
SUBSTITUTE HOUSE BILL 2091

State of Washington

56th Legislature

1999 Regular Session

By House Committee on Natural Resources (originally sponsored by Representatives Buck, Regala, Dunshee, Thomas, Alexander, Doumit, Kessler, McMorris, Grant, Hatfield, Linville, G. Chandler, Reardon, Ericksen, Quall, Ogden, Clements, Schoesler, Anderson, Lisk, Eickmeyer, D. Sommers and Veloria; by request of Governor Locke)

Read first time 03/02/1999.

1 AN ACT Relating to forest practices as they affect the recovery of
2 salmon and other aquatic resources; amending RCW 76.09.020, 76.13.010,
3 76.42.060, 76.09.330, 76.09.040, 76.09.010, and 90.48.420; reenacting
4 and amending RCW 76.09.220; adding a new section to chapter 75.46 RCW;
5 adding new sections to chapter 76.13 RCW; adding new sections to
6 chapter 76.09 RCW; and repealing RCW 90.28.150.

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

8 NEW SECTION. **Sec. 1.** A new section is added to chapter 75.46 RCW
9 and codified with the subchapter heading of "salmon recovery planning
10 in areas involving forest practices" to read as follows:

11 (1) The changes in laws and rules contemplated by chapter . . . ,
12 Laws of 1999 (this act), taken as a whole, constitute a comprehensive
13 and coordinated program to provide substantial and sufficient
14 contributions to salmon recovery and water quality enhancement in areas
15 impacted by forest practices and are intended to fully satisfy the
16 requirements of the endangered species act (16 U.S.C. Sec. 1531 et
17 seq.) with respect to incidental take of salmon and other aquatic
18 resources and the clean water act (33 U.S.C. Sec. 1251 et seq.) with
19 respect to nonpoint source pollution attributable to forest practices.

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

17 (3) The legislature finds that the forestry industry, small
18 landowners, tribal governments, state and federal agencies, and
19 counties have worked diligently for nearly two years to reach agreement
20 on scientifically based changes to the forest practices rules, set
21 forth in the forests and fish report to the forest practices board and
22 the governor's salmon recovery team dated February 22, 1999, and known
23 as the forests and fish report. The legislature further finds that if
24 existing forest practices rules are amended as proposed in the forests
25 and fish report, the resulting changes in forest practices (a) will
26 lead to: (i) Fully functioning salmon habitat that is vital to the
27 long-term recovery of salmon on more than sixty thousand miles of
28 streams in this state; (ii) identification of forest roads contributing
29 to habitat degradation and corrective action to remedy those problems
30 to protect salmon habitat; (iii) increased protection of steep and
31 unstable slopes; and (iv) the implementation of scientifically based
32 adaptive management and monitoring processes for evaluating the impacts
33 of forest practices on aquatic resources, as defined in RCW 76.09.020,
34 and a process for amending the forest practices rules to incorporate
35 new information as it becomes available; (b) will lead to the
36 protection of aquatic resources to the maximum extent practicable
37 consistent with maintaining commercial forest management as an
38 economically viable use of lands suitable for that purpose; and (c)

1 will avoid unnecessary regulatory incentives to convert forest lands to
2 other uses that would be less desirable for salmon recovery.

3 (4) The legislature recognizes that the adoption of forest
4 practices rules consistent with the forests and fish report will impose
5 substantial financial burdens on forest landowners which, if not
6 partially offset through other changes in the laws and rules governing
7 forestry, could lead to significantly reduced silvicultural investments
8 on nonfederal lands, deterioration in the quality, condition, and
9 amounts of forests on those lands, and long-term adverse effects on
10 fish and wildlife habitat and other environmental amenities associated
11 with well managed forests. Moreover, as the benefits of the proposed
12 revisions to the forest practices rules will benefit the general
13 public, chapter . . . , Laws of 1999 (this act) suggests that some of
14 these costs be shared with the general public.

