
32 application associated with the easement is submitted; (ii) an entity
33 that has harvested from its own lands in this state during the three
34 years prior to the year of application an average timber volume that
35 would qualify the owner as a small timber harvester under RCW
36 84.33.073(1); and (iii) an entity that certifies at the time of
37 application that it does not expect to harvest from its own lands more
38 than the volume allowed by RCW 84.33.073(1) during the ten years

1 following application. If a landowner's prior three-year average
2 harvest exceeds the limit of RCW 84.33.073(1), or the landowner expects
3 to exceed this limit during the ten years following application, and
4 that landowner establishes to the department of natural resources'
5 reasonable satisfaction that the harvest limits were or will be
6 exceeded to raise funds to pay estate taxes or equally compelling and
7 unexpected obligations such as court-ordered judgments or extraordinary
8 medical expenses, the landowner shall be deemed to be a small forest
9 landowner.

10 For purposes of determining whether a person qualifies as a small
11 forest landowner, the small forest landowner office, created in section
12 503 of this act, shall evaluate the landowner under this definition as
13 of the date that the forest practices application is submitted with
14 which the forestry riparian easement is associated. A small forest
15 landowner can include an individual, partnership, corporate, or other
16 nongovernmental legal entity. If a landowner grants timber rights to
17 another entity for less than five years, the landowner may still
18 qualify as a small forest landowner under this section.

19 (d) "Completion of harvest" means that the trees have been
20 harvested from an area and that further entry into that area by
21 mechanized logging or slash treating equipment is not expected.

22 (3) The department of natural resources is authorized and directed
23 to accept and hold in the name of the state of Washington forestry
24 riparian easements granted by small forest landowners covering
25 qualifying timber and to pay compensation to such landowners in
26 accordance with subsections (6) and (7) of this section. The
27 department of natural resources may not transfer the easements to any
28 entity other than another state agency.

29 (4) Forestry riparian easements shall be effective for fifty years
30 from the date the forest practices application associated with the
31 qualifying timber is submitted to the department of natural resources,
32 unless the easement is terminated earlier by the department of natural
33 resources voluntarily, based on a determination that termination is in
34 the best interest of the state, or under the terms of a termination
35 clause in the easement.

36 (5) Forestry riparian easements shall be restrictive only, and
37 shall preserve all lawful uses of the easement premises by the
38 landowner that are consistent with the terms of the easement and the
39 requirement to protect riparian functions during the term of the

1 easement, subject to the restriction that the leave trees required by
2 the rules to be left on the easement premises may not be cut during the
3 term of the easement. No right of public access to or across, or any
4 public use of the easement premises is created by this statute or by
5 the easement. Forestry riparian easements shall not be deemed to
6 trigger the compensating tax of or otherwise disqualify land from being
7 taxed under chapter 84.33 or 84.34 RCW.

8 (6) Upon application of a small forest landowner for a riparian
9 easement that is associated with a forest practices application and the
10 landowner's marking of the qualifying timber on the qualifying lands,
11 the small forest landowner office shall determine the compensation to
12 be offered to the small landowner as provided for in this section. The
13 legislature recognizes that there is not readily available market
14 transaction evidence of value for easements of this nature, and thus
15 establishes the following methodology to ascertain the value for
16 forestry riparian easements. Values so determined shall not be
17 considered competent evidence of value for any other purpose.

18 The small forest landowner office shall establish the volume of the
19 qualifying timber. Based on that volume and using data obtained or
20 maintained by the department of revenue under RCW 84.33.074 and
21 84.33.091, the small forest landowner office shall attempt to determine
22 the fair market value of the qualifying timber as of the date the
23 forest practices application associated with the qualifying timber was
24 submitted. If, under the forest practices rules adopted under
25 chapter. . ., Laws of 1999 (this act), some qualifying timber may be
26 removed prior to the expiration of the fifty-year term of the easement,
27 the small forest landowner office shall apply a reduced compensation
28 factor to ascertain the value of those trees based on the proportional
29 economic value, considering income and growth, lost to the landowner.

30 (7) Except as provided in subsection (8) of this section, the small
31 forest landowner office shall, subject to available funding, offer
32 compensation to the small forest landowner in the amount of fifty
33 percent of the value determined in subsection (6) of this section. If
34 the landowner accepts the offer, the department of natural resources
35 shall pay the compensation promptly upon (a) completion of harvest in
36 the area covered by the forestry riparian easement; (b) verification
37 that there has been compliance with the rules requiring leave trees in
38 the easement area; and (c) execution and delivery of the easement to
39 the department of natural resources. Upon donation or payment of

1 compensation, the department of natural resources may record the
2 easement.

3 (8) For approved forest practice applications where the regulatory
4 impact is greater than the average percentage impact for all small
5 landowners as determined by the department of natural resources
6 analysis under the regulatory fairness act, chapter 19.85 RCW, the
7 compensation offered will be increased to one hundred percent for that
8 portion of the regulatory impact that is in excess of the average.
9 Regulatory impact includes trees left in buffers, special management
10 zones, and those rendered uneconomic to harvest by these rules. A
11 separate average or high impact regulatory threshold shall be
12 established for western and eastern Washington. Criteria for these
13 measurements and payments shall be established by the small forest
14 landowner office.

15 (9) The forest practices board shall adopt rules under the
16 administrative procedure act, chapter 34.05 RCW, to implement the
17 forestry riparian easement program, including the following:

18 (a) A standard version or versions of all documents necessary or
19 advisable to create the forestry riparian easements as provided for in
20 this section;

21 (b) Standards for descriptions of the easement premises with a
22 degree of precision that is reasonable in relation to the values
23 involved;

24 (c) Methods and standards for cruises and valuation of forestry
25 riparian easements for purposes of establishing the compensation. The
26 department of natural resources shall perform the timber cruises of
27 forestry riparian easements required under this chapter and chapter
28 76.09 RCW. Any rules concerning the methods and standards for
29 valuations of forestry riparian easements shall apply only to the
30 department of natural resources, small forest landowners, and the small
31 forest landowner office;

32 (d) A method to determine that a forest practice application
33 involves a commercially reasonable harvest;

34 (e) A method to address blowdown of qualified timber falling
35 outside the easement premises;

36 (f) A formula for sharing of proceeds in relation to the
37 acquisition of qualified timber covered by an easement through the
38 exercise or threats of eminent domain by a federal or state agency with
39 eminent domain authority, based on the present value of the department

1 of natural resources' and the landowner's relative interests in the
2 qualified timber;

3 (g) High impact regulatory thresholds;

4 (h) A method to determine timber that is qualifying timber because
5 it is rendered uneconomic to harvest by the rules adopted under
6 sections 201 and 204 of this act; and

7 (i) A method for internal department of natural resources review of
8 small landowner office compensation decisions under subsection (7) of
9 this section.

10 NEW SECTION. **Sec. 505.** A new section is added to chapter 76.13
11 RCW to read as follows:

12 On parcels of twenty contiguous acres or less, landowners with a
13 total parcel ownership of less than eighty acres shall not be required
14 to leave riparian buffers adjacent to streams according to forest
15 practices rules adopted under the forests and fish report as defined in
16 RCW 76.09.020. These landowners shall be subject to the current forest
17 practices rules in effect as of January 1, 1999, but may additionally
18 be required to leave timber adjacent to streams that is equivalent to
19 no greater than fifteen percent of a volume of timber contained in a
20 stand of well managed fifty-year old commercial timber covering the
21 harvest area. The additional fifteen percent leave tree level shall be
22 computed as a rotating stand volume and shall be regulated through
23 flexible forest practices as the stream buffer is managed over time to
24 meet riparian functions.

25 On parcels of twenty contiguous acres or less the small forest
26 landowner office shall work with landowners with a total parcel
27 ownership of less than eighty acres to develop alternative management
28 plans for riparian buffers. Such alternative plans shall provide for
29 the removal of leave trees as other new trees grow in order to ensure
30 the most effective protection of critical riparian function. The
31 office may recommend reasonable modifications in alternative management
32 plans of such landowners to further reduce risks to public resources
33 and endangered species so long as the anticipated operating costs are
34 not unreasonably increased and the landowner is not required to leave
35 a greater volume than the threshold level. To qualify for the
36 provisions of this section, parcels must be twenty acres or less in
37 contiguous ownership, and owners cannot have ownership interests in a
38 total of more than eighty acres of forest lands within the state.

PART VI
LARGE WOODY DEBRIS

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3 **Sec. 601.** RCW 76.42.060 and 1973 c 136 s 7 are each amended to
4 read as follows:

5 It shall be unlawful to dispose of wood debris by depositing such
6 material into any of the navigable waters of this state, except as
7 authorized by law including any discharge or deposit allowed to be made
8 under and in compliance with chapter 90.48 RCW and any rules ((~~or~~
9 ~~regulations~~)) duly ((~~promulgated~~)) adopted thereunder or any deposit
10 allowed to be made under and in compliance with chapter 76.09 or 75.46
11 RCW and any rules duly adopted under those chapters. Violation of this
12 section shall be a misdemeanor.

