

HOUSE BILL **2091**

Chapter 4, Laws of 1999

(partial veto)

56th Legislature  
1999 1st Special Session

FOREST PRACTICES--SALMON RECOVERY

EFFECTIVE DATE: 8/18/99 - Except sections 201, 202, and 203 which become effective on 6/7/99.  
Passed by the House May 19, 1999  
Yeas 67 Nays 27

CLYDE BALLARD  
Speaker of the House of Representatives

FRANK CHOPP  
Speaker of the House of Representatives

Passed by the Senate May 17, 1999  
Yeas 29 Nays 17  
CERTIFICATE

We, Dean R. Foster and Timothy A. Martin, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is ENGROSSED SUBSTITUTE HOUSE BILL **2091** as passed by the House of Representatives and the Senate on the dates hereon set forth.

DEAN R. FOSTER  
Chief Clerk

TIMOTHY A. MARTIN  
Chief Clerk  
R. LORRAINE WOJAHN  
President of the Senate

Approved June 7, 1999, with the exception of sections 903 and 1404, which are vetoed.

FILED  
June 7, 1999 - 1:38 p.m.  
GARY LOCKE  
Governor of the State of Washington  
State of Washington

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ENGROSSED SUBSTITUTE HOUSE BILL 2091

AS AMENDED BY THE SENATE

Passed Legislature - 1999 1st Special Session

State of Washington          56th Legislature          1999 1st Special 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.

AN ACT Relating to forest practices as they affect the recovery of salmon and other aquatic resources; amending RCW 76.09.020, 76.13.010, 76.42.060, 76.09.330, 76.09.040, 84.33.120, 84.33.140, 84.33.145, 84.34.080, 84.34.108, 76.09.140, 76.09.150, 76.09.170, 76.09.010, 76.09.220, 76.09.030, and 90.48.420; adding new sections to chapter 75.46 RCW; adding new sections to chapter 76.09 RCW; adding a new section to chapter 34.05 RCW; adding new sections to chapter 43.21C RCW; adding a new section to chapter 84.33 RCW; adding new sections to chapter 76.13 RCW; creating new sections; repealing RCW 90.28.150; and declaring an emergency.

**TABLE OF CONTENTS:**

<b>PART I: SUMMARY</b>	<b>Pg. 1</b>
<b>PART II: RULE MAKING</b>	<b>Pg. 2</b>
<b>PART III: DEFINITIONS</b>	<b>Pg. 4</b>
<b>PART IV: TIMBER EXCISE TAX CREDIT</b>	<b>Pg. 5</b>
<b>PART V: SMALL FOREST LANDOWNERS</b>	<b>Pg. 6</b>
<b>PART VI: LARGE WOODY DEBRIS</b>	<b>Pg. 11</b>
<b>PART VII: RIPARIAN OPEN SPACE</b>	<b>Pg. 11</b>
<b>PART VIII: ENFORCEMENT</b>	<b>Pg. 20</b>
<b>PART IX: WATERSHED ANALYSIS</b>	<b>Pg. 22</b>
<b>PART X: FOREST PRACTICES BOARD COMPOSITION</b>	<b>Pg. 24</b>
<b>PART XI: WATER QUALITY COORDINATION</b>	<b>Pg. 25</b>
<b>PART XII: STATE ENVIRONMENTAL PROTECTION ACT</b>	<b>Pg. 25</b>
<b>PART XIII: FEDERAL ASSURANCES</b>	<b>Pg. 26</b>
<b>PART XIV: MISCELLANEOUS</b>	<b>Pg. 27</b>

**PART I  
SUMMARY**

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

{+ NEW SECTION. +} Sec. 101. A new section is added to chapter 75.46 RCW and codified with the subchapter heading of "salmon recovery planning in areas involving forest practices" to read as follows:

(1) The legislature finds that the forests and fish report as defined in RCW 76.09.020 was developed through extensive negotiations with the federal agencies responsible for administering the endangered species act and the clean water act. The legislature further finds that the forestry industry, small landowners, tribal governments, state and federal agencies, and counties have worked diligently for nearly two years to reach agreement on scientifically based changes to the forest practices rules, set forth in the forests and fish report as defined in RCW 76.09.020. The legislature further finds that if existing forest practices rules are amended as proposed in the forests and fish report as defined in RCW 76.09.020, the

resulting changes in forest practices (a) will lead to: (i) Salmon habitat that meets riparian functions vital to the long-term recovery of salmon on more than sixty thousand miles of streams in this state; (ii) identification of forest roads contributing to habitat degradation and corrective action to remedy those problems to protect salmon habitat; (iii) increased protection of steep and unstable slopes; and (iv) the implementation of scientifically based adaptive management and monitoring processes for evaluating the impacts of forest practices on aquatic resources, as defined in RCW 76.09.020, and a process for amending the forest practices rules to incorporate new information as it becomes available; (b) will lead to the protection of aquatic resources to the maximum extent practicable consistent with maintaining commercial forest management as an economically viable use of lands suitable for that purpose; and (c) will provide a regulatory climate and structure more likely to keep landowners from converting forest lands to other uses that would be less desirable for salmon recovery.