15 (5) As an integral part of implementing the salmon recovery
16 strategy, chapter . . . , Laws of 1999 (this act) (a) provides direction
17 to the forest practices board, the department of natural resources, and
18 the department of ecology with respect to the adoption, implementation,
19 and enforcement of rules relating to forest practices and the
20 protection of aquatic resources; (b) provides additional enforcement
21 tools to the department of natural resources to enforce the forest
22 practices rules; (c) suggests that some of these costs be shared with
23 the general public; (d) provides for the acquisition by the state of
24 forest lands within certain stream channel migration zones where timber
25 harvest will not be allowed; (e) provides for small landowners to have
26 costs shared for a portion of any extraordinary economic losses
27 attributable to the revisions to the forest practices rules required by
28 chapter . . . , Laws of 1999 (this act); and (f) amends other existing
29 laws to aid in the implementation of the recommendations set forth in
30 the forests and fish report.

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

33 For purposes of this chapter:

34 (1) "Appeals board" (~~shall~~) means the forest practices appeals
35 board created by RCW 76.09.210.

36 (2) "Aquatic resources" includes water quality, salmon, other
37 species of the vertebrate classes Cephalaspidomorphi and Osteichthyes
38 identified in the forests and fish report, the Columbia torrent

1 salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander
2 (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton*
3 *olympian*), the Dunn's salamander (*Plethodon dunnii*), the Van Dyke's
4 salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and
5 their respective habitats.

6 (3) "Commissioner" (~~shall~~) means the commissioner of public
7 lands.

8 ~~((3))~~ (4) "Contiguous" (~~shall~~) means land adjoining or touching
9 by common corner or otherwise. Land having common ownership divided by
10 a road or other right of way shall be considered contiguous.

11 ~~((4))~~ (5) "Conversion to a use other than commercial timber
12 operation" (~~shall~~) means a bona fide conversion to an active use
13 which is incompatible with timber growing and as may be defined by
14 forest practices ~~((regulations))~~ rules.

15 ~~((5))~~ (6) "Department" (~~shall~~) means the department of natural
16 resources.

17 ~~((6))~~ (7) "Forest land" (~~shall~~) means all land which is capable
18 of supporting a merchantable stand of timber and is not being actively
19 used for a use which is incompatible with timber growing.

20 ~~((7))~~ (8) "Forest landowner" (~~shall~~) means any person in actual
21 control of forest land, whether such control is based either on legal
22 or equitable title, or on any other interest entitling the holder to
23 sell or otherwise dispose of any or all of the timber on such land in
24 any manner: PROVIDED, That any lessee or other person in possession of
25 forest land without legal or equitable title to such land shall be
26 excluded from the definition of "forest landowner" unless such lessee
27 or other person has the right to sell or otherwise dispose of any or
28 all of the timber located on such forest land.

29 ~~((8))~~ (9) "Forest practice" (~~shall~~) means any activity
30 conducted on or directly pertaining to forest land and relating to
31 growing, harvesting, or processing timber, including but not limited
32 to:

- 33 (a) Road and trail construction;
- 34 (b) Harvesting, final and intermediate;
- 35 (c) Precommercial thinning;
- 36 (d) Reforestation;
- 37 (e) Fertilization;
- 38 (f) Prevention and suppression of diseases and insects;
- 39 (g) Salvage of trees; and

1 (h) Brush control.

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

8 ~~((+9))~~ (10) "Forest practices ~~((regulations" shall))~~ rules" means
9 any rules ~~((promulgated))~~ adopted pursuant to RCW 76.09.040.

10 ~~((+10))~~ (11) "Forests and fish report" means the forests and fish
11 report to the board dated February 22, 1999.

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

14 ~~((+11))~~ (13) "Operator" ~~((shall))~~ means any person engaging in
15 forest practices except an employee with wages as his or her sole
16 compensation.

17 ~~((+12))~~ (14) "Person" ~~((shall))~~ means any individual, partnership,
18 private, public, or municipal corporation, county, the department or
19 other state or local governmental entity, or association of individuals
20 of whatever nature.

21 ~~((+13))~~ (15) "Public resources" ~~((shall))~~ means water, fish and
22 wildlife, and in addition shall mean capital improvements of the state
23 or its political subdivisions.