13 **Sec. 602.** RCW 76.09.330 and 1992 c 52 s 5 are each amended to read
14 as follows:

15 The legislature hereby finds and declares that riparian ecosystems
16 on forest lands in addition to containing valuable timber resources,
17 provide benefits for wildlife, fish, and water quality. The
18 legislature further finds and declares that leaving riparian areas
19 unharvested and leaving snags and green trees for large woody debris
20 recruitment for streams and rivers provides public benefits including
21 but not limited to benefits for threatened and endangered salmonids,
22 other fish, amphibians, wildlife, and water quality enhancement. The
23 legislature further finds and declares that leaving upland areas
24 unharvested for wildlife and leaving snags and green trees for future
25 snag recruitment provides benefits for wildlife. Forest landowners may
26 be required to leave trees standing in riparian and upland areas to
27 benefit public resources. It is recognized that these trees may blow
28 down or fall into streams and that organic debris may be allowed to
29 remain in streams. This is beneficial to riparian dependent and other
30 wildlife species. Further, it is recognized that trees may blow down,
31 fall onto, or otherwise cause damage or injury to public improvements,
32 private property, and persons. Notwithstanding any statutory
33 provision, rule, or common law doctrine to the contrary, the landowner,
34 the department, and the state of Washington shall not be held liable
35 for any injury or damages resulting from these actions, including but
36 not limited to wildfire, erosion, flooding, personal injury, property

1 damage, damage to public improvements, and other injury or damages of
2 any kind or character resulting from the trees being left.

3 **PART VII**

4 **RIPARIAN OPEN SPACE**

5 **Sec. 701.** RCW 76.09.040 and 1997 c 173 s 1 are each amended to
6 read as follows:

7 (1) Where necessary to accomplish the purposes and policies stated
8 in RCW 76.09.010, and to implement the provisions of this chapter, the
9 board shall ~~((promulgate))~~ adopt forest practices ~~((regulations))~~ rules
10 pursuant to chapter 34.05 RCW and in accordance with the procedures
11 enumerated in this section that:

12 (a) Establish minimum standards for forest practices;

13 (b) Provide procedures for the voluntary development of resource
14 management plans which may be adopted as an alternative to the minimum
15 standards in (a) of this subsection if the plan is consistent with the
16 purposes and policies stated in RCW 76.09.010 and the plan meets or
17 exceeds the objectives of the minimum standards;

18 (c) Set forth necessary administrative provisions; ~~((and))~~

19 (d) Establish procedures for the collection and administration of
20 forest practice fees as set forth by this chapter; and

21 (e) Allow for the development of watershed analyses.

22 Forest practices ~~((regulations))~~ rules pertaining to water quality
23 protection shall be ~~((promulgated individually))~~ adopted by the board
24 ~~((and by the department of ecology))~~ after ~~((they have reached))~~
25 reaching agreement with the director of the department of ecology or
26 the director's designee on the board with respect thereto. All other
27 forest practices ~~((regulations))~~ rules shall be ~~((promulgated))~~ adopted
28 by the board.

29 Forest practices ~~((regulations))~~ rules shall be administered and
30 enforced by either the department or the local governmental entity as
31 provided in this chapter. Such ~~((regulations))~~ rules shall be
32 ~~((promulgated))~~ adopted and administered so as to give consideration to
33 all purposes and policies set forth in RCW 76.09.010.

34 (2) The board shall prepare proposed forest practices
35 ~~((regulations))~~ rules. In addition to any forest practices
36 ~~((regulations))~~ rules relating to water quality protection proposed by
37 the board, the department of ecology ~~((shall prepare))~~ may submit to

1 the board proposed forest practices (~~(regulations)~~) rules relating to
2 water quality protection.

3 Prior to initiating the rule making process, the proposed
4 (~~(regulations)~~) rules shall be submitted for review and comments to the
5 department of fish and wildlife and to the counties of the state.
6 After receipt of the proposed forest practices (~~(regulations)~~) rules,
7 the department of fish and wildlife and the counties of the state shall
8 have thirty days in which to review and submit comments to the board,
9 and to the department of ecology with respect to its proposed
10 (~~(regulations)~~) rules relating to water quality protection. After the
11 expiration of such thirty day period the board and the department of
12 ecology shall jointly hold one or more hearings on the proposed
13 (~~(regulations)~~) rules pursuant to chapter 34.05 RCW. At such
14 hearing(s) any county may propose specific forest practices
15 (~~(regulations)~~) rules relating to problems existing within such county.
16 The board may adopt and the department of ecology may (~~(adopt)~~) approve
17 such proposals if they find the proposals are consistent with the
18 purposes and policies of this chapter.

19 (3) The board shall establish by rule a riparian open space program
20 that includes acquisition of a fee interest in, or at the landowner's
21 option, a conservation easement on lands within unconfined avulsing
22 channel migration zones. Once acquired, these lands may be held and
23 managed by the department, transferred to another state agency,
24 transferred to an appropriate local government agency, or transferred
25 to a private nonprofit nature conservation corporation, as defined in
26 RCW 64.04.130, in fee or transfer of management obligation. The board
27 shall adopt rules governing the acquisition by the state or donation to
28 the state of such interest in lands including the right of refusal if
29 the lands are subject to unacceptable liabilities. The rules shall
30 include definitions of qualifying lands, priorities for acquisition,
31 and provide for the opportunity to transfer such lands with limited
32 warranties and with a description of boundaries that does not require
33 full surveys where the cost of securing the surveys would be
34 unreasonable in relation to the value of the lands conveyed. The rules
35 shall provide for the management of the lands for ecological protection
36 or fisheries enhancement. Because there are few, if any, comparable
37 sales of forest land within unconfined avulsing channel migration
38 zones, separate from the other lands or assets, these lands are likely
39 to be extraordinarily difficult to appraise and the cost of a

1 conventional appraisal often would be unreasonable in relation to the
2 value of the land involved. Therefore, for the purposes of voluntary
3 sales under this section, the legislature declares that these lands are
4 presumed to have a value equal to: (a) The acreage in the sale
5 multiplied by the average value of commercial forest land in the region
6 under the land value tables used for property tax purposes under RCW
7 84.33.120; plus (b) the cruised volume of any timber located within the
8 channel migration multiplied by the appropriate quality code stumpage
9 value for timber of the same species shown on the appropriate table
10 used for timber harvest excise tax purposes under RCW 84.33.091. For
11 purposes of this section, there shall be an eastside region and a
12 westside region as defined in the forests and fish report as defined in
13 RCW 76.09.020.

14 (4) Subject to appropriations sufficient to cover the cost of such
15 an acquisition program and the related costs of administering the
16 program, the department is directed to purchase a fee interest or, at
17 the owner's option, a conservation easement in land that an owner
18 tenders for purchase; provided that such lands have been taxed as
19 forest lands and are located within an unconfined avulsing channel
20 migration zone. Lands acquired under this section shall become
21 riparian open space. These acquisitions shall not be deemed to trigger
22 the compensating tax of chapters 84.33 and 84.34 RCW.

23 (5) Instead of offering to sell interests in qualifying lands,
24 owners may elect to donate the interests to the state.

25 (6) Any acquired interest in qualifying lands by the state under
26 this section shall be managed as riparian open space.

27 **Sec. 702.** RCW 84.33.120 and 1997 c 299 s 1 are each amended to
28 read as follows:

29 (1) In preparing the assessment rolls as of January 1, 1982, for
30 taxes payable in 1983 and each January 1st thereafter, the assessor
31 shall list each parcel of forest land at a value with respect to the
32 grade and class provided in this subsection and adjusted as provided in
33 subsection (2) of this section and shall compute the assessed value of
34 the land by using the same assessment ratio he or she applies generally
35 in computing the assessed value of other property in his or her county.
36 Values for the several grades of bare forest land shall be as follows.

