
HOUSE BILL 2091

State of Washington

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1999 Regular Session

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 02/15/1999. Referred to Committee on Natural Resources.

1 AN ACT Relating to forest practices as they affect the recovery of
2 salmon and other aquatic resources; amending RCW 76.09.020, 84.33.081,
3 76.13.010, 76.42.060, 76.09.330, 76.09.140, 76.09.150, 76.09.170,
4 76.09.040, 76.09.010, 76.09.080, 76.09.090, 76.09.030, and 90.48.420;
5 reenacting and amending RCW 76.09.220; adding new sections to chapter
6 75.46 RCW; adding new sections to chapter 76.09 RCW; adding a new
7 section to chapter 34.05 RCW; adding a new section to chapter 19.85
8 RCW; adding new sections to chapter 43.21C RCW; adding a new section to
9 chapter 84.33 RCW; and adding new sections to chapter 76.13 RCW.

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

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

14 (1) The changes in laws and rules contemplated by chapter . . . ,
15 Laws of 1999 (this act), taken as a whole, constitute a comprehensive
16 and coordinated program to provide substantial and sufficient
17 contributions to salmon recovery and water quality enhancement in areas
18 impacted by forest practices and are intended to fully satisfy the
19 requirements of the endangered species act (16 U.S.C. Sec. 1531 et

1 seq.) with respect to incidental take of salmon and other aquatic
2 resources and the clean water act (33 U.S.C. Sec. 1251 et seq.) with
3 respect to nonpoint source pollution attributable to forest practices.

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

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

1 commercial forest management as an economically viable use of lands
2 suitable for that purpose; and (c) will avoid unnecessary regulatory
3 incentives to convert forest lands to other uses that would be less
4 desirable for salmon recovery.

5 (4) The legislature recognizes that the adoption of forest
6 practices rules consistent with the forests and fish report will impose
7 substantial financial burdens on forest landowners which, if not
8 partially offset through other changes in the laws and rules governing
9 forestry, could lead to significantly reduced silvicultural investments
10 on nonfederal lands, deterioration in the quality, condition, and
11 amounts of forests on those lands, and long-term adverse effects on
12 fish and wildlife habitat and other environmental amenities associated
13 with well managed forests. Moreover, as the benefits of the proposed
14 revisions to the forest practices rules will benefit the general
15 public, fairness requires that these costs be shared with the general
16 public through (a) reductions in timber harvest taxes; (b) government
17 acquisition of certain forest lands in stream channel migration zones;
18 and (c) a direct cost-sharing program for small landowners.

19 (5) As an integral part of implementing the salmon recovery
20 strategy, chapter . . . , Laws of 1999 (this act) (a) provides direction
21 to the forest practices board, the department of natural resources, and
22 the department of ecology with respect to the adoption, implementation,
23 and enforcement of rules relating to forest practices and the
24 protection of aquatic resources; (b) provides additional enforcement
25 tools to the department of natural resources to enforce the forest
26 practices rules; (c) reduces timber harvest taxes from five percent to
27 four percent of the value of timber harvested; (d) provides for the
28 acquisition by the state of forest lands within certain stream channel
29 migration zones where timber harvest will not be allowed; (e) provides
30 for small landowners to be compensated for a portion of any
31 extraordinary economic losses attributable to the revisions to the
32 forest practices rules required by chapter . . . , Laws of 1999 (this
33 act); and (f) amends other existing laws to aid in the implementation
34 of the recommendations set forth in the forests and fish report.

35 NEW SECTION. **Sec. 2.** A new section is added to chapter 76.09 RCW
36 to read as follows:

37 The forest practices board is authorized to adopt interim rules
38 amending the forest practices rules consistent with the forests and

1 fish report. The interim rules may remain in effect until permanent
2 amendments to the forest practices rules are adopted under normal rule-
3 making procedures as required by chapter . . . , Laws of 1999 (this
4 act). The interim rules may address less than all the elements of the
5 forests and fish report if the forest practices board determines that
6 this is necessary because of the interim nature of the rules. Adoption
7 of the interim rules does not require compliance with the procedural
8 requirements of the forest practices act, the administrative procedure
9 act, chapter 34.05 RCW, the small business economic impact provisions
10 of the regulatory fairness act, chapter 19.85 RCW, or the procedural
11 requirements of the state environmental protection act, chapter 43.21C
12 RCW.

13 NEW SECTION. **Sec. 3.** A new section is added to chapter 34.05 RCW
14 to read as follows:

15 The forest practices board is authorized to adopt interim rules
16 amending the forest practices rules consistent with the final forests
17 and fish report to the forest practices board dated, 1999.
18 The interim rules may remain in effect until permanent amendments to
19 the forest practices rules are adopted under normal rule-making
20 procedures as required by chapter . . . , Laws of 1999 (this act). The
21 interim rules may address less than all the elements of the forests and
22 fish report if the forest practices board determines that this is
23 necessary because of the interim nature of the rules. Adoption of
24 interim rules does not require compliance with the procedural
25 requirements of this chapter.

26 NEW SECTION. **Sec. 4.** A new section is added to chapter 19.85 RCW
27 to read as follows:

28 The forest practices board is authorized to adopt interim rules
29 amending the forest practices rules consistent with the final forests
30 and fish report to the forest practices board dated, 1999.
31 The interim rules may remain in effect until permanent amendments to
32 the forest practices rules are adopted under normal rule-making
33 procedures as required by chapter . . . , Laws of 1999 (this act). The
34 interim rules may address less than all the elements of the forests and
35 fish report if the forest practices board determines that this is
36 necessary because of the interim nature of the rules. Adoption of the

1 interim rules does not require compliance with the procedural
2 requirements of this chapter.

3 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.21C RCW
4 to read as follows:

5 The forest practices board is authorized to adopt interim rules
6 amending the forest practices rules to make the rules consistent with
7 the final forests and fish report to the forest practices board dated
8, 1999. The interim rules may remain in effect until
9 permanent amendments to the forest practices rules are adopted under
10 normal rule-making procedures as required by chapter . . . , Laws of
11 1999 (this act). The interim rules may address less than all the
12 elements of the forests and fish report if the forest practices board
13 determines that this is necessary because of the interim nature of the
14 rules. Adoption of the interim rules does not require compliance with
15 the procedural requirements of RCW 43.21C.030(2)(c).