24 ~~((+14))~~ (16) "Timber" ~~((shall))~~ means forest trees, standing or
25 down, of a commercial species, including Christmas trees.

26 ~~((+15))~~ (17) "Timber owner" ~~((shall))~~ means any person having all
27 or any part of the legal interest in timber. Where such timber is
28 subject to a contract of sale, "timber owner" shall mean the contract
29 purchaser.

30 ~~((+16))~~ (18) "Board" ~~((shall))~~ means the forest practices board
31 created in RCW 76.09.030.

32 (19) "Unconfined avulsing channel migration zone" means the area
33 within which the active channel of an unconfined avulsing stream is
34 prone to move and where the movement would result in a potential near-
35 term loss of riparian forest adjacent to the stream. Sizeable islands
36 with productive timber may exist within the zone.

37 (20) "Unconfined avulsing stream" means generally fifth order or
38 larger waters that experience abrupt shifts in channel location,
39 creating a complex flood plain characterized by extensive gravel bars,

1 disturbance species of vegetation of variable age, numerous side
2 channels, wall-based channels, oxbow lakes, and wetland complexes.
3 Many of these streams have dikes and levees that may temporarily or
4 permanently restrict channel movement.

5 NEW SECTION. **Sec. 3.** A new section is added to chapter 76.13 RCW
6 to read as follows:

7 (1) The legislature finds that increasing regulatory requirements
8 continue to diminish the economic viability of small forest landowners.
9 The concerns set forth in section 1 of this act about the importance of
10 sustaining forestry as a viable land use are particularly applicable to
11 small landowners because of the location of their holdings, the
12 expected complexity of the regulatory requirements, and the need for
13 significant technical expertise not readily available to small
14 landowners. The further reduction in harvestable timber owned by small
15 forest landowners as a result of the rules adopted under chapter . . . ,
16 Laws of 1999 (this act) will further erode small landowners' economic
17 viability and willingness or ability to keep the lands in forestry use
18 and, therefore, reduce the amount of habitat available for salmon
19 recovery and conservation of other aquatic resources, as defined in RCW
20 76.09.020.

21 (2) The legislature finds that the concerns identified in
22 subsection (1) of this section should be addressed by establishing
23 within the department of natural resources a small forest landowner
24 office that shall be a resource and focal point for small forest
25 landowner concerns and policies. The legislature further finds that a
26 forestry riparian easement program should be established to acquire
27 easements from small landowners along riparian and other areas of value
28 to the state for protection of aquatic resources.

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

31 Unless the context clearly requires otherwise, the definitions in
32 this section apply (~~throughout this chapter~~) to RCW 76.13.005,
33 76.13.007, 76.13.020, and 76.13.030.

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

35 (2) "Landowner" means an individual, partnership, private, public
36 or municipal corporation, Indian tribe, state agency, county, or local
37 government entity, educational institution, or association of

1 individuals of whatever nature that own nonindustrial forests and
2 woodlands.

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

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

13 (5) "Cooperating organization" means federal, state, and local
14 agencies, colleges and universities, landowner assistance
15 organizations, consultants, forest resource-related industries, and
16 environmental organizations which promote and maintain programs
17 designed to provide information and technical assistance services to
18 nonindustrial forest and woodland owners.

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

21 (1) The department of natural resources shall establish and
22 maintain a small forest landowner office. The small forest landowner
23 office shall be a resource and focal point for small forest landowner
24 concerns and policies, and shall have significant expertise regarding
25 the management of small forest holdings, governmental programs
26 applicable to such holdings, and the forestry riparian easement
27 program.

28 (2) The small forest landowner office shall administer the
29 provisions of the forestry riparian easement program created under
30 section 6 of this act. With respect to that program, the office shall
31 have the authority to contract with private consultants that the office
32 finds qualified to perform timber cruises of forestry riparian
33 easements.