1	LAND	OPERABILITY	VALUES
2	GRADE	CLASS	PER ACRE
3			
4		1	\$141
5	1	2	136
6		3	131
7		4	95
8			
9		1	118
10	2	2	114
11		3	110
12		4	80
13			
14		1	93
15	3	2	90
16		3	87
17		4	66
18			
19		1	70
20	4	2	68
21		3	66
22		4	52
23			
24		1	51
25	5	2	48
26		3	46
27		4	31
28			
29		1	26
30	6	2	25
31		3	25
32		4	23
33			
34		1	12
35	7	2	12
36		3	11
37		4	11

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(2) On or before December 31, 1981, the department shall adjust, by rule under chapter 34.05 RCW, the forest land values contained in subsection (1) of this section in accordance with this subsection, and shall certify these adjusted values to the county assessor for his or her use in preparing the assessment rolls as of January 1, 1982. For the adjustment to be made on or before December 31, 1981, for use in the 1982 assessment year, the department shall:

(a) Divide the aggregate value of all timber harvested within the state between July 1, 1976, and June 30, 1981, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 82.04.291 and 84.33.071; and

(b) Divide the aggregate value of all timber harvested within the state between July 1, 1975, and June 30, 1980, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 82.04.291 and 84.33.071; and

(c) Adjust the forest land values contained in subsection (1) of this section by a percentage equal to one-half of the percentage change in the average values of harvested timber reflected by comparing the resultant values calculated under (a) and (b) of this subsection.

For the adjustments to be made on or before December 31, 1982, and each succeeding year thereafter, the same procedure shall be followed as described in this subsection utilizing harvester excise tax returns filed under RCW 82.04.291 and this chapter except that this adjustment shall be made to the prior year's adjusted value, and the five-year periods for calculating average harvested timber values shall be successively one year more recent.

(3) In preparing the assessment roll for 1972 and each year thereafter, the assessor shall enter as the true and fair value of each parcel of forest land the appropriate grade value certified to him or her by the department of revenue, and he or she shall compute the assessed value of such land by using the same assessment ratio he or she applies generally in computing the assessed value of other property in his or her county. In preparing the assessment roll for 1975 and

1 each year thereafter, the assessor shall assess and value as classified
2 forest land all forest land that is not then designated pursuant to RCW
3 84.33.120(4) or 84.33.130 and shall make a notation of such
4 classification upon the assessment and tax rolls. On or before January
5 15 of the first year in which such notation is made, the assessor shall
6 mail notice by certified mail to the owner that such land has been
7 classified as forest land and is subject to the compensating tax
8 imposed by this section. If the owner desires not to have such land
9 assessed and valued as classified forest land, he or she shall give the
10 assessor written notice thereof on or before March 31 of such year and
11 the assessor shall remove from the assessment and tax rolls the
12 classification notation entered pursuant to this subsection, and shall
13 thereafter assess and value such land in the manner provided by law
14 other than this chapter 84.33 RCW.

15 (4) In any year commencing with 1972, an owner of land which is
16 assessed and valued by the assessor other than pursuant to the
17 procedures set forth in RCW 84.33.110 and this section, and which has,
18 in the immediately preceding year, been assessed and valued by the
19 assessor as forest land, may appeal to the county board of equalization
20 by filing an application with the board in the manner prescribed in
21 subsection (2) of RCW 84.33.130. The county board shall afford the
22 applicant an opportunity to be heard if the application so requests and
23 shall act upon the application in the manner prescribed in subsection
24 (3) of RCW 84.33.130.

25 (5) Land that has been assessed and valued as classified forest
26 land as of any year commencing with 1975 assessment year or earlier
27 shall continue to be so assessed and valued until removal of
28 classification by the assessor only upon the occurrence of one of the
29 following events:

30 (a) Receipt of notice from the owner to remove such land from
31 classification as forest land;

32 (b) Sale or transfer to an ownership making such land exempt from
33 ad valorem taxation;

34 (c) Determination by the assessor, after giving the owner written
35 notice and an opportunity to be heard, that, because of actions taken
36 by the owner, such land is no longer primarily devoted to and used for
37 growing and harvesting timber. However, land shall not be removed from
38 classification if a governmental agency, organization, or other
39 recipient identified in subsection (9) or (10) of this section as

1 exempt from the payment of compensating tax has manifested its intent
2 in writing or by other official action to acquire a property interest
3 in classified forest land by means of a transaction that qualifies for
4 an exemption under subsection (9) or (10) of this section. The
5 governmental agency, organization, or recipient shall annually provide
6 the assessor of the county in which the land is located reasonable
7 evidence in writing of the intent to acquire the classified land as
8 long as the intent continues or within sixty days of a request by the
9 assessor. The assessor may not request this evidence more than once in
10 a calendar year;

11 (d) Determination that a higher and better use exists for such land
12 than growing and harvesting timber after giving the owner written
13 notice and an opportunity to be heard;

14 (e) Sale or transfer of all or a portion of such land to a new
15 owner, unless the new owner has signed a notice of forest land
16 classification continuance, except transfer to an owner who is an heir
17 or devisee of a deceased owner, shall not, by itself, result in removal
18 of classification. The signed notice of continuance shall be attached
19 to the real estate excise tax affidavit provided for in RCW 82.45.150.
20 The notice of continuance shall be on a form prepared by the department
21 of revenue. If the notice of continuance is not signed by the new
22 owner and attached to the real estate excise tax affidavit, all
23 compensating taxes calculated pursuant to subsection (7) of this
24 section shall become due and payable by the seller or transferor at
25 time of sale. The county auditor shall not accept an instrument of
26 conveyance of classified forest land for filing or recording unless the
27 new owner has signed the notice of continuance or the compensating tax
28 has been paid. The seller, transferor, or new owner may appeal the new
29 assessed valuation calculated under subsection (7) of this section to
30 the county board of equalization. Jurisdiction is hereby conferred on
31 the county board of equalization to hear these appeals.

32 The assessor shall remove classification pursuant to (c) or (d) of
33 this subsection prior to September 30 of the year prior to the
34 assessment year for which termination of classification is to be
35 effective. Removal of classification as forest land upon occurrence of
36 (a), (b), (d), or (e) of this subsection shall apply only to the land
37 affected, and upon occurrence of (c) of this subsection shall apply
38 only to the actual area of land no longer primarily devoted to and used
39 for growing and harvesting timber: PROVIDED, That any remaining

1 classified forest land meets necessary definitions of forest land
2 pursuant to RCW 84.33.100.

3 (6) Within thirty days after such removal of classification as
4 forest land, the assessor shall notify the owner in writing setting
5 forth the reasons for such removal. The owner of such land shall
6 thereupon have the right to apply for designation of such land as
7 forest land pursuant to subsection (4) of this section or RCW
8 84.33.130. The seller, transferor, or owner may appeal such removal to
9 the county board of equalization.

10 (7) Unless the owner successfully applies for designation of such
11 land or unless the removal is reversed on appeal, notation of removal
12 from classification shall immediately be made upon the assessment and
13 tax rolls, and commencing on January 1 of the year following the year
14 in which the assessor made such notation, such land shall be assessed
15 on the same basis as real property is assessed generally in that
16 county. Except as provided in subsection (5)(e), (9), or (10) of this
17 section and unless the assessor shall not have mailed notice of
18 classification pursuant to subsection (3) of this section, a
19 compensating tax shall be imposed which shall be due and payable to the
20 county treasurer thirty days after the owner is notified of the amount
21 of the compensating tax. As soon as possible, the assessor shall
22 compute the amount of such compensating tax and mail notice to the
23 owner of the amount thereof and the date on which payment is due. The
24 amount of such compensating tax shall be equal to the difference, if
25 any, between the amount of tax last levied on such land as forest land
26 and an amount equal to the new assessed valuation of such land
27 multiplied by the dollar rate of the last levy extended against such
28 land, multiplied by a number, in no event greater than ten, equal to
29 the number of years, commencing with assessment year 1975, for which
30 such land was assessed and valued as forest land.

31 (8) Compensating tax, together with applicable interest thereon,
32 shall become a lien on such land which shall attach at the time such
33 land is removed from classification as forest land and shall have
34 priority to and shall be fully paid and satisfied before any
35 recognizance, mortgage, judgment, debt, obligation or responsibility to
36 or with which such land may become charged or liable. Such lien may be
37 foreclosed upon expiration of the same period after delinquency and in
38 the same manner provided by law for foreclosure of liens for delinquent
39 real property taxes as provided in RCW 84.64.050. Any compensating tax

1 unpaid on its due date shall thereupon become delinquent. From the
2 date of delinquency until paid, interest shall be charged at the same
3 rate applied by law to delinquent ad valorem property taxes.