16 **Sec. 6.** RCW 76.09.020 and 1974 ex.s. c 137 s 2 are each amended to
17 read as follows:

18 For purposes of this chapter:

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

21 (2) "Aquatic resources" includes water quality, salmon, other
22 species of the vertebrate classes Cephalaspidomorphi and Osteichthyes
23 identified in the forests and fish report, the Columbia torrent
24 salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander
25 (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton*
26 *olympian*), the Dunn's salamander (*Plethodon dunnii*), the Van Dyke's
27 salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and
28 their respective habitats.

29 (3) "Commissioner" (~~shall~~) means the commissioner of public
30 lands.

31 (~~(3)~~) (4) "Contiguous" (~~shall~~) means land adjoining or touching
32 by common corner or otherwise. Land having common ownership divided by
33 a road or other right of way shall be considered contiguous.

34 (~~(4)~~) (5) "Conversion to a use other than commercial timber
35 operation" (~~shall~~) means a bona fide conversion to an active use
36 which is incompatible with timber growing and as may be defined by
37 forest practices (~~regulations~~) rules.

1 (~~(5)~~) (6) "Department" (~~(shall)~~) means the department of natural
2 resources.

3 (~~(6)~~) (7) "Forest land" (~~(shall)~~) means all land which is capable
4 of supporting a merchantable stand of timber and is not being actively
5 used for a use which is incompatible with timber growing.

6 (~~(7)~~) (8) "Forest landowner" (~~(shall)~~) means any person in actual
7 control of forest land, whether such control is based either on legal
8 or equitable title, or on any other interest entitling the holder to
9 sell or otherwise dispose of any or all of the timber on such land in
10 any manner: PROVIDED, That any lessee or other person in possession of
11 forest land without legal or equitable title to such land shall be
12 excluded from the definition of "forest landowner" unless such lessee
13 or other person has the right to sell or otherwise dispose of any or
14 all of the timber located on such forest land.

15 (~~(8)~~) (9) "Forest practice" (~~(shall)~~) means any activity
16 conducted on or directly pertaining to forest land and relating to
17 growing, harvesting, or processing timber, including but not limited
18 to:

- 19 (a) Road and trail construction;
- 20 (b) Harvesting, final and intermediate;
- 21 (c) Precommercial thinning;
- 22 (d) Reforestation;
- 23 (e) Fertilization;
- 24 (f) Prevention and suppression of diseases and insects;
- 25 (g) Salvage of trees; and
- 26 (h) Brush control.

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

33 (~~(9)~~) (10) "Forest practices (~~(regulations" shall)~~) rules" means
34 any rules (~~(promulgated)~~) adopted pursuant to RCW 76.09.040.

35 (~~(10)~~) (11) "Forests and fish report" means the forests and fish
36 report to the board dated, 1999.

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

1 (~~(11)~~) (13) "Operator" (~~(shall)~~) means any person engaging in
2 forest practices except an employee with wages as his or her sole
3 compensation.

4 (~~(12)~~) (14) "Person" (~~(shall)~~) means any individual, partnership,
5 private, public, or municipal corporation, county, the department or
6 other state or local governmental entity, or association of individuals
7 of whatever nature.

8 (~~(13)~~) (15) "Public resources" (~~(shall)~~) means water, fish and
9 wildlife, and in addition shall mean capital improvements of the state
10 or its political subdivisions.

11 (~~(14)~~) (16) "Public safety" means reducing the risk to the public
12 at large from the danger of snow avalanches, identified in consultation
13 with the department of transportation or a local government,
14 landslides, or debris torrents caused or triggered by forest practices.

15 (17) "Timber" (~~(shall)~~) means forest trees, standing or down, of a
16 commercial species, including Christmas trees.

17 (~~(15)~~) (18) "Timber owner" (~~(shall)~~) means any person having all
18 or any part of the legal interest in timber. Where such timber is
19 subject to a contract of sale, "timber owner" shall mean the contract
20 purchaser.

21 (~~(16)~~) (19) "Board" (~~(shall)~~) means the forest practices board
22 created in RCW 76.09.030.

23 (20) "Unconfined avulsing channel migration zone" means the area
24 within which the active channel of an unconfined avulsing stream is
25 prone to move and where the movement would result in a potential near-
26 term loss of riparian forest adjacent to the stream. Sizeable islands
27 with productive timber may exist within the zone.

28 (21) "Unconfined avulsing stream" means generally fifth order or
29 larger waters that experience abrupt shifts in channel location,
30 creating a complex flood plain characterized by extensive gravel bars,
31 disturbance species of vegetation of variable age, numerous side
32 channels, wall-based channels, oxbow lakes, and wetland complexes.
33 Many of these streams have dikes and levees that may temporarily or
34 permanently restrict channel movement.

35 NEW SECTION. Sec. 7. A new section is added to chapter 76.09 RCW
36 to read as follows:

37 (1) It is the policy of the state that the forest practices rules
38 pertaining to aquatic resources and public safety should be coordinated

1 and consistent with the forests and fish report, which report is to be
2 integrated into the salmon recovery strategy adopted under chapter
3 75.46 RCW. The legislature intends for the board to use its expertise
4 to adopt rules consistent with the forests and fish report.

5 (2) The board shall amend the forest practices rules through its
6 normal rule-making processes to cause such rules to be consistent with
7 the recommendations of the forests and fish report unless, following
8 the completion of its environmental and economic review and receipt of
9 public comments, a super-majority of the board consisting of nine or
10 more board members determines that a deviation from the recommendations
11 of the forests and fish report is necessary to prevent material damage
12 to a public resource and can be adopted without jeopardizing the
13 economic viability of the timber industry and to accomplish the
14 purposes and policies stated in RCW 76.09.010. Final rules to be
15 adopted under this subsection (2) shall be completed within twenty-four
16 months of the effective date of this section. The board should
17 consider the desirability of pursuing any environmental review process
18 under chapter 43.21C RCW relating to the adoption of such final rules
19 coincident with any review of a related proposal under the national
20 environmental policy act (42 U.S.C. Sec. 4321, et seq.). To achieve
21 the policy set out in subsection (1) of this section, the rules to be
22 adopted under this subsection (2) should be as specific as the board
23 considers reasonably possible while also providing for alternate plans
24 if, in response to site-specific physical features, an applicant
25 proposes to provide protection at least equal in overall effectiveness
26 by alternate means.