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

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

(4) The legislature recognizes that the adoption of forest practices rules consistent with the forests and fish report as defined in RCW 76.09.020 will impose substantial financial burdens on forest landowners which, if not partially offset through other changes in the laws and rules governing forestry, could lead to significantly reduced silvicultural investments on nonfederal lands, deterioration in the quality, condition, and amounts of forests on those lands, and long-term adverse effects on fish and wildlife habitat and other environmental amenities associated with well managed forests. Moreover, as the benefits of the proposed revisions to the forest practices rules will benefit the general public, chapter . . . , Laws of 1999 1st sp. sess. (this act) suggests that some of these costs be shared with the general public.

(5) As an integral part of implementing the salmon recovery strategy, chapter . . . , Laws of 1999 1st sp. sess. (this act) (a) provides direction to the forest practices board, the department of natural resources, and the department of ecology with respect to the adoption, implementation, and enforcement of rules relating to forest practices and the protection of aquatic resources; (b) provides additional enforcement tools to the department of natural resources to enforce the forest practices rules; (c) anticipates the need for adequate and consistent funding for the various programmatic elements necessary to fully implement the strategy over time and derive the long-term benefits; (d) provides for the acquisition by the state of forest lands within certain stream channel migration zones where timber harvest will not be allowed; (e) provides for small landowners to have costs shared for a portion of any extraordinary economic losses attributable to the revisions to the forest practices rules required by chapter . . . , Laws of 1999 1st sp. sess. (this act); and (f) amends other existing laws to aid in the implementation of the recommendations set forth in the forests and fish report as defined in RCW 76.09.020.

## **PART II RULE MAKING**

{+ NEW SECTION. +} Sec. 201. A new section is added to chapter 76.09 RCW to read as follows:

(1) The legislature finds that the declines of fish stocks throughout much of the state requires immediate action to be taken to help restore these fish runs where possible. The legislature also recognizes that federal

and state agencies, tribes, county representatives, and private timberland owners have spent considerable effort and time to develop the forests and fish report. Given the agreement of the parties, the legislature believes that the immediate adoption of emergency rules is appropriate in this particular instance. These rules can implement many provisions of the forests and fish report to protect the economic well-being of the state, and to minimize the risk to the state and landowners to legal challenges. This authority is not designed to set any precedents for the forest practices board in future rule making or set any precedents for other rule-making bodies of the state.

(2) The forest practices board is authorized to adopt emergency rules amending the forest practices rules with respect to the protection of aquatic resources, in accordance with RCW 34.05.350, except: (a) That the rules adopted under this section may remain in effect until permanent rules are adopted, or until June 30, 2001, whichever is sooner; (b) notice of the proposed rules must be published in the Washington State Register as provided in RCW 34.05.320; (c) at least one public hearing must be conducted with an opportunity to provide oral and written comments; and (d) a rule-making file must be maintained as required by RCW 34.05.370. In adopting the emergency rules, the board is not required to prepare a small business economic impact statement under chapter 19.85 RCW, prepare a statement indicating whether the rules constitute a significant legislative rule under RCW 34.05.328, prepare a significant legislative rule analysis under RCW 34.05.328, or follow the procedural requirements of the state environmental policy act, chapter 43.21C RCW. The forest practices board may only adopt recommendations contained in the forests and fish report as emergency rules under this section.

{+ NEW SECTION. +} Sec. 202. A new section is added to chapter 34.05 RCW to read as follows:  
Emergency rules adopted by the forest practices board pertaining to forest practices and the protection of aquatic resources are subject to this chapter to the extent provided in section 201 of this act.

{+ NEW SECTION. +} Sec. 203. A new section is added to chapter 43.21C RCW to read as follows:  
The duration and process for adopting emergency rules by the forest practices board pertaining to forest practices and the protection of aquatic resources as provided in section 201 of this act are exempt from the procedural requirements of this chapter.