4 (9) The compensating tax specified in subsection (7) of this
5 section shall not be imposed if the removal of classification as forest
6 land pursuant to subsection (5) of this section resulted solely from:

7 (a) Transfer to a government entity in exchange for other forest
8 land located within the state of Washington;

9 (b) A taking through the exercise of the power of eminent domain,
10 or sale or transfer to an entity having the power of eminent domain in
11 anticipation of the exercise of such power;

12 (c) A donation of fee title, development rights, or the right to
13 harvest timber, to a government agency or organization qualified under
14 RCW 84.34.210 and 64.04.130 for the purposes enumerated in those
15 sections, or the sale or transfer of fee title to a governmental entity
16 or a nonprofit nature conservancy corporation, as defined in RCW
17 64.04.130, exclusively for the protection and conservation of lands
18 recommended for state natural area preserve purposes by the natural
19 heritage council and natural heritage plan as defined in chapter 79.70
20 RCW: PROVIDED, That at such time as the land is not used for the
21 purposes enumerated, the compensating tax specified in subsection (7)
22 of this section shall be imposed upon the current owner;

23 (d) The sale or transfer of fee title to the parks and recreation
24 commission for park and recreation purposes; ((or))

25 (e) Official action by an agency of the state of Washington or by
26 the county or city within which the land is located that disallows the
27 present use of such land;

28 (f) The creation, sale, or transfer of forestry riparian easements
29 under section 504 of this act; or

30 (g) The creation, sale, or transfer of a fee interest or a
31 conservation easement for the riparian open space program under RCW
32 76.09.040.

33 (10) In a county with a population of more than one million
34 inhabitants, the compensating tax specified in subsection (7) of this
35 section shall not be imposed if the removal of classification as forest
36 land pursuant to subsection (5) of this section resulted solely from:

37 (a) An action described in subsection (9) of this section; or

38 (b) A transfer of a property interest to a government entity, or to
39 a nonprofit historic preservation corporation or nonprofit nature

1 conservancy corporation, as defined in RCW 64.04.130, to protect or
2 enhance public resources, or to preserve, maintain, improve, restore,
3 limit the future use of, or otherwise to conserve for public use or
4 enjoyment, the property interest being transferred. At such time as
5 the property interest is not used for the purposes enumerated, the
6 compensating tax shall be imposed upon the current owner.

7 (11) With respect to any land that has been designated prior to May
8 6, 1974, pursuant to RCW 84.33.120(4) or 84.33.130, the assessor may,
9 prior to January 1, 1975, on his or her own motion or pursuant to
10 petition by the owner, change, without imposition of the compensating
11 tax provided under RCW 84.33.140, the status of such designated land to
12 classified forest land.

13 **Sec. 703.** RCW 84.33.140 and 1997 c 299 s 2 are each amended to
14 read as follows:

15 (1) When land has been designated as forest land pursuant to RCW
16 84.33.120(4) or 84.33.130, a notation of such designation shall be made
17 each year upon the assessment and tax rolls, a copy of the notice of
18 approval together with the legal description or assessor's tax lot
19 numbers for such land shall, at the expense of the applicant, be filed
20 by the assessor in the same manner as deeds are recorded, and such land
21 shall be graded and valued pursuant to RCW 84.33.110 and 84.33.120
22 until removal of such designation by the assessor upon occurrence of
23 any of the following:

24 (a) Receipt of notice from the owner to remove such designation;
25 (b) Sale or transfer to an ownership making such land exempt from
26 ad valorem taxation;

27 (c) Sale or transfer of all or a portion of such land to a new
28 owner, unless the new owner has signed a notice of forest land
29 designation continuance, except transfer to an owner who is an heir or
30 devisee of a deceased owner, shall not, by itself, result in removal of
31 classification. The signed notice of continuance shall be attached to
32 the real estate excise tax affidavit provided for in RCW 82.45.150.
33 The notice of continuance shall be on a form prepared by the department
34 of revenue. If the notice of continuance is not signed by the new
35 owner and attached to the real estate excise tax affidavit, all
36 compensating taxes calculated pursuant to subsection (3) of this
37 section shall become due and payable by the seller or transferor at
38 time of sale. The county auditor shall not accept an instrument of

1 conveyance of designated forest land for filing or recording unless the
2 new owner has signed the notice of continuance or the compensating tax
3 has been paid. The seller, transferor, or new owner may appeal the new
4 assessed valuation calculated under subsection (3) of this section to
5 the county board of equalization. Jurisdiction is hereby conferred on
6 the county board of equalization to hear these appeals;

7 (d) Determination by the assessor, after giving the owner written
8 notice and an opportunity to be heard, that:

9 (i) Such land is no longer primarily devoted to and used for
10 growing and harvesting timber. However, land shall not be removed from
11 designation if a governmental agency, organization, or other recipient
12 identified in subsection (5) or (6) of this section as exempt from the
13 payment of compensating tax has manifested its intent in writing or by
14 other official action to acquire a property interest in designated
15 forest land by means of a transaction that qualifies for an exemption
16 under subsection (5) or (6) of this section. The governmental agency,
17 organization, or recipient shall annually provide the assessor of the
18 county in which the land is located reasonable evidence in writing of
19 the intent to acquire the designated land as long as the intent
20 continues or within sixty days of a request by the assessor. The
21 assessor may not request this evidence more than once in a calendar
22 year;

23 (ii) The owner has failed to comply with a final administrative or
24 judicial order with respect to a violation of the restocking, forest
25 management, fire protection, insect and disease control and forest
26 debris provisions of Title 76 RCW or any applicable regulations
27 thereunder; or

28 (iii) Restocking has not occurred to the extent or within the time
29 specified in the application for designation of such land.

30 Removal of designation upon occurrence of any of (a) through (c) of
31 this subsection shall apply only to the land affected, and upon
32 occurrence of (d) of this subsection shall apply only to the actual
33 area of land no longer primarily devoted to and used for growing and
34 harvesting timber, without regard to other land that may have been
35 included in the same application and approval for designation:
36 PROVIDED, That any remaining designated forest land meets necessary
37 definitions of forest land pursuant to RCW 84.33.100.

38 (2) Within thirty days after such removal of designation of forest
39 land, the assessor shall notify the owner in writing, setting forth the

1 reasons for such removal. The seller, transferor, or owner may appeal
2 such removal to the county board of equalization.

3 (3) Unless the removal is reversed on appeal a copy of the notice
4 of removal with notation of the action, if any, upon appeal, together
5 with the legal description or assessor's tax lot numbers for the land
6 removed from designation shall, at the expense of the applicant, be
7 filed by the assessor in the same manner as deeds are recorded, and
8 commencing on January 1 of the year following the year in which the
9 assessor mailed such notice, such land shall be assessed on the same
10 basis as real property is assessed generally in that county. Except as
11 provided in subsection (1)(c), (5), or (6) of this section, a
12 compensating tax shall be imposed which shall be due and payable to the
13 county treasurer thirty days after the owner is notified of the amount
14 of the compensating tax. As soon as possible, the assessor shall
15 compute the amount of such compensating tax and mail notice to the
16 owner of the amount thereof and the date on which payment is due. The
17 amount of such compensating tax shall be equal to the difference
18 between the amount of tax last levied on such land as forest land and
19 an amount equal to the new assessed valuation of such land multiplied
20 by the dollar rate of the last levy extended against such land,
21 multiplied by a number, in no event greater than ten, equal to the
22 number of years for which such land was designated as forest land.

23 (4) Compensating tax, together with applicable interest thereon,
24 shall become a lien on such land which shall attach at the time such
25 land is removed from designation as forest land and shall have priority
26 to and shall be fully paid and satisfied before any recognizance,
27 mortgage, judgment, debt, obligation or responsibility to or with which
28 such land may become charged or liable. Such lien may be foreclosed
29 upon expiration of the same period after delinquency and in the same
30 manner provided by law for foreclosure of liens for delinquent real
31 property taxes as provided in RCW 84.64.050. Any compensating tax
32 unpaid on its due date shall thereupon become delinquent. From the
33 date of delinquency until paid, interest shall be charged at the same
34 rate applied by law to delinquent ad valorem property taxes.

35 (5) The compensating tax specified in subsection (3) of this
36 section shall not be imposed if the removal of designation pursuant to
37 subsection (1) of this section resulted solely from:

38 (a) Transfer to a government entity in exchange for other forest
39 land located within the state of Washington;

1 (b) A taking through the exercise of the power of eminent domain,
2 or sale or transfer to an entity having the power of eminent domain in
3 anticipation of the exercise of such power;

4 (c) A donation of fee title, development rights, or the right to
5 harvest timber, to a government agency or organization qualified under
6 RCW 84.34.210 and 64.04.130 for the purposes enumerated in those
7 sections, or the sale or transfer of fee title to a governmental entity
8 or a nonprofit nature conservancy corporation, as defined in RCW
9 64.04.130, exclusively for the protection and conservation of lands
10 recommended for state natural area preserve purposes by the natural
11 heritage council and natural heritage plan as defined in chapter 79.70
12 RCW: PROVIDED, That at such time as the land is not used for the
13 purposes enumerated, the compensating tax specified in subsection (3)
14 of this section shall be imposed upon the current owner;

15 (d) The sale or transfer of fee title to the parks and recreation
16 commission for park and recreation purposes; ((or))

17 (e) Official action by an agency of the state of Washington or by
18 the county or city within which the land is located that disallows the
19 present use of such land;

20 (f) The creation, sale, or transfer of forestry riparian easements
21 under section 504 of this act; or

22 (g) The creation, sale, or transfer of a fee interest or a
23 conservation easement for the riparian open space program under RCW
24 76.09.040.