27 (3) After the board has adopted rules to comply with subsection (2)
28 of this section, changes to those rules and any new rules covering
29 aquatic resources may be adopted by a majority of the board through
30 normal rule-making processes and in compliance with all applicable laws
31 if the changes or new rules are consistent with recommendations
32 resulting from the scientifically based adaptive management process
33 established by a rule of the board consistent with the adaptive
34 management recommendations of the forests and fish report. Any new
35 rules or changes need not be based upon the recommendations of such an
36 adaptive management process if (a) consensus is not reached through the
37 process after completion of all required dispute resolution processes;
38 (b) legislative appropriations for such a process are inadequate as
39 determined in accordance with the forests and fish report; (c) the

1 board is required to adopt or modify rules by the final order of any
2 court having jurisdiction thereof; or (d) future state legislation
3 directs the board to adopt or modify the rules.

4 NEW SECTION. **Sec. 8.** A new section is added to chapter 84.33 RCW
5 to read as follows:

6 Private forest landowners are entitled to fair compensation for
7 lands and timber set aside for the protection of aquatic resources
8 under the forests and fish report, dated, 1999.

9 **Sec. 9.** RCW 84.33.081 and 1985 c 184 s 1 are each amended to read
10 as follows:

11 (1) On the last business day of the second month of each calendar
12 quarter, the state treasurer shall distribute from the timber tax
13 distribution account to each county the amount of tax collected on
14 behalf of each county under RCW 84.33.051, less each county's
15 proportionate share of sixty-six percent of the appropriations for
16 collection and administration activities under RCW 84.33.051, and shall
17 transfer to the state general fund the amount of tax collected on
18 behalf of the state under RCW 84.33.041, less (~~the state's~~
19 ~~proportionate share~~) thirty-four percent of the appropriations for
20 collection and administration activities under RCW 84.33.041. The
21 county treasurer shall deposit moneys received under this section in a
22 county timber tax account which shall be established by each county.
23 Following receipt of moneys under this section, the county treasurer
24 shall make distributions from any moneys available in the county timber
25 tax account to taxing districts in the county, except the state, under
26 subsections (2) through (4) of this section.

27 (2) From moneys available, there first shall be a distribution to
28 each taxing district having debt service payments due during the
29 calendar year, based upon bonds issued under authority of a vote of the
30 people conducted pursuant to RCW 84.52.056 and based upon excess levies
31 for a capital project fund authorized pursuant to RCW 84.52.053, of an
32 amount equal to the timber assessed value of the district multiplied by
33 the tax rate levied for payment of the debt service and capital
34 projects: PROVIDED, That in respect to levies for a debt service or
35 capital project fund authorized before July 1, 1984, the amount
36 allocated shall not be less than an amount equal to the same percentage
37 of such debt service or capital project fund represented by timber tax

1 allocations to such payments in calendar year 1984. Distribution under
2 this subsection (2) shall be used only for debt service and capital
3 projects payments. The distribution under this subsection shall be
4 made as follows: One-half of such amount shall be distributed in the
5 first quarter of the year and one-half shall be distributed in the
6 third quarter of the year.

7 (3) From the moneys remaining after the distributions under
8 subsection (2) of this section, the county treasurer shall distribute
9 to each school district an amount equal to one-half of the timber
10 assessed value of the district or eighty percent of the timber roll of
11 such district in calendar year 1983 as determined under this chapter,
12 whichever is greater, multiplied by the tax rate, if any, levied by the
13 district under RCW 84.52.052 or 84.52.053 for purposes other than debt
14 service payments and capital projects supported under subsection (2) of
15 this section. The distribution under this subsection shall be made as
16 follows: One-half of such amount shall be distributed in the first
17 quarter of the year and one-half shall be distributed in the third
18 quarter of the year.

19 (4) After the distributions directed under subsections (2) and (3)
20 of this section, if any, each taxing district shall receive an amount
21 equal to the timber assessed value of the district multiplied by the
22 tax rate, if any, levied as a regular levy of the district or as a
23 special levy not included in subsection (2) or (3) of this section.

24 (5) If there are insufficient moneys in the county timber tax
25 account to make full distribution under subsection (4) of this section,
26 the county treasurer shall multiply the amount to be distributed to
27 each taxing district under that subsection by a fraction. The
28 numerator of the fraction is the county timber tax account balance
29 before making the distribution under that subsection. The denominator
30 of the fraction is the account balance which would be required to make
31 full distribution under that subsection.

32 (6) After making the distributions under subsections (2) through
33 (4) of this section in the full amount indicated for the calendar year,
34 the county treasurer shall place any excess revenue up to twenty
35 percent of the total distributions made for the year under subsections
36 (2) through (4) of this section in a reserve status until the beginning
37 of the next calendar year. Any moneys remaining in the county timber
38 tax account after this amount is placed in reserve shall be distributed

1 to each taxing district in the county in the same proportions as the
2 distributions made under subsection (4) of this section.

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

5 (1) The legislature finds that increasing regulatory requirements
6 continue to diminish the economic viability of small forest landowners.
7 The concerns set forth in section 1 of this act about the importance of
8 sustaining forestry as a viable land use are particularly applicable to
9 small landowners because of the location of their holdings, the
10 expected complexity of the regulatory requirements, and the need for
11 significant technical expertise not readily available to small
12 landowners. The further reduction in harvestable timber owned by small
13 forest landowners as a result of the rules to be adopted under sections
14 2 and 7 of this act will further erode small landowners' economic
15 viability and willingness or ability to keep the lands in forestry use
16 and, therefore, reduce the amount of habitat available for salmon
17 recovery and conservation of other aquatic resources, as defined in RCW
18 76.09.020.

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

27 **Sec. 11.** RCW 76.13.010 and 1991 c 27 s 3 are each amended to read
28 as follows:

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

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

33 (2) "Landowner" means an individual, partnership, private, public
34 or municipal corporation, Indian tribe, state agency, county, or local
35 government entity, educational institution, or association of
36 individuals of whatever nature that own nonindustrial forests and
37 woodlands.

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

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

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

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

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

26 (2) The small forest landowner office shall administer the
27 provisions of the forestry riparian easement program created under
28 section 13 of this act. With respect to that program, the office shall
29 have the authority to contract with private consultants that the office
30 finds qualified to perform timber cruises of forestry riparian
31 easements.

32 (3) An advisory committee is established to assist the small forest
33 landowner office in developing policy and recommending rules to the
34 forest practices board. The advisory committee shall consist at a
35 minimum of five persons, and shall include representatives of natural
36 resource agencies and small forest landowners. The committee members
37 shall be appointed by the governor based on recommendations of the
38 identified authors of the forests and fish report, defined in RCW

1 76.09.020. The small forest landowner office shall review draft rules
2 or rule concepts with the committee prior to recommending such rules to
3 the forest practices board. The office shall reimburse nongovernmental
4 committee members for reasonable expenses associated with attending
5 committee meetings as provided in RCW 43.03.050 and 43.03.060.