34 (3) An advisory committee is established to assist the small forest
35 landowner office in developing policy and recommending rules to the
36 forest practices board. The advisory committee shall consist of seven
37 members, including a representative from the department of ecology, the
38 department of fish and wildlife, and a tribal representative. Four

1 additional committee members shall be small forest landowners who shall
2 be appointed by the commissioner of public lands from a list of
3 candidates submitted by the board of directors of the Washington farm
4 forestry association or its successor organization. The association
5 shall submit more than one candidate for each position. Appointees
6 shall serve for a term of four years. The small forest landowner
7 office shall review draft rules or rule concepts with the committee
8 prior to recommending such rules to the forest practices board. The
9 office shall reimburse nongovernmental committee members for reasonable
10 expenses associated with attending committee meetings as provided in
11 RCW 43.03.050 and 43.03.060.

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

14 (1) The legislature finds that the state should acquire easements
15 along riparian and other sensitive aquatic areas from small forest
16 landowners willing to sell or donate such easements to the state
17 provided that the state will not be required to acquire such easements
18 if they are subject to unacceptable liabilities. The legislature
19 therefore establishes a forestry riparian easement program.

20 (2) The definitions in this subsection apply throughout this
21 section and sections 3 and 5 of this act unless the context clearly
22 requires otherwise.

23 (a) "Forestry riparian easement" means an easement covering
24 qualifying timber granted voluntarily to the state by a small forest
25 landowner.

26 (b) "Qualifying timber" means those trees covered by a forest
27 practices application that the small forest landowner is required to
28 leave unharvested under the rules adopted under chapter . . . , Laws of
29 1999 (this act), and for which the small landowner is willing to grant
30 the state a forestry riparian easement. "Qualifying timber" is timber
31 within or bordering a commercially reasonable harvest unit as
32 determined under rules adopted by the forest practices board.

33 (c) "Small forest landowner" means a landowner meeting all of the
34 following characteristics: (i) A forest landowner as defined in RCW
35 76.09.020 whose interest in the land and timber is in fee or who has
36 rights to the timber to be included in the forestry riparian easement
37 that extend at least fifty years from the date the forest practices
38 application associated with the easement is submitted; (ii) an entity

1 that has harvested from its own lands in this state during the three
2 years prior to the year of application an average timber volume that
3 would qualify the owner as a small timber harvester under RCW
4 84.33.073(1); and (iii) an entity that certifies at the time of
5 application that it does not expect to harvest from its own lands more
6 than the volume allowed by RCW 84.33.073(1) during the ten years
7 following application. If a landowner's prior three-year average
8 harvest exceeds the limit of RCW 84.33.073(1), or the landowner expects
9 to exceed this limit during the ten years following application, and
10 that landowner establishes to the department of natural resources'
11 reasonable satisfaction that the harvest limits were or will be
12 exceeded to raise funds to pay estate taxes or equally compelling and
13 unexpected obligations such as court-ordered judgments or extraordinary
14 medical expenses, the landowner shall be deemed to be a small forest
15 landowner.

16 For purposes of determining whether a person qualifies as a small
17 forest landowner, the small forest landowner office, created in section
18 5 of this act, shall evaluate the landowner under this definition as of
19 the date that the forest practices application is submitted with which
20 the forestry riparian easement is associated. A small forest landowner
21 can include an individual, partnership, corporate, or other
22 nongovernmental legal entity. If a landowner grants timber rights to
23 another entity for less than five years, the landowner may still
24 qualify as a small forest landowner under this section.

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

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

35 (4) Forestry riparian easements shall be effective for fifty years
36 from the date the forest practices application associated with the
37 qualifying timber is submitted to the department of natural resources,
38 unless the easement is terminated earlier by the department of natural
39 resources voluntarily, based on a determination that termination is in

1 the best interest of the state, or under the terms of a termination
2 clause in the easement.