{+ NEW SECTION. +} Sec. 204. A new section is added to chapter 76.09 RCW to read as follows:  
(1) The legislature finds that the process that produced the forests and fish report was instigated by the forest practices board, the report is the product of considerable negotiations between several diverse interest groups, and the report has the support of key federal agencies. When adopting permanent rules under this section, the forest practices board is strongly encouraged to follow the recommendations of the forests and fish report, but may include other alternatives for protection of aquatic resources. If the forest practices board chooses to adopt rules under this section that are not consistent with the recommendations contained in the forests and fish report, the board must notify the appropriate legislative committees of the proposed deviations, the reasons for the proposed deviations, and whether the parties to the forests and fish report still support the agreement. The board shall defer final adoption of such rules for sixty days of the legislative session to allow for the opportunity for additional public involvement and legislative oversight.  
(2) The forest practices board shall follow the regular rules adoption process contained in the administrative procedure act, chapter 34.05 RCW, when adopting permanent rules pertaining to forest practices and the protection of aquatic resources except as limited by subsection (1) of this section. The permanent rules must accomplish the policies stated in RCW 76.09.010 without jeopardizing the economic viability of the forest products industry.  
(3) The rules adopted under this section should be as specific as reasonably possible while also allowing an applicant to propose alternate plans in response to site-specific physical features. Alternate plans should provide protection to public resources at least equal in overall effectiveness by alternate means.  
(4) Rule making under subsection (2) of this section shall be completed by June 30, 2001.  
(5) The board should consider coordinating any environmental review process under chapter 43.21C RCW relating to the adoption of rules under subsection (2) of this section with any review of a related proposal under the national environmental policy act (42 U.S.C. Sec. 4321, et seq.).  
(6) After the board has adopted permanent rules under subsection (2) of this section, changes to those rules and any new rules covering aquatic resources may be adopted by the board but only if the changes or new rules are consistent with recommendations resulting from the scientifically based adaptive management process established by a rule of the board. Any new rules or changes under this subsection

need not be based upon the recommendations of the adaptive management process if: (a) The board is required to adopt or modify rules by the final order of any court having jurisdiction thereof; or (b) future state legislation directs the board to adopt or modify the rules.

(7) In adopting permanent rules, the board shall incorporate the scientific-based adaptive management process described in the forests and fish report which will be used to determine the effectiveness of the new forest practices rules in aiding the state's salmon recovery effort. The purpose of an adaptive management process is to make adjustments as quickly as possible to forest practices that are not achieving the resource objectives. The adaptive management process shall incorporate the best available science and information, include protocols and standards, regular monitoring, a scientific and peer review process, and provide recommendations to the board on proposed changes to forest practices rules to meet timber industry viability and salmon recovery.

{+ NEW SECTION. +} Sec. 205. A new section is added to chapter 76.09 RCW to read as follows:

Prior to the adoption of permanent rules as required by chapter . . ., Laws of 1999 1st sp. sess. (this act) and no later than January 1, 2000, the board shall report to the appropriate legislative committees regarding the substance of emergency rules that have been adopted under chapter . . ., Laws of 1999 1st sp. sess. (this act). In addition, the report shall include information on changes made to the forests and fish report after April 29, 1999, and an update on the status of the adoption of permanent rules, including the anticipated substance of the rules and the anticipated date of final adoption. The board shall additionally provide a report to the appropriate legislative committees by January 1, 2001.

On January 1, 2006, the board shall provide a summary to the appropriate legislative committees regarding modifications made to the forests and fish report made after January 1, 2000, and to the permanent rules according to the adaptive management process as set forth in the forests and fish report.

### **PART III DEFINITIONS**

Sec. 301. RCW 76.09.020 and 1974 ex.s. c 137 s 2 are each amended to read as follows:

For purposes of this chapter:

(1) {"Adaptive management"} means reliance on scientific methods to test the results of actions taken so that the management and related policy can be changed promptly and appropriately.

(2) {"Appeals board"} mean {" s "} the forest practices appeals board created by RCW 76.09.210.

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

(4) {"Commissioner"} mean {" s "} the commissioner of public lands.

{{ (3) - }} {"Contiguous"} mean {" s "} land adjoining or touching by common corner or otherwise. Land having common ownership divided by a road or other right of way shall be considered contiguous.

{{ (4) - }} {"Conversion to a use other than commercial timber operation"} mean {" s "} a bona fide conversion to an active use which is incompatible with timber growing and as may be defined by forest practices {{ regulations - }} {" rules + }.

{{ (5) - }} {"Department"} mean {" s "} the department of natural resources.

{{ (6) - }} {"Forest land"} mean {" s "} all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing.

{{ (7) - }} {"Forest landowner"} mean {" s "} any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner: PROVIDED, That any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

(({- (8) -})) {+ (10) +} "Forest practice" (({- shall -})) mean{+ s +} any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

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

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

(({- (9) -})) {+ (11) +} "Forest practices (({- regulations" shall -})) {+ rules" +} mean{+ s +} any rules (({- promulgated -})) {+ adopted +} pursuant to RCW 76.09.040.

(({- (10) -})) {+ (12) +} "Forests and fish report" means the forests and fish report to the board dated April 29, 1999.

(13) {+} "Application" (({- shall -})) mean{+ s +} the application required pursuant to RCW 76.09.050.

(({- (11) -})) {+ (14) +} "Operator" (({- shall -})) mean{+ s +} any person engaging in forest practices except an employee with wages as his {+ or her +} sole compensation.