25 (6) In a county with a population of more than one million
26 inhabitants, the compensating tax specified in subsection (3) of this
27 section shall not be imposed if the removal of classification as forest
28 land pursuant to subsection (1) of this section resulted solely from:

29 (a) An action described in subsection (5) of this section; or

30 (b) A transfer of a property interest to a government entity, or to
31 a nonprofit historic preservation corporation or nonprofit nature
32 conservancy corporation, as defined in RCW 64.04.130, to protect or
33 enhance public resources, or to preserve, maintain, improve, restore,
34 limit the future use of, or otherwise to conserve for public use or
35 enjoyment, the property interest being transferred. At such time as
36 the property interest is not used for the purposes enumerated, the
37 compensating tax shall be imposed upon the current owner.

1 **Sec. 704.** RCW 84.33.145 and 1997 c 299 s 3 are each amended to
2 read as follows:

3 (1) If no later than thirty days after removal of classification or
4 designation the owner applies for classification under RCW 84.34.020
5 (1), (2), or (3), then the classified or designated forest land shall
6 not be considered removed from classification or designation for
7 purposes of the compensating tax under RCW 84.33.120 or 84.33.140 until
8 the application for current use classification under RCW 84.34.030 is
9 denied or the property is removed from designation under RCW 84.34.108.
10 Upon removal from designation under RCW 84.34.108, the amount of
11 compensating tax due under this chapter shall be equal to:

12 (a) The difference, if any, between the amount of tax last levied
13 on such land as forest land and an amount equal to the new assessed
14 valuation of such land when removed from designation under RCW
15 84.34.108 multiplied by the dollar rate of the last levy extended
16 against such land, multiplied by

17 (b) A number equal to:

18 (i) The number of years the land was classified or designated under
19 this chapter, if the total number of years the land was classified or
20 designated under this chapter and classified under chapter 84.34 RCW is
21 less than ten; or

22 (ii) Ten minus the number of years the land was classified under
23 chapter 84.34 RCW, if the total number of years the land was classified
24 or designated under this chapter and classified under chapter 84.34 RCW
25 is at least ten.

26 (2) Nothing in this section authorizes the continued classification
27 or designation under this chapter or defers or reduces the compensating
28 tax imposed upon forest land not transferred to classification under
29 subsection (1) of this section which does not meet the necessary
30 definitions of forest land under RCW 84.33.100. Nothing in this
31 section affects the additional tax imposed under RCW 84.34.108.

32 (3) In a county with a population of more than one million
33 inhabitants, no amount of compensating tax is due under this section if
34 the removal from classification under RCW 84.34.108 results from a
35 transfer of property described in RCW 84.34.108((+5)) (6).

36 **Sec. 705.** RCW 84.34.080 and 1992 c 69 s 11 are each amended to
37 read as follows:

1 When land which has been classified under this chapter as open
2 space land, farm and agricultural land, or timber land is applied to
3 some other use, except through compliance with RCW 84.34.070, or except
4 as a result solely from any one of the conditions listed in RCW
5 84.34.108(~~(+5+)~~) (6), the owner shall within sixty days notify the
6 county assessor of such change in use and additional real property tax
7 shall be imposed upon such land in an amount equal to the sum of the
8 following:

9 (1) The total amount of the additional tax and applicable interest
10 due under RCW 84.34.108; plus

11 (2) A penalty amounting to twenty percent of the amount determined
12 in subsection (1) of this section.

13 **Sec. 706.** RCW 84.34.108 and 1992 c 69 s 12 are each amended to
14 read as follows:

15 (1) When land has once been classified under this chapter, a
16 notation of such classification shall be made each year upon the
17 assessment and tax rolls and such land shall be valued pursuant to RCW
18 84.34.060 or 84.34.065 until removal of all or a portion of such
19 classification by the assessor upon occurrence of any of the following:

20 (a) Receipt of notice from the owner to remove all or a portion of
21 such classification;

22 (b) Sale or transfer to an ownership, except a transfer that
23 resulted from a default in loan payments made to or secured by a
24 governmental agency that intends to or is required by law or regulation
25 to resell the property for the same use as before, making all or a
26 portion of such land exempt from ad valorem taxation;

27 (c) Sale or transfer of all or a portion of such land to a new
28 owner, unless the new owner has signed a notice of classification
29 continuance, except transfer to an owner who is an heir or devisee of
30 a deceased owner shall not, by itself, result in removal of
31 classification. (~~The signed notice of continuance shall be attached
32 to the real estate excise tax affidavit provided for in RCW 82.45.120,
33 as now or hereafter amended.~~) The notice of continuance shall be on
34 a form prepared by the department of revenue. If the notice of
35 continuance is not signed by the new owner and attached to the real
36 estate excise tax affidavit, all additional taxes calculated pursuant
37 to subsection (~~(+3+)~~) (4) of this section shall become due and payable
38 by the seller or transferor at time of sale. The county auditor shall

1 not accept an instrument of conveyance of classified land for filing or
2 recording unless the new owner has signed the notice of continuance or
3 the additional tax has been paid. The seller, transferor, or new owner
4 may appeal the new assessed valuation calculated under subsection
5 ~~((+3))~~ (4) of this section to the county board of equalization.
6 Jurisdiction is hereby conferred on the county board of equalization to
7 hear these appeals;

8 (d) Determination by the assessor, after giving the owner written
9 notice and an opportunity to be heard, that all or a portion of such
10 land no longer meets the criteria for classification under this
11 chapter. The criteria for classification pursuant to this chapter
12 continue to apply after classification has been granted.

13 The granting authority, upon request of an assessor, shall provide
14 reasonable assistance to the assessor in making a determination whether
15 such land continues to meet the qualifications of RCW 84.34.020 (1) or
16 (3). The assistance shall be provided within thirty days of receipt of
17 the request.

18 (2) Land may not be removed from classification because of:

19 (a) The creation, sale, or transfer of forestry riparian easements
20 under section 504 of this act; or

21 (b) The creation, sale, or transfer of a fee interest or a
22 conservation easement for the riparian open space program under RCW
23 76.09.040.

24 (3) Within thirty days after such removal of all or a portion of
25 such land from current use classification, the assessor shall notify
26 the owner in writing, setting forth the reasons for such removal. The
27 seller, transferor, or owner may appeal such removal to the county
28 board of equalization.

29 ~~((+3))~~ (4) Unless the removal is reversed on appeal, the assessor
30 shall revalue the affected land with reference to full market value on
31 the date of removal from classification. Both the assessed valuation
32 before and after the removal of classification shall be listed and
33 taxes shall be allocated according to that part of the year to which
34 each assessed valuation applies. Except as provided in subsection
35 ~~((+5))~~ (6) of this section, an additional tax, applicable interest,
36 and penalty shall be imposed which shall be due and payable to the
37 county treasurer thirty days after the owner is notified of the amount
38 of the additional tax. As soon as possible, the assessor shall compute
39 the amount of such an additional tax, applicable interest, and penalty

1 and the treasurer shall mail notice to the owner of the amount thereof
2 and the date on which payment is due. The amount of such additional
3 tax, applicable interest, and penalty shall be determined as follows:

4 (a) The amount of additional tax shall be equal to the difference
5 between the property tax paid as "open space land", "farm and
6 agricultural land", or "timber land" and the amount of property tax
7 otherwise due and payable for the seven years last past had the land
8 not been so classified;

9 (b) The amount of applicable interest shall be equal to the
10 interest upon the amounts of such additional tax paid at the same
11 statutory rate charged on delinquent property taxes from the dates on
12 which such additional tax could have been paid without penalty if the
13 land had been assessed at a value without regard to this chapter;

14 (c) The amount of the penalty shall be as provided in RCW
15 84.34.080. The penalty shall not be imposed if the removal satisfies
16 the conditions of RCW 84.34.070.

17 (~~((4))~~) (5) Additional tax, applicable interest, and penalty, shall
18 become a lien on such land which shall attach at the time such land is
19 removed from classification under this chapter and shall have priority
20 to and shall be fully paid and satisfied before any recognizance,
21 mortgage, judgment, debt, obligation or responsibility to or with which
22 such land may become charged or liable. Such lien may be foreclosed
23 upon expiration of the same period after delinquency and in the same
24 manner provided by law for foreclosure of liens for delinquent real
25 property taxes as provided in RCW 84.64.050 now or as hereafter
26 amended. Any additional tax unpaid on its due date shall thereupon
27 become delinquent. From the date of delinquency until paid, interest
28 shall be charged at the same rate applied by law to delinquent ad
29 valorem property taxes.