3 (5) Forestry riparian easements shall be restrictive only, and
4 shall preserve all lawful uses of the easement premises by the
5 landowner that are consistent with the terms of the easement and the
6 requirement to protect riparian functions during the term of the
7 easement, subject to the restriction that the leave trees required by
8 the rules to be left on the easement premises may not be cut during the
9 term of the easement. No right of public access to or across, or any
10 public use of the easement premises is created by this statute or by
11 the easement. Forestry riparian easements shall not be deemed to
12 trigger the compensating tax of or otherwise disqualify land from being
13 taxed under chapter 84.33 or 84.34 RCW.

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

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

35 (7) Except as provided in subsection (8) of this section, the small
36 forest landowner office shall, subject to available funding, offer
37 compensation to the small forest landowner in the amount of fifty
38 percent of the value determined in subsection (6) of this section. If
39 the landowner accepts the offer, the department of natural resources

1 shall pay the compensation promptly upon (a) completion of harvest in
2 the area covered by the forestry riparian easement; (b) verification
3 that there has been compliance with the rules requiring leave trees in
4 the easement area; and (c) execution and delivery of the easement to
5 the department of natural resources. Upon donation or payment of
6 compensation, the department of natural resources may record the
7 easement.

8 (8) With respect to forest practices applications that are subject
9 to high regulatory impacts from the rules adopted under chapter . . . ,
10 Laws of 1999 (this act), the compensation to be offered will be
11 increased by an additional fifty percent of the value of that portion
12 of the area included in buffers or special management zones established
13 under the rules that exceeds the high impact threshold established by
14 the small forest landowner office. For these purposes, the small
15 forest landowner office shall apply the average value of all qualified
16 timber per acre to the acreage that exceeds the threshold for that
17 forest practices application. The threshold acreage shall be set by
18 the small forest landowner office as the average number of acres
19 included in buffers and special management zones as determined by the
20 department of natural resources during the analysis done under the
21 regulatory fairness act, chapter 19.85 RCW. Separate percentage
22 thresholds shall be established for western and eastern Washington.

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

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

29 (b) Standards for descriptions of the easement premises with a
30 degree of precision that is reasonable in relation to the values
31 involved;

32 (c) Methods and standards for cruises and valuation of forestry
33 riparian easements for purposes of establishing the compensation;

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

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

38 (f) A formula for sharing of proceeds in relation to the
39 acquisition of qualified timber covered by an easement through the

1 exercise or threats of eminent domain by a federal or state agency with
2 eminent domain authority, based on the present value of the department
3 of natural resources' and the landowner's relative interests in the
4 qualified timber;

5 (g) High impact regulatory thresholds;

6 (h) A method to determine timber that is qualifying timber because
7 it is rendered uneconomic to harvest by the rules adopted under chapter
8 . . . , Laws of 1999 (this act); and

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

12 NEW SECTION. **Sec. 7.** A new section is added to chapter 76.09 RCW
13 to read as follows:

14 The forests and fish account is created in the state treasury.
15 Receipts from appropriations, federal grants, and gifts from private
16 organizations and individuals or other sources may be deposited into
17 the account. Moneys in the account may be spent only after
18 appropriation. Expenditures from the account may only be used for the
19 establishment and operation of the small forest landowner office under
20 section 5 of this act, the purchase of easements under section 6 of
21 this act, the purchase of lands under RCW 76.09.040, or other
22 activities necessary to implement chapter . . . , Laws of 1999 (this
23 act).

24 **Sec. 8.** RCW 76.42.060 and 1973 c 136 s 7 are each amended to read
25 as follows:

26 It shall be unlawful to dispose of wood debris by depositing such
27 material into any of the navigable waters of this state, except as
28 authorized by law including any discharge or deposit allowed to be made
29 under and in compliance with chapter 90.48 RCW and any rules ((~~or~~
30 ~~regulations~~)) duly ((~~promulgated~~)) adopted thereunder or any deposit
31 allowed to be made under and in compliance with chapter 76.09 or 75.46
32 RCW and any rules duly adopted under those chapters. Violation of this
33 section shall be a misdemeanor.