(({- (12) -})) {+ (15) +} "Person" (({- shall -})) mean{+ s +} any individual, partnership, private, public, or municipal corporation, county, the department or other state or local governmental entity, or association of individuals of whatever nature.

(({- (13) -})) {+ (16) +} "Public resources" (({- shall -})) mean{+ s +} water, fish and wildlife, and in addition shall mean capital improvements of the state or its political subdivisions.

(({- (14) -})) {+ (17) +} "Timber" (({- shall -})) mean{+ s +} forest trees, standing or down, of a commercial species, including Christmas trees.

(({- (15) -})) {+ (18) +} "Timber owner" (({- shall -})) mean{+ s +} any person having all or any part of the legal interest in timber. Where such timber is subject to a contract of sale, "timber owner" shall mean the contract purchaser.

(({- (16) -})) {+ (19) +} "Board" (({- shall -})) mean{+ s +} the forest practices board created in RCW 76.09.030.

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

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

#### **PART IV TIMBER EXCISE TAX CREDIT**

{+ NEW SECTION. +} Sec. 401. A new section is added to chapter 84.33 RCW to read as follows:

(1) A taxpayer is allowed a credit against the tax imposed under RCW 84.33.041 for timber harvested under a forest practices notification filed or application approved under RCW 76.09.050 and subject to enhanced aquatic resources requirements.

(2)(a) For a person other than a small harvester who elects to calculate tax under RCW 84.33.074, the credit is equal to the stumpage value of timber harvested for sale or for commercial or industrial use multiplied by eight-tenths of one percent.

(b) For a small harvester who elects to calculate tax under RCW 84.33.074, the credit is equal to sixteen percent of the tax imposed under this chapter.

(c) The amount of credit claimed by a taxpayer under this section shall be reduced by the amount of any compensation received from the federal government for reduced timber harvest due to enhanced aquatic resource requirements. If the amount of compensation from the federal government exceeds the amount of credit available to a taxpayer in any reporting period, the excess shall be carried forward and applied against credits in future reporting periods. This subsection does not apply to small harvesters as defined in RCW 84.33.073.

(d) Refunds may not be given in place of credits. Credit may not be claimed in excess of tax owed. The department of revenue shall disallow any credits, used or unused, upon written notification from the department of natural resources of a final decision that timber for which credit was claimed was not harvested under a forest practices notification filed or application approved under RCW 76.09.050 and subject to enhanced aquatic resources requirements.

(3) As used in this section, a forest practice notification or application is subject to enhanced aquatic resource requirements if it includes, in whole or in part, riparian area, wetland, or steep or unstable slope from which the operator is limited, by rule adopted under sections 201 through 204 of this act, or any federally approved habitat conservation plan or department of natural resources approved watershed analysis, from harvesting timber, or if a road is included within or adjacent to the area covered by such notification or application and the road is covered by a road maintenance plan approved by the department of natural resources under rules adopted under chapter 76.09 RCW, the forest practices act, or a federally approved habitat conservation plan.

(4) For forest practices notification or applications submitted after January 1, 2000, the department of natural resources shall indicate whether the notification or application is subject to enhanced aquatic resource requirements and, unless notified of a contrary determination by the forest practices appeals board, the department of revenue shall use such indication in determining the credit to be allowed against the tax assessed under RCW 84.33.041. The department of natural resources shall develop revisions to the form of the forest practices notifications and applications to provide a space for the applicant to indicate and the department of natural resources to confirm or not confirm, whether the notification or application is subject to enhanced aquatic resource requirements. For forest practices notifications or applications submitted before January 1, 2000, the applicant may submit the approved notification or application to the department of natural resources for confirmation that the notification or application is subject to enhanced aquatic resource requirements. Upon any such submission, the department of natural resources will within thirty days confirm or deny that the notification or application is subject to enhanced aquatic resource requirements and will forward separate evidence of each confirmation to the department of revenue. Unless notified of a contrary ruling by the forest practices appeals board, the department of revenue shall use the separate confirmations in determining the credit to be allowed against the tax assessed under RCW 84.33.041.

(5) A refusal by the department of natural resources to confirm that a notification or application is subject to enhanced aquatic resources requirements may be appealed to the forest practices appeals board under RCW 76.09.220.

(6) A person receiving approval of credit must keep records necessary for the department of revenue to verify eligibility under this section.

{+ NEW SECTION. +} Sec. 402. The department of revenue and the department of natural resources shall conduct a joint study of the tax credits under section 401 of this act. The study shall examine the relationship between the amount of tax credit received by each taxpayer and the extent that the taxpayer's timber harvests have been limited as a result of complying with enhanced aquatic resource requirements. The departments shall submit the study to the legislature by November 1, 2002.