30 (~~((5))~~) (6) The additional tax, applicable interest, and penalty
31 specified in subsection (~~((3))~~) (4) of this section shall not be
32 imposed if the removal of classification pursuant to subsection (1) of
33 this section resulted solely from:

34 (a) Transfer to a government entity in exchange for other land
35 located within the state of Washington;

36 (b)(i) A taking through the exercise of the power of eminent
37 domain, or (ii) sale or transfer to an entity having the power of
38 eminent domain in anticipation of the exercise of such power, said

1 entity having manifested its intent in writing or by other official
2 action;

3 (c) A natural disaster such as a flood, windstorm, earthquake, or
4 other such calamity rather than by virtue of the act of the landowner
5 changing the use of such property;

6 (d) Official action by an agency of the state of Washington or by
7 the county or city within which the land is located which disallows the
8 present use of such land;

9 (e) Transfer of land to a church when such land would qualify for
10 exemption pursuant to RCW 84.36.020;

11 (f) Acquisition of property interests by state agencies or agencies
12 or organizations qualified under RCW 84.34.210 and 64.04.130 for the
13 purposes enumerated in those sections: PROVIDED, That at such time as
14 these property interests are not used for the purposes enumerated in
15 RCW 84.34.210 and 64.04.130 the additional tax specified in subsection
16 ~~((+3))~~ (4) of this section shall be imposed; ~~((or))~~

17 (g) Removal of land classified as farm and agricultural land under
18 RCW 84.34.020(2)(d);

19 (h) The creation, sale, or transfer of forestry riparian easements
20 under section 504 of this act; or

21 (i) The creation, sale, or transfer of a fee interest or a
22 conservation easement for the riparian open space program under RCW
23 76.09.040.

24 NEW SECTION. Sec. 707. A new section is added to chapter 76.09
25 RCW to read as follows:

26 Prior to the sale or transfer of land or perpetual timber rights
27 subject to continuing forest land obligations under the forest
28 practices rules adopted under section 204 of this act, as specifically
29 identified in the forests and fish report the seller shall notify the
30 buyer of the existence and nature of such a continuing obligation and
31 the buyer shall sign a notice of continuing forest land obligation
32 indicating the buyer's knowledge thereof. The notice shall be on a
33 form prepared by the department and shall be sent to the department by
34 the seller at the time of sale or transfer of the land or perpetual
35 timber rights and retained by the department. If the seller fails to
36 notify the buyer about the continuing forest land obligation, the
37 seller shall pay the buyer's costs related to such continuing forest
38 land obligation, including all legal costs and reasonable attorneys'

1 fees, incurred by the buyer in enforcing the continuing forest land
2 obligation against the seller. Failure by the seller to send the
3 required notice to the department at the time of sale shall be prima
4 facie evidence, in an action by the buyer against the seller for costs
5 related to the continuing forest land obligation, that the seller did
6 not notify the buyer of the continuing forest land obligation prior to
7 sale.

8 **PART VIII**
9 **ENFORCEMENT**

10 **Sec. 801.** RCW 76.09.140 and 1993 c 482 s 1 are each amended to
11 read as follows:

12 (1) The department of natural resources may take any necessary
13 action to enforce any final order or final decision, and may disapprove
14 (~~for up to one year~~) any forest practices application or notification
15 submitted by any person who has failed to comply with a final order or
16 final decision or has failed to pay any civil penalties as provided in
17 RCW 76.09.170, for up to one year from the issuance of a notice of
18 intent to disapprove notifications and applications under this section
19 or until the violator pays all outstanding civil penalties and complies
20 with all validly issued and outstanding notices to comply and stop work
21 orders, whichever is longer. For purposes of chapter 482, Laws of
22 1993, the terms "final order" and "final decision" shall mean the same
23 as set forth in RCW 76.09.080, 76.09.090, and 76.09.110. The
24 department shall provide written notice of its intent to disapprove an
25 application or notification under this subsection. The department
26 shall forward copies of its notice of intent to disapprove to any
27 affected landowner. The disapproval period shall run from thirty days
28 following the date of actual notice or when all administrative and
29 judicial appellate processes, if any, have been exhausted. Any person
30 provided the notice may seek review from the appeals board by filing a
31 request for review within thirty days of the date of the notice of
32 intent. While the notice of intent to disapprove is in effect, the
33 violator may not serve as a person in charge of, be employed by,
34 manage, or otherwise participate to any degree in forest practices.

35 (2) On request of the department, the attorney general may take
36 action necessary to enforce this chapter, including, but not limited
37 to(~~τ~~): Seeking penalties, interest, costs, and attorneys' fees;

1 enforcing final orders or decisions(~~(7)~~); and seeking civil
2 injunctions, show cause orders, or contempt orders.

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

16 (4)(a) The department may require financial assurance prior to the
17 conduct of any further forest practices from an operator or landowner
18 who within the preceding three-year period has:

19 (i) Operated without an approved forest practices application,
20 other than an unintentional operation in connection with an approved
21 application outside the approved boundary of such an application;

22 (ii) Continued to operate in breach of, or failed to comply with,
23 the terms of an effective stop work order or notice to comply; or

24 (iii) Failed to pay any civil or criminal penalty.

25 (b) The department may deny any application for failure to submit
26 financial assurances as required.

27 **Sec. 802.** RCW 76.09.150 and 1974 ex.s. c 137 s 15 are each amended
28 to read as follows:

29 (1) The department shall make inspections of forest lands, before,
30 during and after the conducting of forest practices as necessary for
31 the purpose of (~~(insuring)~~) ensuring compliance with this chapter and
32 the forest practices (~~(regulations)~~) rules and to (~~(insure)~~) ensure
33 that no material damage occurs to the natural resources of this state
34 as a result of such practices.

35 (2) Any duly authorized representative of the department shall have
36 the right to enter upon forest land at any reasonable time to enforce
37 the provisions of this chapter and the forest practices (~~(regulations)~~)
38 rules.

1 (3) The department or the department of ecology may apply for an
2 administrative inspection warrant to either Thurston county superior
3 court, or the superior court in the county in which the property is
4 located. An administrative inspection warrant may be issued where:

5 (a) The department has attempted an inspection of forest lands
6 under this chapter to ensure compliance with this chapter and the
7 forest practice rules or to ensure that no potential or actual material
8 damage occurs to the natural resources of this state, and access to all
9 or part of the forest lands has been actually or constructively denied;
10 or

11 (b) The department has reasonable cause to believe that a violation
12 of this chapter or of rules adopted under this chapter is occurring or
13 has occurred.

14 (4) In connection with any watershed analysis, any review of a
15 pending application by an identification team appointed by the
16 department, any compliance studies, any effectiveness monitoring, or
17 other research that has been agreed to by a landowner, the department
18 may invite representatives of other agencies, tribes, and interest
19 groups to accompany a department representative and, at the landowner's
20 election, the landowner, on any such inspections. Reasonable efforts
21 shall be made by the department to notify the landowner of the persons
22 being invited onto the property and the purposes for which they are
23 being invited.

24 **Sec. 803.** RCW 76.09.170 and 1993 c 482 s 2 are each amended to
25 read as follows:

26 (1) Every person who violates any provision of RCW 76.09.010
27 through 76.09.280 or of the forest practices rules, or who converts
28 forest land to a use other than commercial timber operation within
29 three years after completion of the forest practice without the consent
30 of the county, city, or town, shall be subject to a penalty in an
31 amount of not more than ten thousand dollars for every such violation.
32 Each and every such violation shall be a separate and distinct offense.
33 In case of a failure to comply with a stop work order, every day's
34 continuance shall be a separate and distinct violation. Every person
35 who through an act of commission or omission procures, aids or abets in
36 the violation shall be considered to have violated the provisions of
37 this section and shall be subject to the penalty in this section. No
38 penalty shall be imposed under this section upon any governmental

1 official, an employee of any governmental department, agency, or
2 entity, or a member of any board or advisory committee created by this
3 chapter for any act or omission in his or her duties in the
4 administration of this chapter or of any rule adopted under this
5 chapter.

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

11 (a) Previous violation history;

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

13 (c) Whether the violation of this chapter or its rules was
14 intentional;

15 (d) Cooperation with the department;

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

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

21 (3) The penalty in this section shall be imposed by a notice in
22 writing, either by certified mail with return receipt requested or by
23 personal service, to the person incurring the same from the department
24 describing the violation with reasonable particularity. Within fifteen
25 days after the notice is received, the person incurring the penalty may
26 apply in writing to the department for the remission or mitigation of
27 such penalty. Upon receipt of the application, that department may
28 remit or mitigate the penalty upon whatever terms that department in
29 its discretion deems proper, provided the department deems such
30 remission or mitigation to be in the best interests of carrying out the
31 purposes of this chapter. The department shall have authority to
32 ascertain the facts regarding all such applications in such reasonable
33 manner and under such rule as it may deem proper.