34 **Sec. 9.** RCW 76.09.330 and 1992 c 52 s 5 are each amended to read
35 as follows:

1 The legislature hereby finds and declares that riparian ecosystems
2 on forest lands in addition to containing valuable timber resources,
3 provide benefits for wildlife, fish, and water quality. The
4 legislature further finds and declares that leaving riparian areas
5 unharvested and leaving snags and green trees for large woody debris
6 recruitment for streams and rivers provides public benefits including
7 but not limited to benefits for threatened and endangered salmonids,
8 other fish, amphibians, wildlife, and water quality enhancement. The
9 legislature further finds and declares that leaving upland areas
10 unharvested for wildlife and leaving snags and green trees for future
11 snag recruitment provides benefits for wildlife. Forest landowners may
12 be required to leave trees standing in riparian and upland areas to
13 benefit public resources. It is recognized that these trees may blow
14 down or fall into streams and that organic debris may be allowed to
15 remain in streams. This is beneficial to riparian dependent and other
16 wildlife species. Further, it is recognized that trees may blow down,
17 fall onto, or otherwise cause damage or injury to public improvements,
18 private property, and persons. Notwithstanding any statutory
19 provision, rule, or common law doctrine to the contrary, the landowner
20 and the department shall not be held liable for any injury or damages
21 resulting from these actions, including but not limited to wildfire,
22 erosion, flooding, personal injury, property damage, damage to public
23 improvements, and other injury or damages of any kind or character
24 resulting from the trees being left.

25 NEW SECTION. Sec. 10. A new section is added to chapter 76.09 RCW
26 to read as follows:

27 Prior to the sale or transfer of land or perpetual timber rights
28 subject to continuing forest land obligations under the forest
29 practices rules adopted under chapter . . . , Laws of 1999 (this act),
30 as specifically identified in the forests and fish report the seller
31 shall notify the buyer of the existence and nature of such a continuing
32 obligation and the buyer shall sign a notice of continuing forest land
33 obligation indicating the buyer's knowledge thereof. The notice shall
34 be on a form prepared by the department and shall be sent to the
35 department by the seller at the time of sale or transfer of the land or
36 perpetual timber rights and retained by the department. If the seller
37 fails to notify the buyer about the continuing forest land obligation,
38 the seller shall pay the buyer's costs related to such continuing

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

9 **Sec. 11.** RCW 76.09.040 and 1997 c 173 s 1 are each amended to read
10 as follows:

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

16 (a) Establish minimum standards for forest practices;

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

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

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

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

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

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

1 (2) The board shall prepare proposed forest practices
2 ((regulations)) rules. In addition to any forest practices
3 ((regulations)) rules relating to water quality protection proposed by
4 the board, the department of ecology ((shall prepare)) may submit to
5 the board proposed forest practices ((regulations)) rules relating to
6 water quality protection.

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

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

1 or fisheries enhancement. Because there are few, if any, comparable
2 sales of forest land within unconfined avulsing channel migration
3 zones, separate from the other lands or assets, these lands are likely
4 to be extraordinarily difficult to appraise and the cost of a
5 conventional appraisal often would be unreasonable in relation to the
6 value of the land involved. Therefore, for the purposes of voluntary
7 sales under this section, the legislature declares that these lands are
8 presumed to have a value equal to: (a) The median value of commercial
9 forest land under the land value tables used for property tax purposes
10 under RCW 84.33.120; plus (b) the cruised volume of any timber located
11 within the channel migration zone that is twelve inches or larger in
12 diameter breast height times the median value of timber of the same
13 species in the tables used for timber harvest excise tax purposes under
14 RCW 84.33.091.

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

24 (5) Instead of offering to sell interests in qualifying lands,
25 owners may elect to donate the interests to the state. The state shall
26 accept any such donation of qualifying lands.

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

29 **Sec. 12.** RCW 76.09.010 and 1993 c 443 s 1 are each amended to read
30 as follows:

31 (1) The legislature hereby finds and declares that the forest land
32 resources are among the most valuable of all resources in the state;
33 that a viable forest products industry is of prime importance to the
34 state's economy; that it is in the public interest for public and
35 private commercial forest lands to be managed consistent with sound
36 policies of natural resource protection; that coincident with
37 maintenance of a viable forest products industry, it is important to

1 afford protection to forest soils, fisheries, wildlife, water quantity
2 and quality, air quality, recreation, and scenic beauty.