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

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

14 (2) The definitions in this subsection apply throughout this
15 section and sections 10 and 12 of this act unless the context clearly
16 requires otherwise.

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

20 (b) "Qualifying timber" means those trees covered by a forest
21 practices application that the small forest landowner is required to
22 leave unharvested under the rules adopted under sections 2 and 7 of
23 this act or that is made uneconomic to harvest by those rules, and for
24 which the small landowner is willing to grant the state a forestry
25 riparian easement. "Qualifying timber" is timber within or bordering
26 a commercially reasonable harvest unit as determined under rules
27 adopted by the forest practices board.

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

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

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

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

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

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

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

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

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

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

3 (8) With respect to forest practices applications that are subject
4 to high regulatory impacts from the rules adopted under sections 2 and
5 7 of this act, the compensation to be offered will be increased by an
6 additional fifty percent of the value of that portion of the area
7 included in buffers or special management zones established under the
8 rules that exceeds the high impact threshold established by the small
9 forest landowner office. For these purposes, the small forest
10 landowner office shall apply the average value of all qualified timber
11 per acre to the acreage that exceeds the threshold for that forest
12 practices application. The threshold acreage shall be set by the small
13 forest landowner office as the average number of acres included in
14 buffers and special management zones as determined by the department of
15 natural resources during the analysis done under the regulatory
16 fairness act, chapter 19.85 RCW. Separate percentage thresholds shall
17 be established for western and eastern Washington.

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

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

24 (b) Standards for descriptions of the easement premises with a
25 degree of precision that is reasonable in relation to the values
26 involved;

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

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

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

33 (f) A formula for sharing of proceeds in relation to the
34 acquisition of qualified timber covered by an easement through the
35 exercise or threats of eminent domain by a federal or state agency with
36 eminent domain authority, based on the present value of the department
37 of natural resources' and the landowner's relative interests in the
38 qualified timber;

39 (g) High impact regulatory thresholds;

1 (h) A method to determine timber that is qualifying timber because
2 it is rendered uneconomic to harvest by the rules adopted under
3 sections 2 and 7 of this act; and

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

7 (10)(a) The small forest landowner office account is created in the
8 state treasury. All receipts from appropriations, federal grants, and
9 gifts from private organizations and individuals must be deposited into
10 the account. Moneys in the account may be spent only after
11 appropriation. Expenditures from the account may be used only for the
12 operation of the small forest landowner office.

13 (b) The easement purchase account is created in the state treasury.
14 All receipts from appropriations, federal grants, and gifts from
15 private organizations and individuals must be deposited into the
16 account. Moneys in the account may be spent only after appropriation.
17 Expenditures from the account may be used only for purchase of
18 easements under this section.

19 **Sec. 14.** RCW 76.42.060 and 1973 c 136 s 7 are each amended to read
20 as follows:

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

29 **Sec. 15.** RCW 76.09.330 and 1992 c 52 s 5 are each amended to read
30 as follows:

31 The legislature hereby finds and declares that riparian ecosystems
32 on forest lands in addition to containing valuable timber resources,
33 provide benefits for wildlife, fish, and water quality. The
34 legislature further finds and declares that leaving riparian areas
35 unharvested and leaving snags and green trees for large woody debris
36 recruitment for streams and rivers provides public benefits including
37 but not limited to benefits for threatened and endangered salmonids,

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

18 NEW SECTION. Sec. 16. A new section is added to chapter 76.09 RCW
19 to read as follows:

20 Prior to the sale or transfer of land or perpetual timber rights
21 subject to continuing forest land obligations under the forest
22 practices rules adopted under section 7 of this act, as specifically
23 identified in the forests and fish report the seller shall notify the
24 buyer of the existence and nature of such a continuing obligation and
25 the buyer shall sign a notice of continuing forest land obligation
26 indicating the buyer's knowledge thereof. The notice shall be on a
27 form prepared by the department and shall be sent to the department by
28 the seller at the time of sale or transfer of the land or perpetual
29 timber rights and retained by the department. If the seller fails to
30 notify the buyer about the continuing forest land obligation, the
31 seller shall pay the buyer's costs related to such continuing forest
32 land obligation, including all legal costs and reasonable attorneys'
33 fees, incurred by the buyer in enforcing the continuing forest land
34 obligation against the seller. Failure by the seller to send the
35 required notice to the department at the time of sale shall be prima
36 facie evidence, in an action by the buyer against the seller for costs
37 related to the continuing forest land obligation, that the seller did

1 not notify the buyer of the continuing forest land obligation prior to
2 sale.

3 **Sec. 17.** RCW 76.09.140 and 1993 c 482 s 1 are each amended to read
4 as follows:

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

28 (2) On request of the department, the attorney general may take
29 action necessary to enforce this chapter, including, but not limited
30 to, seeking penalties, seeking interests, costs, and attorneys' fees,
31 enforcing final orders or decisions, and seeking civil injunctions,
32 show cause orders, or contempt orders.

33 (3) A county may bring injunctive, declaratory, or other actions
34 for enforcement for forest practice activities within its jurisdiction
35 in the superior court as provided by law against the department, the
36 forest landowner, timber owner or operator to enforce the forest
37 practice (~~regulations~~) rules or any final order of the department, or
38 the appeals board. No civil or criminal penalties shall be imposed for

1 past actions or omissions if such actions or omissions were conducted
2 pursuant to an approval or directive of the department. Injunctions,
3 declaratory actions, or other actions for enforcement under this
4 subsection may not be commenced unless the department fails to take
5 appropriate action after ten days written notice to the department by
6 the county of a violation of the forest practices rules or final orders
7 of the department or the appeals board.

8 (4)(a) If an operator or landowner has three significant violations
9 within a three-year period, the department may require that he or she
10 provide financial assurances prior to the conduct of any further forest
11 practices. The department may deny an application for failure to
12 submit financial assurances as required.

13 (b) "Significant violations" means operating without an approved
14 forest practices application, other than an unintentional operation in
15 connection with an approved application outside of the approved
16 boundary of such an application; operations in breach of the terms of
17 an approved forest practices application where the operations cause
18 actual material damage to public resources; and the continuation of
19 operations in breach of the terms of an effective stop work order or
20 notice to comply.

21 (c) If financial assurances are required by the department under
22 (a) of this subsection, they shall be submitted along with a forest
23 practices application. The financial assurances may be in the form of
24 a bank letter of credit, a cash deposit, a savings account assignment,
25 a corporate surety bond executed in favor of the department, a letter
26 of financial assurance, or any other form of assurance acceptable to
27 the department. The department may refuse a financial assurance that
28 is inadequate, in which case it shall deny the forest practices
29 application.