34 (4) Any person incurring a penalty under this section may appeal
35 the penalty to the forest practices appeals board. Such appeals shall
36 be filed within thirty days of receipt of notice imposing any penalty
37 unless an application for remission or mitigation is made to the
38 department. When such an application for remission or mitigation is
39 made, such appeals shall be filed within thirty days of receipt of

1 notice from the department setting forth the disposition of the
2 application for remission or mitigation.

3 (5) The penalty imposed under this section shall become due and
4 payable thirty days after receipt of a notice imposing the same unless
5 application for remission or mitigation is made or an appeal is filed.
6 When such an application for remission or mitigation is made, any
7 penalty incurred under this section shall become due and payable thirty
8 days after receipt of notice setting forth the disposition of such
9 application unless an appeal is filed from such disposition. Whenever
10 an appeal of the penalty incurred is filed, the penalty shall become
11 due and payable only upon completion of all administrative and judicial
12 review proceedings and the issuance of a final decision confirming the
13 penalty in whole or in part.

14 (6) If the amount of any penalty is not paid to the department
15 within thirty days after it becomes due and payable, the attorney
16 general, upon the request of the department, shall bring an action in
17 the name of the state of Washington in the superior court of Thurston
18 county or of any county in which such violator may do business, to
19 recover such penalty, interest, costs, and attorneys' fees. In all
20 such actions the procedure and rules of evidence shall be the same as
21 an ordinary civil action except as otherwise in this chapter provided.
22 In addition to or as an alternative to seeking enforcement of penalties
23 in superior court, the department may bring an action in district court
24 as provided in Title 3 RCW, to collect penalties, interest, costs, and
25 attorneys' fees.

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

31 (8) Any person incurring a penalty imposed under this section is
32 also responsible for the payment of all costs and attorneys' fees
33 incurred in connection with the penalty and interest accruing on the
34 unpaid penalty amount.

35 **PART IX**
36 **WATERSHED ANALYSIS**

1 **Sec. 901.** RCW 76.09.010 and 1993 c 443 s 1 are each amended to
2 read as follows:

3 (1) The legislature hereby finds and declares that the forest land
4 resources are among the most valuable of all resources in the state;
5 that a viable forest products industry is of prime importance to the
6 state's economy; that it is in the public interest for public and
7 private commercial forest lands to be managed consistent with sound
8 policies of natural resource protection; that coincident with
9 maintenance of a viable forest products industry, it is important to
10 afford protection to forest soils, fisheries, wildlife, water quantity
11 and quality, air quality, recreation, and scenic beauty.

12 (2) The legislature further finds and declares it to be in the
13 public interest of this state to create and maintain through the
14 adoption of this chapter a comprehensive state-wide system of laws and
15 forest practices (~~(regulations)~~) rules which will achieve the following
16 purposes and policies:

17 (a) Afford protection to, promote, foster and encourage timber
18 growth, and require such minimum reforestation of commercial tree
19 species on forest lands as will reasonably utilize the timber growing
20 capacity of the soil following current timber harvest;

21 (b) Afford protection to forest soils and public resources by
22 utilizing all reasonable methods of technology in conducting forest
23 practices;

24 (c) Recognize both the public and private interest in the
25 profitable growing and harvesting of timber;

26 (d) Promote efficiency by permitting maximum operating freedom
27 consistent with the other purposes and policies stated herein;

28 (e) Provide for regulation of forest practices so as to avoid
29 unnecessary duplication in such (~~(regulation)~~) rules;

30 (f) Provide for interagency input and intergovernmental and tribal
31 coordination and cooperation;

32 (g) Achieve compliance with all applicable requirements of federal
33 and state law with respect to nonpoint sources of water pollution from
34 forest practices;

35 (h) To consider reasonable land use planning goals and concepts
36 contained in local comprehensive plans and zoning regulations; (~~(and)~~)

37 (i) Foster cooperation among managers of public resources, forest
38 landowners, Indian tribes and the citizens of the state; and

1 (j) Develop a watershed analysis system that addresses the
2 cumulative effect of forest practices on, at a minimum, the public
3 resources of fish, water, and public capital improvements of the state
4 and its political subdivisions.

5 (3) The legislature further finds and declares that it is also in
6 the public interest of the state to encourage forest landowners to
7 undertake corrective and remedial action to reduce the impact of mass
8 earth movements and fluvial processes.

9 (4) The legislature further finds and declares that it is in the
10 public interest that the applicants for state forest practices permits
11 should assist in paying for the cost of review and permitting necessary
12 for the environmental protection of these resources.

13 **Sec. 902.** RCW 76.09.220 and 1997 c 290 s 5 and 1997 c 423 s 2 are
14 each reenacted and amended to read as follows:

15 (1) The appeals board shall operate on either a part-time or a
16 full-time basis, as determined by the governor. If it is determined
17 that the appeals board shall operate on a full-time basis, each member
18 shall receive an annual salary to be determined by the governor. If it
19 is determined that the appeals board shall operate on a part-time
20 basis, each member shall be compensated in accordance with RCW
21 43.03.250. The director of the environmental hearings office shall
22 make the determination, required under RCW 43.03.250, as to what
23 statutorily prescribed duties, in addition to attendance at a hearing
24 or meeting of the board, shall merit compensation. This compensation
25 shall not exceed ten thousand dollars in a fiscal year. Each member
26 shall receive reimbursement for travel expenses incurred in the
27 discharge of his or her duties in accordance with the provisions of RCW
28 43.03.050 and 43.03.060.

29 (2) The appeals board shall as soon as practicable after the
30 initial appointment of the members thereof, meet and elect from among
31 its members a chair, and shall at least biennially thereafter meet and
32 elect or reelect a chair.

33 (3) The principal office of the appeals board shall be at the state
34 capital, but it may sit or hold hearings at any other place in the
35 state. A majority of the appeals board shall constitute a quorum for
36 making orders or decisions, (~~promulgating~~) adopting rules (~~and~~
37 ~~regulations~~) necessary for the conduct of its powers and duties, or
38 transacting other official business, and may act though one position on

1 the board be vacant. One or more members may hold hearings and take
2 testimony to be reported for action by the board when authorized by
3 rule or order of the board. The appeals board shall perform all the
4 powers and duties granted to it in this chapter or as otherwise
5 provided by law.

6 (4) The appeals board shall make findings of fact and prepare a
7 written decision in each case decided by it, and such findings and
8 decision shall be effective upon being signed by two or more members
9 and upon being filed at the appeals board's principal office, and shall
10 be open to public inspection at all reasonable times.

11 (5) The appeals board shall either publish at its expense or make
12 arrangements with a publishing firm for the publication of those of its
13 findings and decisions which are of general public interest, in such
14 form as to assure reasonable distribution thereof.

15 (6) The appeals board shall maintain at its principal office a
16 journal which shall contain all official actions of the appeals board,
17 with the exception of findings and decisions, together with the vote of
18 each member on such actions. The journal shall be available for public
19 inspection at the principal office of the appeals board at all
20 reasonable times.

21 (7) The forest practices appeals board shall have exclusive
22 jurisdiction to hear appeals arising from an action or determination by
23 the department, and the department of fish and wildlife, and the
24 department of ecology with respect to management plans provided for
25 under RCW 76.09.350.

26 (8)(a) Any person aggrieved by the approval or disapproval of an
27 application to conduct a forest practice or the approval or disapproval
28 of any landscape plan or permit or watershed analysis may seek review
29 from the appeals board by filing a request for the same within thirty
30 days of the approval or disapproval. Concurrently with the filing of
31 any request for review with the board as provided in this section, the
32 requestor shall file a copy of his or her request with the department
33 and the attorney general. The attorney general may intervene to
34 protect the public interest and ensure that the provisions of this
35 chapter are complied with.

36 (b) The review proceedings authorized in (a) of this subsection are
37 subject to the provisions of chapter 34.05 RCW pertaining to procedures
38 in adjudicative proceedings.

1 PART X

2 FOREST PRACTICES BOARD COMPOSITION

3 Sec. 1001. RCW 76.09.030 and 1995 c 399 s 207 are each amended to
4 read as follows:

5 (1) There is hereby created the forest practices board of the state
6 of Washington as an agency of state government consisting of members as
7 follows:

8 (a) The commissioner of public lands or the commissioner's
9 designee;

10 (b) The director of the department of community, trade, and
11 economic development or the director's designee;

12 (c) The director of the department of agriculture or the director's
13 designee;

14 (d) The director of the department of ecology or the director's
15 designee;

16 (e) The director of the department of fish and wildlife or the
17 director's designee;

18 (f) An elected member of a county legislative authority appointed
19 by the governor: PROVIDED, That such member's service on the board
20 shall be conditioned on the member's continued service as an elected
21 county official; and

22 (~~(f)~~) (g) Six members of the general public appointed by the
23 governor, one of whom shall be an owner of not more than five hundred
24 acres of forest land, and one of whom shall be an independent logging
25 contractor.

