

HOUSE BILL REPORT

HB 1810

As Reported By House Committee On:
Natural Resources & Parks

Title: An act relating to civil enforcement of forest practices violations.

Brief Description: Modifying enforcement of forest practices guidelines.

Sponsors: Representatives Pruitt, Appelwick and Valle.

Brief History:

Reported by House Committee on:
Natural Resources & Parks, March 3, 1993, DPS.

HOUSE COMMITTEE ON NATURAL RESOURCES & PARKS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Pruitt, Chair; R. Johnson, Vice Chair; Dunshee; Linville; Schoesler; Sheldon; Thomas; Valle; and Wolfe.

Minority Report: Without recommendation. Signed by 2 members: Representatives Morton, Ranking Minority Member and Stevens, Assistant Ranking Minority Member.

Staff: Tim Burke (786-7103).

Background: The Department of Natural Resources may enjoin future forest practices by a person who has failed to comply with a final order or final decision under the forest practices laws. The statutory term of the injunction is for one year following the date on which the person has failed to comply.

Violators of the forest practices laws or of any regulations adopted under them are subject to a civil penalty of up to \$500 for each violation. The department may bring a civil action in the Superior Court to collect civil penalties.

Certain classes of forest practices may not be conducted unless an application for the practices has been approved by the department or notification of the practices has been filed with the department. If an application or notification does not reveal that the land will be converted

to a use other than commercial timber operations, within three years after completion of the forest practices, then conversion within the three year period is not permitted without the consent of the city, town, or county having jurisdiction over the land.

Summary of Substitute Bill: The department's authority to enjoin forest practices for one year is eliminated and new authority is provided enabling the department to disapprove for "up to one year" any application or notification submitted by a person who has failed to comply with a final order or final decision under the forest practices laws or to pay a civil penalty imposed under the laws. Procedures are provided for notifying a violator of the department's decision to disapprove and for appealing the decision.

The civil penalty for violating the forest practices laws or regulations is increased to a maximum of \$10,000. This new penalty is also made applicable to persons who convert forest land to a use other than commercial timber operation within three years after completion of the forest practices without the consent of the county, city, or town. The department is required to submit to the Forest Practices Board a penalty schedule designed to assist the department to determine the penalty in cases involving violations. In developing the schedule, the department is required to consider a number of factors. The board is required to adopt the schedule no later than January 1, 1994.

The department is authorized to collect penalties by bringing a civil action in district court or Superior Court. Penalties imposed for violations associated with conversions to a use other than commercial timber operation are a lien on the real property of the persons assessed the penalties and the department may collect the penalties in the manner provided for mechanics' liens.

Substitute Bill Compared to Original Bill: The substitute contains more detailed administrative procedures designed to protect the rights of private parties and provides the following additional factors that the department would have to consider in developing the schedule for penalties: (a) a violator's previous violation history and (b) the extent to which a penalty imposed on a landowner should be reduced because the landowner was unaware of the violation and did not receive substantial economic benefits from it. Unlike the original, the substitute vests the power to adopt the schedule in the Forest Practices Board. Also unlike the original, the substitute applies the penalty provisions to conversions made without local government consent. The original provides that all unpaid penalties become a lien on the violator's real property, while the substitute's lien

provisions are limited to penalties imposed in conversion cases. Unlike the substitute, the original authorizes a court to award attorneys' fees and costs in cases brought by the department to collect penalties.

Fiscal Note: Available. New fiscal note requested on March 4, 1993.

Effective Date of Substitute Bill: With one exception, the provisions of this bill take effect January 1, 1994. The exception is Section 2(2) which takes effect ninety days after adjournment of session in which bill is passed.

Testimony For (Original Bill): The penalties provided under the forest practices laws are inadequate to deter violations. Violations are a serious problem. The penalties, when coupled with the recent substantial increases in the price of timber, can provide an economic inducement to violate the laws.

Testimony Against (Original Bill): The increased penalties would create unfair hardships for innocent landowners. The bill gives the Department of Natural Resources too much power and lacks provisions to assure procedural fairness for landowners and persons conducting forest practices.

Witnesses (Original Bill): Pat McElroy, Department of Natural Resources (pro); Tim Boyd, Washington Forest Protection Association (pro, with proposed changes); Judy Turpin, Washington Environmental Council (pro); Jeff Parsons, National Audubon Society (pro); Dan Cantrell, Sierra Club (pro); Dick Wallace, Department of Ecology (pro); Cyreis Schmitt, Department of Fisheries (pro); Nels Hanson, Washington Farm Forestry Association (pro, with proposed changes); Gary Hanson, Washington Timberland Management Inc. (pro); and Karanne Gonzalez, Kitsap County (pro).