30 (d) The board shall establish by rule a standardized formula for
31 determining the amount of financial assurance and a means to appeal
32 such processes. The formula shall reflect reasonable estimates of the
33 amount of civil penalties, fees, and mitigation that may be required
34 under current law as a result of noncompliance with forest practices
35 rules and department directives in connection with a typical forest
36 practices operation and the risks to the state that the landowner or
37 operator may be financially unable to pay the fines and fees or to
38 complete the mitigation.

1 (e) Liability under the financial assurance shall be maintained
2 until all forest practices notifications or applications issued by the
3 department during the period the financial assurance is required or
4 until these notifications or applications expire and all of the
5 landowner's or operator's obligations under the forest practices act
6 and rules are completed to the satisfaction of the department,
7 including payment of any civil penalties and completion of any required
8 mitigation work. Liability under the financial assurance may be
9 released only upon written notification by the department.
10 Notification shall be given upon completion of compliance or acceptance
11 of a substitute financial assurance.

12 (f) Any interest or appreciation on the financial assurance shall
13 be held by the department until performance is completed to its
14 satisfaction. At such time the interest and appreciation shall be
15 remitted to the landowner or operator. However, interest or
16 appreciation may be used by the department to effect performance in the
17 event that the landowner or operator fails to comply with the forest
18 practices act and rules and the costs of civil penalties and mitigation
19 exceed the face value of the financial assurance.

20 **Sec. 18.** RCW 76.09.150 and 1974 ex.s. c 137 s 15 are each amended
21 to read as follows:

22 (1) The department shall make inspections of forest lands, before,
23 during and after the conducting of forest practices as necessary for
24 the purpose of (~~insuring~~) ensuring compliance with this chapter and
25 the forest practice (~~regulations~~) rules and to (~~insure~~) ensure that
26 no material damage occurs to the natural resources of this state as a
27 result of such practices.

28 (2) Any duly authorized representative of the department shall have
29 the right to enter upon forest land at any reasonable time to enforce
30 the provisions of this chapter and the forest practices (~~regulations~~)
31 rules. The department or the department of ecology may apply for an
32 administrative inspection warrant to either Thurston county superior
33 court, or the superior court in the county in which the property is
34 located. An administrative inspection warrant may be issued where:

35 (a) The department has attempted an inspection of forest lands
36 under this chapter to ensure compliance with this chapter and the
37 forest practice rules or to ensure that no potential or actual material
38 damage occurs to the natural resources of this state, and access to all

1 or part of the forest lands has been actually or constructively denied;
2 or

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

6 (3) In connection with any watershed analysis, any review of a
7 pending application by an identification team appointed by the
8 department, any compliance studies, any effectiveness monitoring, or
9 other research that has been agreed to by a landowner, the department
10 may invite representatives of other agencies, tribes, and interest
11 groups to accompany a department representative and, at the landowner's
12 election, the landowner, on any such inspections. Reasonable efforts
13 shall be made by the department to notify the landowner of the persons
14 being invited onto the property and the purposes for which they are
15 being invited.

16 **Sec. 19.** RCW 76.09.170 and 1993 c 482 s 2 are each amended to read
17 as follows:

18 (1) Every person who violates any provision of RCW 76.09.010
19 through 76.09.280 or of the forest practices rules, or who converts
20 forest land to a use other than commercial timber operation within
21 three years after completion of the forest practice without the consent
22 of the county, city, or town, shall be subject to a penalty in an
23 amount of not more than ten thousand dollars for every such violation.
24 Each and every such violation shall be a separate and distinct offense.
25 In case of a failure to comply with a stop work order, every day's
26 continuance shall be a separate and distinct violation. Every person
27 who through an act of commission or omission procures, aids or abets in
28 the violation shall be considered to have violated the provisions of
29 this section and shall be subject to the penalty in this section. No
30 penalty shall be imposed under this section upon any governmental
31 official, an employee of any governmental department, agency, or
32 entity, or a member of any board or advisory committee created by this
33 chapter for any act or omission in his or her duties in the
34 administration of this chapter or of any rule adopted under this
35 chapter.

36 (2) The department shall develop and recommend to the board a
37 penalty schedule to determine the amount to be imposed under this
38 section. The board shall adopt by rule, pursuant to chapter 34.05 RCW,

1 such penalty schedule to be effective no later than January 1, 1994.

2 The schedule shall be developed in consideration of the following:

3 (a) Previous violation history;

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

5 (c) Whether the violation of this chapter or its rules was
6 intentional;

7 (d) Cooperation with the department;

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

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

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

26 (4) Any person incurring a penalty under this section may appeal
27 the penalty to the forest practices appeals board. Such appeals shall
28 be filed within thirty days of receipt of notice imposing any penalty
29 unless an application for remission or mitigation is made to the
30 department. When such an application for remission or mitigation is
31 made, such appeals shall be filed within thirty days of receipt of
32 notice from the department setting forth the disposition of the
33 application for remission or mitigation.

34 (5) The penalty imposed under this section shall become due and
35 payable thirty days after receipt of a notice imposing the same unless
36 application for remission or mitigation is made or an appeal is filed.
37 When such an application for remission or mitigation is made, any
38 penalty incurred under this section shall become due and payable thirty
39 days after receipt of notice setting forth the disposition of such

1 application unless an appeal is filed from such disposition. Whenever
2 an appeal of the penalty incurred is filed, the penalty shall become
3 due and payable only upon completion of all administrative and judicial
4 review proceedings and the issuance of a final decision confirming the
5 penalty in whole or in part.

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

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

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

27 **Sec. 20.** RCW 76.09.040 and 1997 c 173 s 1 are each amended to read
28 as follows:

29 (1) Where necessary to accomplish the purposes and policies stated
30 in RCW 76.09.010 or when adopting rules under section 2 or 7 of this
31 act, to protect public safety, and to implement the provisions of this
32 chapter, the board shall (~~promulgate~~) adopt forest practices
33 (~~regulations~~) rules pursuant to chapter 34.05 RCW and in accordance
34 with the procedures enumerated in this section that:

35 (a) Establish minimum standards for forest practices;

36 (b) Provide procedures for the voluntary development of resource
37 management plans which may be adopted as an alternative to the minimum
38 standards in (a) of this subsection if the plan is consistent with the

1 purposes and policies stated in RCW 76.09.010 and the plan meets or
2 exceeds the objectives of the minimum standards;

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

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

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

7 Forest practices ~~((regulations))~~ rules pertaining to water quality
8 protection shall be ~~((promulgated individually))~~ adopted by the board
9 ~~((and by the department of ecology))~~ after ~~((they have reached))~~
10 reaching agreement with the director of the department of ecology or
11 the director's designee on the board with respect thereto. All other
12 forest practices ~~((regulations))~~ rules shall be ~~((promulgated))~~ adopted
13 by the board.