26 (2) The director of the department of fish and wildlife's service
27 on the board may be terminated two years after the effective date of
28 this section if the legislature finds that after two years the
29 department has not made substantial progress toward integrating the
30 laws, rules, and programs governing forest practices, chapter 76.09
31 RCW, and the laws, rules, and programs governing hydraulic projects,
32 chapter 75.20 RCW. Such a finding shall be based solely on whether the
33 department of fish and wildlife makes substantial progress as defined
34 in this subsection, and will not be based on other actions taken as a
35 member of the board. Substantial progress shall include
36 recommendations to the legislature for closer integration of the
37 existing rule-making authorities of the board and the department of
38 fish and wildlife, and closer integration of the forest practices and

1 hydraulics permitting processes, including exploring the potential for
2 a consolidated permitting process. These recommendations shall be
3 designed to resolve problems currently associated with the existing
4 dual regulatory and permitting processes.

5 (3) The members of the initial board appointed by the governor
6 shall be appointed so that the term of one member shall expire December
7 31, 1975, the term of one member shall expire December 31, 1976, the
8 term of one member shall expire December 31, 1977, the terms of two
9 members shall expire December 31, 1978, and the terms of two members
10 shall expire December 31, 1979. Thereafter, each member shall be
11 appointed for a term of four years. Vacancies on the board shall be
12 filled in the same manner as the original appointments. Each member of
13 the board shall continue in office until his or her successor is
14 appointed and qualified. The commissioner of public lands or the
15 commissioner's designee shall be the chairman of the board.

16 ((+3)) (4) The board shall meet at such times and places as shall
17 be designated by the chairman or upon the written request of the
18 majority of the board. The principal office of the board shall be at
19 the state capital.

20 ((+4)) (5) Members of the board, except public employees and
21 elected officials, shall be compensated in accordance with RCW
22 43.03.250. Each member shall be entitled to reimbursement for travel
23 expenses incurred in the performance of their duties as provided in RCW
24 43.03.050 and 43.03.060.

25 ((+5)) (6) The board may employ such clerical help and staff
26 pursuant to chapter 41.06 RCW as is necessary to carry out its duties.

27 PART XI

28 WATER QUALITY COORDINATION

29 **Sec. 1101.** RCW 90.48.420 and 1975 1st ex.s. c 200 s 13 are each
30 amended to read as follows:

31 (1) The department of ecology, pursuant to powers vested in it
32 previously by chapter 90.48 RCW and consistent with the policies of
33 said chapter and RCW 90.54.020(3), shall be solely responsible for
34 establishing water quality standards for waters of the state. On or
35 before January 1, 1975, the department of ecology shall examine
36 existing ((regulations)) rules containing water quality standards and
37 other applicable rules ((and—regulations)) of said department

1 pertaining to waters of the state affected by nonpoint sources of
2 pollution arising from forest practices and, when it appears
3 appropriate to the department of ecology, modify said ~~((regulations))~~
4 rules. In any such examination or modification the department of
5 ecology shall consider such factors, among others, as uses of the
6 receiving waters, diffusion, down-stream cooling, and reasonable
7 transient and short-term effects resulting from forest practices.

8 ~~((Promulgation))~~ Adoption of forest practices ~~((regulations))~~ rules
9 pertaining to water quality by ~~((the department of ecology and))~~ the
10 forest practices board~~((7))~~ shall be accomplished after reaching
11 agreement with the director of the department or the director's
12 designee on the board. Adoption shall be accomplished so that
13 compliance with such forest practice ~~((regulations))~~ rules will achieve
14 compliance with water pollution control laws.

15 (2) The department of ecology shall monitor water quality to
16 determine whether revisions in such water quality standards or
17 revisions in such forest practices ~~((regulations))~~ rules are necessary
18 to accomplish the foregoing result, and either ~~((promulgate))~~ adopt
19 appropriate revisions to such water quality standards or propose
20 appropriate revisions to such forest practices ~~((regulations))~~ rules or
21 both.

22 (3) Notwithstanding any other provisions of chapter 90.48 RCW or of
23 the rules ~~((and regulations promulgated))~~ adopted thereunder, no permit
24 system pertaining to nonpoint sources of pollution arising from forest
25 practices shall be authorized, and no civil or criminal penalties shall
26 be imposed with respect to any forest practices conducted in full
27 compliance with the applicable provisions of RCW 76.09.010 through
28 76.09.280, forest practices ~~((regulations))~~ rules, and any approvals or
29 directives of the department of natural resources thereunder.

30 (4) Prior to the department of ecology taking action under statutes
31 or ~~((regulations))~~ rules relating to water quality, regarding
32 violations of water quality standards arising from forest practices,
33 the department of ecology shall notify the department of natural
34 resources.

35 **PART XII**

36 **STATE ENVIRONMENTAL POLICY ACT**

1 listed as threatened under the endangered species act within two years
2 after the date on which the aquatic resource is so listed or, in the
3 case of bull trout, within two years after the effective date of this
4 section; or (ii) any such rule fails to permit any incidental take that
5 would occur from the conduct of forest practices in compliance with the
6 rules adopted under chapter . . . , Laws of 1999 (this act) or fails to
7 confirm that such forest practices would not otherwise be in violation
8 of the endangered species act and the regulations promulgated under
9 that act. However, this subsection (2)(a) is not applicable to any
10 aquatic resource covered by an incidental take permit described in (c)
11 of this subsection;

12 (b) Either the national marine fisheries service or the United
13 States fish and wildlife service shall promulgate an effective rule
14 under 16 U.S.C. Sec. 1533(d) covering any aquatic resource that would
15 preclude the conduct of forest practices consistent with the
16 prescriptions outlined in the forests and fish report. However, this
17 subsection (2)(b) is not applicable to any aquatic resource covered by
18 an incidental take permit described in (c) of this subsection;

19 (c) Either the secretary of the interior or the secretary of
20 commerce fails to issue an acceptable incidental take permit under 16
21 U.S.C. Sec. 1539(a) covering all fish and wildlife species included
22 within aquatic resources on or before June 30, 2003. An acceptable
23 incidental take permit will (i) permit the incidental take, if any, of
24 all fish and wildlife species included within aquatic resources
25 resulting from the conduct of forest practices in compliance with the
26 prescriptions outlined in the forests and fish report; (ii) provide
27 protection to the state of Washington and its subdivisions and to
28 landowners and operators; (iii) not require the commitment of
29 additional resources beyond those required to be committed under the
30 forests and fish report; and (iv) provide "no-surprises" protection as
31 described in 50 C.F.R. Parts 17 and 222 (1998);

32 (d) The environmental protection agency or department of ecology
33 fails to provide the clean water act assurances described in appendix
34 M to the forests and fish report; or

35 (e) The assurances described in (a) through (d) of this subsection
36 are reversed or otherwise rendered ineffective by subsequent federal
37 legislation or rulemaking or by final decision of any court of
38 competent jurisdiction.

1 The forests and fish account is created in the state treasury.
2 Receipts from appropriations, federal grants, and gifts from private
3 organizations and individuals or other sources may be deposited into
4 the account. Moneys in the account may be spent only after
5 appropriation. Expenditures from the account may only be used for the
6 establishment and operation of the small forest landowner office under
7 section 503 of this act, the purchase of easements under section 504 of
8 this act, the purchase of lands under RCW 76.09.040, or other
9 activities necessary to implement chapter . . . , Laws of 1999 (this
10 act).

11 NEW SECTION. **Sec. 1403.** Part headings used in this act are not
12 any part of the law.

13 NEW SECTION. **Sec. 1404.** Sections 201, 202, and 203 of this act
14 are necessary for the immediate preservation of the public peace,
15 health, or safety, or support of the state government and its existing
16 public institutions, and take effect immediately."

17 **SHB 2091** - H AMD
18 By Representative

19
20 On page 1, line 2 of the title, after "resources;" strike the
21 remainder of the title and insert "amending RCW 76.09.020, 76.13.010,
22 76.42.060, 76.09.330, 76.09.040, 84.33.120, 84.33.140, 84.33.145,
23 84.34.080, 84.34.108, 76.09.140, 76.09.150, 76.09.170, 76.09.010,
24 76.09.030, and 90.48.420; reenacting and amending RCW 76.09.220; adding
25 new sections to chapter 75.46 RCW; adding new sections to chapter 76.09
26 RCW; adding a new section to chapter 34.05 RCW; adding new sections to
27 chapter 43.21C RCW; adding a new section to chapter 82.04 RCW; adding
28 new sections to chapter 76.13 RCW; creating a new section; repealing
29 RCW 90.28.150; and declaring an emergency."

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