## **PART V SMALL FOREST LANDOWNERS**

{+ NEW SECTION. +} Sec. 501. A new section is added to chapter 76.13 RCW to read as follows:

(1) The legislature finds that increasing regulatory requirements continue to diminish the economic viability of small forest landowners. The concerns set forth in section 101 of this act about the importance of sustaining forestry as a viable land use are particularly applicable to small landowners because of the location of their holdings, the expected complexity of the regulatory requirements, and the need for significant technical expertise not readily available to small landowners. The further reduction in

harvestable timber owned by small forest landowners as a result of the rules to be adopted under section 201 of this act will further erode small landowners' economic viability and willingness or ability to keep the lands in forestry use and, therefore, reduce the amount of habitat available for salmon recovery and conservation of other aquatic resources, as defined in RCW 76.09.020.

(2) The legislature finds that the concerns identified in subsection (1) of this section should be addressed by establishing within the department of natural resources a small forest landowner office that shall be a resource and focal point for small forest landowner concerns and policies. The legislature further finds that a forestry riparian easement program shall be established to acquire easements from small landowners along riparian and other areas of value to the state for protection of aquatic resources. The legislature further finds that small forest landowners should have the option of alternate management plans or alternate harvest restrictions on smaller harvest units that may have a relatively low impact on aquatic resources. The small forest landowner office should be responsible for assisting small landowners in the development and implementation of these plans or restrictions.

Sec. 502. RCW 76.13.010 and 1991 c 27 s 3 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply (({- throughout this chapter -})) {+ to RCW 76.13.005, 76.13.007, 76.13.020, and 76.13.030 +}.

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

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

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

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

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

{+ NEW SECTION. +} Sec. 503. A new section is added to chapter 76.13 RCW to read as follows:

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

(2) The small forest landowner office shall administer the provisions of the forestry riparian easement program created under section 504 of this act. With respect to that program, the office shall have the authority to contract with private consultants that the office finds qualified to perform timber cruises of forestry riparian easements.

(3) The small forest landowner office shall assist in the development of small landowner options through alternate management plans or alternate harvest restrictions appropriate to small landowners. The small forest landowner office shall develop criteria to be adopted by the forest practices board in a manual for alternate management plans or alternate harvest restrictions. These alternate plans or alternate harvest restrictions shall meet riparian functions while requiring less costly regulatory prescriptions. At the landowner's option, alternate plans or alternate harvest restrictions may be used to further meet riparian functions.

The small landowner office shall evaluate the cumulative impact of such alternate management plans or alternate harvest restrictions on essential riparian functions at the subbasin or watershed level. The small forest landowner office shall adjust future alternate management plans or alternate harvest restrictions in a manner that will minimize the negative impacts on essential riparian functions within a subbasin or watershed.



(4) An advisory committee is established to assist the small forest landowner office in developing policy and recommending rules to the forest practices board. The advisory committee shall consist of seven members, including a representative from the department of ecology, the department of fish and wildlife, and a tribal representative. Four additional committee members shall be small forest landowners who shall be appointed by the commissioner of public lands from a list of candidates submitted by the board of directors of the Washington farm forestry association or its successor organization. The association shall submit more than one candidate for each position. Appointees shall serve for a term of four years. The small forest landowner office shall review draft rules or rule concepts with the committee prior to recommending such rules to the forest practices board. The office shall reimburse nongovernmental committee members for reasonable expenses associated with attending committee meetings as provided in RCW 43.03.050 and 43.03.060.

(5) By December 1, 2000, the small forest landowner office shall provide a report to the board and the legislature containing:

(a) Estimates of the amounts of nonindustrial forests and woodlands in holdings of twenty acres or less, twenty-one to one hundred acres, one hundred to one thousand acres, and one thousand to five thousand acres, in western Washington and eastern Washington, and the number of persons having total nonindustrial forest and woodland holdings in those size ranges;

(b) Estimates of the number of parcels of nonindustrial forests and woodlands held in contiguous ownerships of twenty acres or less, and the percentages of those parcels containing improvements used: (i) As primary residences for half or more of most years; (ii) as vacation homes or other temporary residences for less than half of most years; and (iii) for other uses;

(c) The watershed administrative units in which significant portions of the riparian areas or total land area are nonindustrial forests and woodlands;

(d) Estimates of the number of forest practices applications and notifications filed per year for forest road construction, silvicultural activities to enhance timber growth, timber harvest not associated with conversion to nonforest land uses, with estimates of the number of acres of nonindustrial forests and woodlands on which forest practices are conducted under those applications and notifications; and

(e) Recommendations on ways the board and the legislature could provide more effective incentives to encourage continued management of nonindustrial forests and woodlands for forestry uses in ways that better protect salmon, other fish and wildlife, water quality, and other environmental values.