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

19 (2) The board shall prepare proposed forest practices
20 ~~((regulations))~~ rules. In addition to any forest practices
21 ~~((regulations))~~ rules relating to water quality protection proposed by
22 the board, the department of ecology ~~((shall prepare))~~ may submit to
23 the board proposed forest practices ~~((regulations))~~ rules relating to
24 water quality protection.

25 Prior to initiating the rule making process, the proposed
26 ~~((regulations))~~ rules shall be submitted for review and comments to the
27 department of fish and wildlife and to the counties of the state.
28 After receipt of the proposed forest practices ~~((regulations))~~ rules,
29 the department of fish and wildlife and the counties of the state shall
30 have thirty days in which to review and submit comments to the board,
31 and to the department of ecology with respect to its proposed
32 ~~((regulations))~~ rules relating to water quality protection. After the
33 expiration of such thirty day period the board and the department of
34 ecology shall jointly hold one or more hearings on the proposed
35 ~~((regulations))~~ rules pursuant to chapter 34.05 RCW. At such
36 hearing(s) any county may propose specific forest practices
37 ~~((regulations))~~ rules relating to problems existing within such county.
38 The board may adopt and the department of ecology may ~~((adopt))~~ approve

1 such proposals if they find the proposals are consistent with the
2 purposes and policies of this chapter.

3 (3) The board shall establish by rule a riparian open space program
4 that includes acquisition of a fee interest in, or at the landowner's
5 option, a conservation easement on lands within unconfined avulsing
6 channel migration zones. Once acquired, these lands may be held and
7 managed by the department, transferred to another state agency,
8 transferred to an appropriate local government agency, or transferred
9 to a private nonprofit nature conservation corporation, as defined in
10 RCW 64.04.130, in fee or transfer of management obligation. The board
11 shall adopt rules governing the acquisition by the state or donation by
12 the state of such interest in lands including the right of refusal if
13 the lands are subject to unacceptable liabilities. The rules shall
14 include definitions of qualifying lands, priorities for acquisition,
15 and provide for the opportunity to transfer such lands with limited
16 warranties and with a description of boundaries that does not require
17 full surveys where the cost of securing the surveys would be
18 unreasonable in relation to the value of the lands conveyed. The rules
19 shall provide for the management of the lands for ecological protection
20 or fisheries enhancement. Because there are few, if any, comparable
21 sales of forest land within unconfined avulsing channel migration
22 zones, separate from the other lands or assets, these lands are likely
23 to be extraordinarily difficult to appraise and the cost of a
24 conventional appraisal often would be unreasonable in relation to the
25 value of the land involved. Therefore, for the purposes of voluntary
26 sales under this section, the legislature declares that these lands are
27 presumed to have a value equal to: (a) The median value of commercial
28 forest land under the land value tables used for property tax purposes
29 under RCW 84.33.120; plus (b) the cruised volume of any timber located
30 within the channel migration zone that is twelve inches or larger in
31 diameter breast height times the median value of timber of the same
32 species in the tables used for timber harvest excise tax purposes under
33 RCW 84.33.091.

34 (4) Subject to appropriations sufficient to cover the cost of such
35 an acquisition program and the related costs of administering the
36 program, the department is directed to purchase a fee interest or, at
37 the owner's option, a conservation easement in land that an owner
38 tenders for purchase; provided that such lands have been taxed as
39 forest lands and are located within an unconfined avulsing channel

1 migration zone. Lands acquired under this section shall become
2 riparian open space. These acquisitions shall not be deemed to trigger
3 the compensating tax of chapters 84.33 and 84.34 RCW.

4 (5) The riparian open space account is created in the custody of
5 the state treasurer. All receipts from legislative appropriations,
6 federal grants, and gifts from private individuals or organizations
7 must be deposited into the account. Expenditures from the account may
8 be used only for purchases of land under this section. Only the
9 commissioner of public lands or the commissioner's designee may
10 authorize expenditures from the account. The account is subject to
11 allotment procedures under chapter 43.88 RCW, but an appropriation is
12 not required for expenditures.

13 (6) Instead of offering to sell interests in qualifying lands,
14 owners may elect to donate the interests to the state. The state shall
15 accept any such donation of qualifying lands.

16 (7) Any acquired interest in qualifying lands by the state under
17 this section shall be managed as riparian open space.

18 **Sec. 21.** RCW 76.09.010 and 1993 c 443 s 1 are each amended to read
19 as follows:

20 (1) The legislature hereby finds and declares that the forest land
21 resources are among the most valuable of all resources in the state;
22 that a viable forest products industry is of prime importance to the
23 state's economy; that it is in the public interest for public and
24 private commercial forest lands to be managed consistent with sound
25 policies of natural resource protection; that coincident with
26 maintenance of a viable forest products industry, it is important to
27 afford protection to forest soils, fisheries, wildlife, water quantity
28 and quality, air quality, recreation, and scenic beauty.

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

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

1 (b) Afford protection to forest soils and public resources by
2 utilizing all reasonable methods of technology in conducting forest
3 practices;

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

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

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

10 (f) Provide for interagency input and intergovernmental and tribal
11 coordination and cooperation;

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

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

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

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

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

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

31 **Sec. 22.** RCW 76.09.080 and 1989 c 175 s 163 are each amended to
32 read as follows:

33 (1) The department shall have the authority to serve upon an
34 operator a stop work order which shall be a final order of the
35 department if:

36 (a) There is any violation of the provisions of this chapter or the
37 forest practices (~~(regulations)~~) rules; or

38 (b) There is a deviation from the approved application; or

1 (c) Immediate action is necessary to prevent continuation of or to
2 avoid material damage to a public resource or to prevent threats to
3 public safety.