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

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

12 (b) Afford protection to forest soils and public resources by
13 utilizing all reasonable methods of technology in conducting forest
14 practices;

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

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

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

21 (f) Provide for interagency input and intergovernmental and tribal
22 coordination and cooperation;

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

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

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

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

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

38 (4) The legislature further finds and declares that it is in the
39 public interest that the applicants for state forest practices permits

1 should assist in paying for the cost of review and permitting necessary
2 for the environmental protection of these resources.

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

5 (1) The department of ecology, pursuant to powers vested in it
6 previously by chapter 90.48 RCW and consistent with the policies of
7 said chapter and RCW 90.54.020(3), shall be solely responsible for
8 establishing water quality standards for waters of the state. On or
9 before January 1, 1975, the department of ecology shall examine
10 existing (~~regulations~~) rules containing water quality standards and
11 other applicable rules (~~and regulations~~) of said department
12 pertaining to waters of the state affected by nonpoint sources of
13 pollution arising from forest practices and, when it appears
14 appropriate to the department of ecology, modify said (~~regulations~~)
15 rules. In any such examination or modification the department of
16 ecology shall consider such factors, among others, as uses of the
17 receiving waters, diffusion, down-stream cooling, and reasonable
18 transient and short-term effects resulting from forest practices.

19 (~~Promulgation~~) Adoption of forest practices (~~regulations~~) rules
20 pertaining to water quality by (~~the department of ecology and~~) the
21 forest practices board(~~(-)~~) shall be accomplished after reaching
22 agreement with the director of the department or the director's
23 designee on the board. Adoption shall be accomplished so that
24 compliance with such forest practice (~~regulations~~) rules will achieve
25 compliance with water pollution control laws.

26 (2) The department of ecology shall monitor water quality to
27 determine whether revisions in such water quality standards or
28 revisions in such forest practices (~~regulations~~) rules are necessary
29 to accomplish the foregoing result, and either (~~promulgate~~) adopt
30 appropriate revisions to such water quality standards or propose
31 appropriate revisions to such forest practices (~~regulations~~) rules or
32 both.

33 (3) Notwithstanding any other provisions of chapter 90.48 RCW or of
34 the rules (~~and regulations promulgated~~) adopted thereunder, no permit
35 system pertaining to nonpoint sources of pollution arising from forest
36 practices shall be authorized, and no civil or criminal penalties shall
37 be imposed with respect to any forest practices conducted in full
38 compliance with the applicable provisions of RCW 76.09.010 through

1 76.09.280, forest practices (~~((regulations))~~) rules, and any approvals or
2 directives of the department of natural resources thereunder.

3 (4) Prior to the department of ecology taking action under statutes
4 or (~~((regulations))~~) rules relating to water quality, regarding
5 violations of water quality standards arising from forest practices,
6 the department of ecology shall notify the department of natural
7 resources.

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

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

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

28 (3) The principal office of the appeals board shall be at the state
29 capital, but it may sit or hold hearings at any other place in the
30 state. A majority of the appeals board shall constitute a quorum for
31 making orders or decisions, (~~((promulgating))~~) adopting rules (~~((and~~
32 ~~regulations))~~) necessary for the conduct of its powers and duties, or
33 transacting other official business, and may act though one position on
34 the board be vacant. One or more members may hold hearings and take
35 testimony to be reported for action by the board when authorized by
36 rule or order of the board. The appeals board shall perform all the
37 powers and duties granted to it in this chapter or as otherwise
38 provided by law.

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

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

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

16 (7) The forest practices appeals board shall have exclusive
17 jurisdiction to hear appeals arising from an action or determination by
18 the department, and the department of fish and wildlife, and the
19 department of ecology with respect to management plans provided for
20 under RCW 76.09.350.

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

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

34 NEW SECTION. **Sec. 15.** RCW 90.28.150 (Improving streams for
35 logging) and 1891 c 120 s 1 are each repealed.

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