(6) By December 1, 2002, and every four years thereafter, the small forest landowner office shall provide to the board and the legislature an update of the report described in subsection (5) of this section, containing more recent information and describing:

(a) Trends in the items estimated under subsection (5)(a) through (d) of this section;

(b) Whether, how, and to what extent the forest practices act and rules contributed to those trends; and

(c) Whether, how, and to what extent: (i) The board and legislature implemented recommendations made in the previous report; and (ii) implementation of or failure to implement those recommendations affected those trends.

{+ NEW SECTION. +} Sec. 504. A new section is added to chapter 76.13 RCW to read as follows:

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

(2) The definitions in this subsection apply throughout this section and sections 501 and 503 of this act unless the context clearly requires otherwise.

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

(b) "Qualifying timber" means those trees covered by a forest practices application that the small forest landowner is required to leave unharvested under the rules adopted under sections 201 and 204 of this act or that is made uneconomic to harvest by those rules, and for which the small landowner is willing to grant the state a forestry riparian easement. "Qualifying timber" is timber within or bordering a commercially reasonable harvest unit as determined under rules adopted by the forest practices board.

(c) "Small forest landowner" means a landowner meeting all of the following characteristics: (i) A forest landowner as defined in RCW 76.09.020 whose interest in the land and timber is in fee or who has rights to the timber to be included in the forestry riparian easement that extend at least fifty years from the

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

For purposes of determining whether a person qualifies as a small forest landowner, the small forest landowner office, created in section 503 of this act, shall evaluate the landowner under this definition as of the date that the forest practices application is submitted with which the forestry riparian easement is associated. A small forest landowner can include an individual, partnership, corporate, or other nongovernmental legal entity. If a landowner grants timber rights to another entity for less than five years, the landowner may still qualify as a small forest landowner under this section.

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

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

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

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

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

The small forest landowner office shall establish the volume of the qualifying timber. Based on that volume and using data obtained or maintained by the department of revenue under RCW 84.33.074 and 84.33.091, the small forest landowner office shall attempt to determine the fair market value of the qualifying timber as of the date the forest practices application associated with the qualifying timber was submitted. If, under the forest practices rules adopted under chapter . . ., Laws of 1999 1st sp. sess. (this act), some qualifying timber may be removed prior to the expiration of the fifty-year term of the easement, the small forest landowner office shall apply a reduced compensation factor to ascertain the value of those trees based on the proportional economic value, considering income and growth, lost to the landowner.

(7) Except as provided in subsection (8) of this section, the small forest landowner office shall, subject to available funding, offer compensation to the small forest landowner in the amount of fifty percent of the value determined in subsection (6) of this section. If the landowner accepts the offer, the department of natural resources shall pay the compensation promptly upon (a) completion of harvest in the area covered by the forestry riparian easement; (b) verification that there has been compliance with the rules requiring

leave trees in the easement area; and (c) execution and delivery of the easement to the department of natural resources. Upon donation or payment of compensation, the department of natural resources may record the easement.

(8) For approved forest practice applications where the regulatory impact is greater than the average percentage impact for all small landowners as determined by the department of natural resources analysis under the regulatory fairness act, chapter 19.85 RCW, the compensation offered will be increased to one hundred percent for that portion of the regulatory impact that is in excess of the average. Regulatory impact includes trees left in buffers, special management zones, and those rendered uneconomic to harvest by these rules. A separate average or high impact regulatory threshold shall be established for western and eastern Washington. Criteria for these measurements and payments shall be established by the small forest landowner office.

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

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

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

(c) Methods and standards for cruises and valuation of forestry riparian easements for purposes of establishing the compensation. The department of natural resources shall perform the timber cruises of forestry riparian easements required under this chapter and chapter 76.09 RCW. Any rules concerning the methods and standards for valuations of forestry riparian easements shall apply only to the department of natural resources, small forest landowners, and the small forest landowner office;

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

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

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

(g) High impact regulatory thresholds;

(h) A method to determine timber that is qualifying timber because it is rendered uneconomic to harvest by the rules adopted under sections 201 and 204 of this act; and

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

{+ NEW SECTION. +} Sec. 505. A new section is added to chapter 76.13 RCW to read as follows:

On parcels of twenty contiguous acres or less, landowners with a total parcel ownership of less than eighty acres shall not be required to leave riparian buffers adjacent to streams according to forest practices rules adopted under the forests and fish report as defined in RCW 76.09.020. These landowners shall be subject to the permanent forest practices rules in effect as of January 1, 1999, but may additionally be required to leave timber adjacent to streams that is equivalent to no greater than fifteen percent of a volume of timber contained in a stand of well managed fifty-year old commercial timber covering the harvest area. The additional fifteen percent leave tree level shall be computed as a rotating stand volume and shall be regulated through flexible forest practices as the stream buffer is managed over time to meet riparian functions.