4 (2) The stop work order shall set forth:

5 (a) The specific nature, extent, and time of the violation,
6 deviation, damage, or potential damage;

7 (b) An order to stop all work connected with the violation,
8 deviation, damage, or potential damage;

9 (c) The specific course of action needed to correct such violation
10 or deviation or to prevent damage and to correct and/or compensate for
11 damage to public resources which has resulted from any violation,
12 unauthorized deviation, or willful or negligent disregard for potential
13 damage to a public resource; and/or those courses of action necessary
14 to prevent continuing damage to public resources where the damage is
15 resulting from the forest practice activities but has not resulted from
16 any violation, unauthorized deviation, or negligence; and

17 (d) The right of the operator to a hearing before the appeals
18 board.

19 The department shall immediately file a copy of such order with the
20 appeals board and mail a copy thereof to the timber owner and forest
21 landowner at the addresses shown on the application. The operator,
22 timber owner, or forest landowner may commence an appeal to the appeals
23 board within fifteen days after service upon the operator. If such
24 appeal is commenced, a hearing shall be held not more than twenty days
25 after copies of the notice of appeal were filed with the appeals board.
26 Such proceeding shall be an adjudicative proceeding within the meaning
27 of chapter 34.05 RCW, the Administrative Procedure Act. The operator
28 shall comply with the order of the department immediately upon being
29 served, but the appeals board if requested shall have authority to
30 continue or discontinue in whole or in part the order of the department
31 under such conditions as it may impose pending the outcome of the
32 proceeding.

33 **Sec. 23.** RCW 76.09.090 and 1975 1st ex.s. c 200 s 6 are each
34 amended to read as follows:

35 If a violation, a deviation, material damage or potential for
36 material damage to a public resource has occurred and the department
37 determines that a stop work order is unnecessary, then the department

1 shall issue and serve upon the operator or landowner a notice, which
2 shall clearly set forth:

3 (1)(a) The specific nature, extent, and time of failure to comply
4 with the approved application; or identifying the damage or potential
5 damage or risks to public safety; and/or

6 (b) The relevant provisions of this chapter or of the forest
7 practices (~~regulations~~) rules relating thereto;

8 (2) The right of the operator or landowner to a hearing before the
9 department; and

10 (3) The specific course of action ordered by the department to be
11 followed by the operator to correct such failure to comply and to
12 prevent, correct and/or compensate for material damage to public
13 resources or public safety which resulted from any violation,
14 unauthorized deviation, or willful or negligent disregard for potential
15 damage to a public resource or to public safety; and/or those courses
16 of action necessary to prevent continuing damage to public resources or
17 public safety where the damage is resulting from the forest practice
18 activities but has not resulted from any violation, unauthorized
19 deviation, or negligence.

20 The department shall mail a copy thereof to the forest landowner
21 and the timber owner at the addresses shown on the application, showing
22 the date of service upon the operator. Such notice to comply shall
23 become a final order of the department: PROVIDED, That no direct
24 appeal to the appeals board will be allowed from such final order.
25 Such operator shall undertake the course of action so ordered by the
26 department unless, within fifteen days after the date of service of
27 such notice to comply, the operator, forest landowner, or timber owner,
28 shall request the department in writing to schedule a hearing. If so
29 requested, the department shall schedule a hearing on a date not more
30 than twenty days after receiving such request. Within ten days after
31 such hearing, the department shall issue a final order either
32 withdrawing its notice to comply or clearly setting forth the specific
33 course of action to be followed by such operator. Such operator shall
34 undertake the course of action so ordered by the department unless
35 within thirty days after the date of such final order, the operator,
36 forest landowner, or timber owner appeals such final order to the
37 appeals board.

38 No person shall be under any obligation under this section to
39 prevent, correct, or compensate for any damage to public resources

1 which occurs more than one year after the date of completion of the
2 forest practices operations involved exclusive of reforestation, unless
3 such forest practices were not conducted in accordance with forest
4 practices rules (~~and regulations~~): PROVIDED, That this provision
5 shall not relieve the forest landowner from any obligation to comply
6 with forest practices rules (~~and regulations~~) pertaining to providing
7 continuing road maintenance. No action to recover damages shall be
8 taken under this section more than two years after the date the damage
9 involved occurs.

10 **Sec. 24.** RCW 76.09.030 and 1995 c 399 s 207 are each amended to
11 read as follows:

12 (1) There is hereby created the forest practices board of the state
13 of Washington as an agency of state government consisting of members as
14 follows:

15 (a) The commissioner of public lands or the commissioner's
16 designee;

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

19 (c) The director of the department of agriculture or the director's
20 designee;

21 (d) The director of the department of ecology or the director's
22 designee;

23 (e) The director of the department of fish and wildlife or the
24 director's designee. However, this member's service on the board shall
25 be terminated automatically two years after the effective date of this
26 section unless prior to that date, the legislature finds that the
27 department has made substantial progress toward integrating the laws,
28 rules, and programs governing forest practices, chapter 76.09 RCW, and
29 the laws, rules, and programs governing hydraulic projects, chapter
30 75.20 RCW. Substantial progress shall include, at a minimum,
31 recommendations to the legislature providing for closer integration of
32 the existing rule-making authorities of the board and the department of
33 fish and wildlife, and closer integration of the forest practices and
34 hydraulics permitting processes, including exploring the potential for
35 a consolidated permitting process. These recommendations shall be
36 designed to resolve problems currently associated with the existing
37 dual regulatory and permitting processes;

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

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

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

20 (3) The board shall meet at such times and places as shall be
21 designated by the chairman or upon the written request of the majority
22 of the board. The principal office of the board shall be at the state
23 capital.

24 (4) Members of the board, except public employees and elected
25 officials, shall be compensated in accordance with RCW 43.03.250. Each
26 member shall be entitled to reimbursement for travel expenses incurred
27 in the performance of their duties as provided in RCW 43.03.050 and
28 43.03.060.

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

31 **Sec. 25.** RCW 90.48.420 and 1975 1st ex.s. c 200 s 13 are each
32 amended to read as follows:

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

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

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

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

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

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

36 NEW SECTION. Sec. 26. A new section is added to chapter 43.21C
37 RCW to read as follows:

1 Decisions pertaining to the following kinds of actions under
2 chapter . . . , Laws of 1999 (this act) are not subject to any
3 procedural requirements implementing RCW 43.21C.030(2)(c): (1)
4 Approval of forest road maintenance and abandonment plans under chapter
5 76.09 RCW and RCW 75.20.100; (2) approval by the department of natural
6 resources of future timber harvest schedules involving east-side clear
7 cuts under rules implementing chapter 76.09 RCW; (3) acquisitions of
8 forest lands in stream channel migration zones under section 9 of this
9 act; and (4) acquisitions of conservation easements pertaining to
10 forest lands in riparian zones under section 13 of this act. For
11 purposes of the department's threshold determination on a watershed
12 analysis, the department shall not make a determination of significance
13 unless the prescriptions themselves, compared to rules or prescriptions
14 in place prior to the analysis, will cause probable significant adverse
15 impact on elements of the environment other than those addressed in the
16 watershed analysis process.

