

SENATE BILL REPORT

SB 5688

AS REPORTED BY COMMITTEE ON NATURAL RESOURCES, MARCH 3, 1993

Brief Description: Modifying enforcement of forest practices guidelines.

SPONSORS: Senators Owen, A. Smith and Oke

SENATE COMMITTEE ON NATURAL RESOURCES

Majority Report: That Substitute Senate Bill No. 5688 be substituted therefor, and the substitute bill do pass.

Signed by Senators Owen, Chairman; Hargrove, Vice Chairman; Amondson, Erwin, Franklin, Haugen, Oke, Snyder, and Spanel.

Staff: Vic Moon (786-7469)

Hearing Dates: February 24, 1993; March 3, 1993

BACKGROUND:

Forest practice rules and regulations incorporate a number of enforcement devices. These include informal conferences, stop work orders, notices to comply, civil penalties and criminal penalties. The Department of Natural Resources uses these methods to implement the legislative intent of the Forest Practices Act. Civil penalties set forth in RCW 76.09.170 are limited to \$500. It is felt that this \$500 penalty offers very little deterrent to operators who act in violation of the rules.

The statutes allow that enforcement of final orders are actions by the Attorney General rather than by the department. The department cannot satisfy the requirements of final orders because actions can only be taken by the Attorney General's Office. Current statutes allow the department to perform work that a landowner refuses to perform as a result of a final order.

No provision in current statute allows for the collection of costs or attorney fees.

SUMMARY:

Civil penalties are increased up to \$10,000 and the department has the authority to establish a penalty schedule. At the department's request, the Attorney General's Office will enforce final orders. The Attorney General has the authority to seek enforcement through district court as well as superior court. The department is allowed to file liens against real property of persons who have not paid penalties. The department may deny applications for one year to any person

who has not complied with a final order when all other alternatives are exhausted. The department may collect reasonable attorney fees and costs of enforcing any penalty.

EFFECT OF PROPOSED SUBSTITUTE:

The Department of Natural Resources may deny a forest practice application or notification submitted by any person who has failed to comply with a final order or who has failed to comply with a final decision of the department. A disapproval of up to one year can also be made for any person who has failed to pay civil penalties. The department will provide written notice of its intent to disapprove an application or notification for a forest practice. The department will send copies of the notice of intent to disapprove to any affected land owner. The disapproval period will run from 30 days following the date of the actual notice. Any person provided the notice may seek review from the Forest Practices Appeals Board by filing a request for review within 30 days of receiving the notice of intent.

The Attorney General may take action to enforce violations of forest practice rules and regulations and may seek penalties and enforce final orders and decisions of the department. The Attorney General's office may seek civil injunctions, may ask for show cause orders or contempt orders.

The maximum penalty for forest practices violations and for a person who converts forest land to other than commercial timber operations within three years without the consent of the county, city or town, shall be \$10,000.

The Department of Natural Resources will develop and recommend to the Forest Practices Board a penalty schedule to determine the amount of fines to be imposed. The board will adopt the penalty schedule by rule no later than January 1, 1994. In developing the rule, consideration will be given to the previous violation history of the person and the severity of impact to public resources. Additional consideration will be given to whether the violation of the chapter or its rules was intentional, the amount of cooperation the violators showed in working with the department to solve the problem, and the reparability of the adverse effect from the violation.

The Department of Natural Resources may use small claims court to collect penalties.

Penalties imposed by the Department of Natural Resources for violations associated with the conversion to a use other than commercial timber shall be a lien upon the real property of the person assessed the penalty and the department may collect fines in the same manner as provided for mechanics liens.

Appropriation: none

Revenue: none

Fiscal Note: requested

TESTIMONY FOR:

The current \$500 penalty is not adequate given the severity of some violations of forest practice permits. The Department of Natural Resources needs more flexibility in its penalty approach.

TESTIMONY AGAINST:

The bill is not specific enough and it needs to be redirected to protect forest land owners from overzealous enforcement by the department. (The substitute bill was worked out between the proponents and opponents of the bill.)

TESTIFIED: Fred Ellis, Friends of the San Juans (pro); Christina Dahl-Sesby, Friends of the San Juans (pro); Commissioner Jennifer Belcher, Commissioner of Public Lands (pro); Eric Weigand, Department of Wildlife (pro); Dick Wallace, Department of Ecology (pro); Nellis Hansen, Washington Farm Forestry Association (pro); Steve Robinson, Northwest Indian Fisheries Commission (pro); Cyreis Schmitt, Department of Fisheries (pro); Judy Turpin, Washington Environmental Council (pro); Greg Hannon, Washington Timber Growers Association (pro); Jeff Parsons, National Audubon Society (pro); Karanne Gonzales, Kitsap County (pro); Tim Boyd, Washington Forest Protection Association (con)