On parcels of twenty contiguous acres or less the small forest landowner office shall work with landowners with a total parcel ownership of less than eighty acres to develop alternative management plans for riparian buffers. Such alternative plans shall provide for the removal of leave trees as other new trees grow in order to ensure the most effective protection of critical riparian function. The office may recommend reasonable modifications in alternative management plans of such landowners to further reduce risks to public resources and endangered species so long as the anticipated operating costs are not unreasonably increased and the landowner is not required to leave a greater volume than the threshold level. To qualify for the provisions of this section, parcels must be twenty acres or less in contiguous ownership, and owners cannot have ownership interests in a total of more than eighty acres of forest lands within the state.

**PART VI  
LARGE WOODY DEBRIS**

Sec. 601. RCW 76.42.060 and 1973 c 136 s 7 are each amended to read as follows:

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

Sec. 602. RCW 76.09.330 and 1992 c 52 s 5 are each amended to read as follows:

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

**PART VII  
RIPARIAN OPEN SPACE**

Sec. 701. RCW 76.09.040 and 1997 c 173 s 1 are each amended to read as follows:

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

(a) Establish minimum standards for forest practices;

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

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

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

(e) Allow for the development of watershed analyses.

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

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

(2) The board shall prepare proposed forest practices (({- regulations -})) {+ rules +}. In addition to any forest practices (({- regulations -})) {+ rules +} relating to water quality protection proposed by the board, the department of ecology (({- shall prepare -})) {+ may submit to the board +} proposed forest practices (({- regulations -})) {+ rules +} relating to water quality protection.

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

{+ (3) The board shall establish by rule a riparian open space program that includes acquisition of a fee interest in, or at the landowner's option, a conservation easement on lands within unconfined avulsing channel migration zones. Once acquired, these lands may be held and managed by the department, transferred to another state agency, transferred to an appropriate local government agency, or transferred to a private nonprofit nature conservation corporation, as defined in RCW 64.04.130, in fee or transfer of management obligation. The board shall adopt rules governing the acquisition by the state or donation to the state of such interest in lands including the right of refusal if the lands are subject to unacceptable liabilities. The rules shall include definitions of qualifying lands, priorities for acquisition, and provide for the opportunity to transfer such lands with limited warranties and with a description of boundaries that does not require full surveys where the cost of securing the surveys would be unreasonable in relation to the value of the lands conveyed. The rules shall provide for the management of the lands for ecological protection or fisheries enhancement. Because there are few, if any, comparable sales of forest land within unconfined avulsing channel migration zones, separate from the other lands or assets, these lands are likely to be extraordinarily difficult to appraise and the cost of a conventional appraisal often would be unreasonable in relation to the value of the land involved. Therefore, for the purposes of voluntary sales under this section, the legislature declares that these lands are presumed to have a value equal to: (a) The acreage in the sale multiplied by the average value of commercial forest land in the region under the land value tables used for property tax purposes under RCW 84.33.120; plus (b) the cruised volume of any timber located within the channel migration multiplied by the appropriate quality code stumpage value for timber of the same species shown on the appropriate table used for timber harvest excise tax purposes under RCW 84.33.091. For purposes of this section, there shall be an eastside region and a westside region as defined in the forests and fish report as defined in RCW 76.09.020.

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

(5) Instead of offering to sell interests in qualifying lands, owners may elect to donate the interests to the state.

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

Sec. 702. RCW 84.33.120 and 1999 c 233 s 20 are each amended to read as follows:

(1) In preparing the assessment rolls as of January 1, 1982, for taxes payable in 1983 and each January 1st thereafter, the assessor shall list each parcel of forest land at a value with respect to the grade and class provided in this subsection and adjusted as provided in subsection (2) of this section and shall compute the assessed value of the land by using the same assessment ratio he or she applies generally in computing the assessed value of other property in his or her county. Values for the several grades of bare forest land shall be as follows.

LAND GRADE	OPERABILITY CLASS	VALUES PER ACRE
1	1	\$141
	2	136
	3	131
	4	95
2	1	118
	2	114
	3	110
	4	80
3	1	93
	2	90
	3	87
	4	66
4	1	70
	2	68
	3	66
	4	52
5	1	51
	2	48
	3	46
	4	31
6	1	26
	2	25
	3	25
	4	23
7	1	12
	2	12
	3	11
	4	11
8		1

(2) On or before December 31, 1981, the department shall adjust, by rule under chapter 34.05 RCW, the forest land values contained in subsection (1) of this section in accordance with this subsection, and shall certify these adjusted values to the county assessor for his or her use in preparing the assessment rolls as of January 1, 1982. For the adjustment to be made on or before December 31, 1981, for use in the 1982 assessment year, the department shall:

(a) Divide the aggregate value of all timber harvested within the state between July 1, 1976, and June 30, 1981, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 82.04.291 and 84.33.071; and

(b) Divide the aggregate value of all timber harvested within the state between July 1, 1975, and June 30, 1980, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 82.04.291 and 84.33.071; and

(c) Adjust the forest land values contained in subsection (1) of this section by a percentage equal to one-half of the percentage change in the average values of harvested timber reflected by comparing the resultant values calculated under (a) and (b) of this subsection.

