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**SUBSTITUTE SENATE BILL 5688**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

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

Read first time 03/03/93.

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

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

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

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

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

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

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

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

28 (1) Every person who (~~(fails to comply with))~~ violates any  
29 provision of RCW 76.09.010 through 76.09.280 (~~(as now or hereafter~~  
30 amended)) or of the forest practices (~~(regulations))~~ rules, or who  
31 converts forest land to a use other than commercial timber operation  
32 within three years after completion of the forest practice without the  
33 consent of the county, city, or town, shall be subject to a penalty in  
34 an amount of not more than (~~(five hundred))~~ ten thousand dollars for  
35 every such violation. Each and every such violation shall be a  
36 separate and distinct offense. In case of a failure to comply with a  
37 (~~(notice pursuant to RCW 76.09.090 as now or hereafter amended or a)~~  
38 stop work order, every day's continuance shall be a separate and

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

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

16 (a) Previous violation history;

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

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

20 (d) Cooperation with the department; and

21 (e) Repairability of the adverse effect from the violation.

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

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

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

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

26 violation with reasonable particularity. Within fifteen days after the

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

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

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

30 mitigate the penalty upon whatever terms that department in its

31 discretion deems proper, provided the department deems such remission

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

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

34 authority to ascertain the facts regarding all such applications in

35 such reasonable manner and under such ~~((regulations))~~ rule as it may

36 deem proper.

37 (4) Any person incurring ~~((any))~~ a penalty ~~((hereunder))~~ under this

38 section may appeal the ~~((same))~~ penalty to the forest practices appeals

39 board. Such appeals shall be filed within thirty days of receipt of

1 notice imposing any penalty unless an application for remission or  
2 mitigation is made to the department. When such an application for  
3 remission or mitigation is made, such appeals shall be filed within  
4 thirty days of receipt of notice from the department setting forth the  
5 disposition of the application for remission or mitigation.

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

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

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

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