17 **Sec. 27.** RCW 76.09.220 and 1997 c 290 s 5 and 1997 c 423 s 2 are
18 each reenacted and amended to read as follows:

19 (1) The appeals board shall operate on either a part-time or a
20 full-time basis, as determined by the governor. If it is determined
21 that the appeals board shall operate on a full-time basis, each member
22 shall receive an annual salary to be determined by the governor. If it
23 is determined that the appeals board shall operate on a part-time
24 basis, each member shall be compensated in accordance with RCW
25 43.03.250. The director of the environmental hearings office shall
26 make the determination, required under RCW 43.03.250, as to what
27 statutorily prescribed duties, in addition to attendance at a hearing
28 or meeting of the board, shall merit compensation. This compensation
29 shall not exceed ten thousand dollars in a fiscal year. Each member
30 shall receive reimbursement for travel expenses incurred in the
31 discharge of his or her duties in accordance with the provisions of RCW
32 43.03.050 and 43.03.060.

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

37 (3) The principal office of the appeals board shall be at the state
38 capital, but it may sit or hold hearings at any other place in the

1 state. A majority of the appeals board shall constitute a quorum for
2 making orders or decisions, (~~promulgating~~) adopting rules (~~and~~
3 ~~regulations~~) necessary for the conduct of its powers and duties, or
4 transacting other official business, and may act though one position on
5 the board be vacant. One or more members may hold hearings and take
6 testimony to be reported for action by the board when authorized by
7 rule or order of the board. The appeals board shall perform all the
8 powers and duties granted to it in this chapter or as otherwise
9 provided by law.

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

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

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

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

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

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

4 NEW SECTION. **Sec. 28.** A new section is added to chapter 75.46 RCW
5 under the subchapter heading "federal assurances related to forest
6 practices conducted under the state salmon recovery strategy" to read
7 as follows:

8 (1) The legislature finds that the forests and fish report as
9 defined in RCW 76.09.020 was developed through extensive negotiations
10 with the federal agencies responsible for administering the endangered
11 species act and the clean water act. Chapter . . . , Laws of 1999 (this
12 act) has been enacted on the assumption that the federal assurances
13 described in the forests and fish report will be obtained and that
14 forest practices conducted in accordance with chapter . . . , Laws of
15 1999 (this act) and the rules adopted under chapter . . . , Laws of 1999
16 (this act) will not be subject to additional regulations or
17 restrictions except as provided in the forests and fish report.

18 (2) The occurrence of any of the following events shall constitute
19 a failure of assurances:

20 (a) Either (i) the national marine fisheries service or the United
21 States fish and wildlife service fails to promulgate an effective rule
22 under 16 U.S.C. Sec. 1533(d) covering each aquatic resource that is
23 listed as threatened under the endangered species act within two years
24 after the date on which the aquatic resource is so listed or, in the
25 case of bull trout, within two years after the effective date of this
26 section; or (ii) any such rule fails to permit any incidental take that
27 would occur from the conduct of forest practices in compliance with the
28 rules adopted under chapter . . . , Laws of 1999 (this act) or fails to
29 confirm that such forest practices would not otherwise be in violation
30 of the endangered species act and the regulations promulgated under
31 that act. However, this subsection (2)(a) is not applicable to any
32 aquatic resource covered by an incidental take permit described in (c)
33 of this subsection;

34 (b) Either the national marine fisheries service or the United
35 States fish and wildlife service shall promulgate an effective rule
36 under 16 U.S.C. Sec. 1533(d) covering any aquatic resource that would
37 preclude the conduct of forest practices consistent with the
38 prescriptions outlined in the forests and fish report. However, this

1 subsection (2)(b) is not applicable to any aquatic resource covered by
2 an incidental take permit described in (c) of this subsection;

3 (c) Either the secretary of the interior or the secretary of
4 commerce fails to issue an acceptable incidental take permit under 16
5 U.S.C. Sec. 1539(a) covering all fish and wildlife species included
6 within aquatic resources on or before June 30, 2003. An acceptable
7 incidental take permit will (i) permit the incidental take, if any, of
8 all fish and wildlife species included within aquatic resources
9 resulting from the conduct of forest practices in compliance with the
10 prescriptions outlined in the forests and fish report; (ii) provide
11 protection to the state of Washington and its subdivisions and to
12 landowners and operators; (iii) not require the commitment of
13 additional resources beyond those required to be committed under the
14 forests and fish report; and (iv) provide "no-surprises" protection as
15 described in 50 C.F.R. Parts 17 and 222 (1998);

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

19 (e) The assurances described in (a) through (d) of this subsection
20 are reversed or otherwise rendered ineffective by subsequent federal
21 legislation or rulemaking or by final decision of any court of
22 competent jurisdiction.

23 Upon the occurrence of a failure of assurances, any agency, tribe,
24 or other interested person including, without limitation, any forest
25 landowner, may provide written notice of the occurrence of such failure
26 of assurances to the legislature and to the office of the governor.
27 Promptly upon receipt of such a notice, the governor shall review
28 relevant information and if he or she determines that a failure of
29 assurances has occurred, the governor shall make such a finding in a
30 written report with recommendations and deliver such report to the
31 legislature. Upon notice of the occurrence of a failure of assurances,
32 the legislature shall review chapter . . . , Laws of 1999 (this act),
33 all rules adopted by the forest practices board, the department of
34 ecology, or the department of fish and wildlife at any time after
35 January 1, 1999, that were adopted primarily for the protection of one
36 or more aquatic resources and affect forest practices and the terms of
37 the forests and fish report, and shall take such action, including the
38 termination of funding or the modification of other statutes, as it
39 deems appropriate.

1 (3) The governor may negotiate with federal officials, directly or
2 through designated representatives, on behalf of the state and its
3 agencies and subdivisions, to obtain assurances from federal agencies
4 to the effect that compliance with the forest practices rules as
5 amended under chapter . . ., Laws of 1999 (this act) and implementation
6 of the recommendations in the forests and fish report will satisfy
7 federal requirements under the endangered species act and the clean
8 water act and related regulations, including the negotiation of a rule
9 adopted under section 4(d) of the endangered species act, entering into
10 implementation agreements and receiving incidental take permits under
11 section 10 of the endangered species act or entering into other
12 intergovernmental agreements.

--- END ---