For the adjustments to be made on or before December 31, 1982, and each succeeding year thereafter, the same procedure shall be followed as described in this subsection utilizing harvester excise tax returns filed under RCW 82.04.291 and this chapter except that this adjustment shall be made to the prior year's adjusted value, and the five-year periods for calculating average harvested timber values shall be successively one year more recent.

(3) In preparing the assessment roll for 1972 and each year thereafter, the assessor shall enter as the true and fair value of each parcel of forest land the appropriate grade value certified to him or her by the department of revenue, and he or she shall compute the assessed value of such land by using the same assessment ratio he or she applies generally in computing the assessed value of other property in his or her county. In preparing the assessment roll for 1975 and each year thereafter, the assessor shall assess and value as classified forest land all forest land that is not then designated pursuant to RCW 84.33.120(4) or 84.33.130 and shall make a notation of such classification upon the assessment and tax rolls. On or before January 15 of the first year in which such notation is made, the assessor shall mail notice by certified mail to the owner that such land has been classified as forest land and is subject to the compensating tax imposed by this section. If the owner desires not to have such land assessed and valued as classified forest land, he or she shall give the assessor written notice thereof on or before March 31 of such year and the assessor shall remove from the assessment and tax rolls the classification notation entered pursuant to this subsection, and shall thereafter assess and value such land in the manner provided by law other than this chapter 84.33 RCW.

(4) In any year commencing with 1972, an owner of land which is assessed and valued by the assessor other than pursuant to the procedures set forth in RCW 84.33.110 and this section, and which has, in the immediately preceding year, been assessed and valued by the assessor as forest land, may appeal to the county board of equalization by filing an application with the board in the manner prescribed in subsection (2) of RCW 84.33.130. The county board shall afford the applicant an opportunity to be heard if the application so requests and shall act upon the application in the manner prescribed in subsection (3) of RCW 84.33.130.

(5) Land that has been assessed and valued as classified forest land as of any year commencing with 1975 assessment year or earlier shall continue to be so assessed and valued until removal of classification by the assessor only upon the occurrence of one of the following events:

- (a) Receipt of notice from the owner to remove such land from classification as forest land;
- (b) Sale or transfer to an ownership making such land exempt from ad valorem taxation;
- (c) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that, because of actions taken by the owner, such land is no longer primarily devoted to and used for growing and harvesting timber. However, land shall not be removed from classification if a governmental agency, organization, or other recipient identified in subsection (9) or (10) of this section as exempt from the payment of compensating tax has manifested its intent in writing or by other official action to acquire a property interest in classified forest land by means of a transaction that qualifies for an exemption under subsection (9) or (10) of this section. The governmental agency, organization, or recipient shall annually provide the assessor of the county in which the land is located reasonable evidence in writing of the intent to acquire the classified land as long as the intent continues or within sixty days of a request by the assessor. The assessor may not request this evidence more than once in a calendar year;
- (d) Determination that a higher and better use exists for such land than growing and harvesting timber after giving the owner written notice and an opportunity to be heard;
- (e) Sale or transfer of all or a portion of such land to a new owner, unless the new owner has signed a notice of forest land classification continuance, except transfer to an owner who is an heir or devisee of a deceased owner, shall not, by itself, result in removal of classification. The signed notice of continuance shall be attached to the real estate excise tax affidavit provided for in RCW 82.45.150. The notice of continuance shall be on a form prepared by the department of revenue. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all compensating taxes calculated pursuant to subsection (7) of this section shall become due and payable by the seller or transferor at time of sale. The county auditor shall not accept an instrument of conveyance of classified forest land for filing or recording unless the new owner has signed the notice of continuance or the compensating tax has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer. The seller,

transferor, or new owner may appeal the new assessed valuation calculated under subsection (7) of this section to the county board of equalization. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals.

The assessor shall remove classification pursuant to (c) or (d) of this subsection prior to September 30 of the year prior to the assessment year for which termination of classification is to be effective. Removal of classification as forest land upon occurrence of (a), (b), (d), or (e) of this subsection shall apply only to the land affected, and upon occurrence of (c) of this subsection shall apply only to the actual area of land no longer primarily devoted to and used for growing and harvesting timber: PROVIDED, That any remaining classified forest land meets necessary definitions of forest land pursuant to RCW 84.33.100.

(6) Within thirty days after such removal of classification as forest land, the assessor shall notify the owner in writing setting forth the reasons for such removal. The owner of such land shall thereupon have the right to apply for designation of such land as forest land pursuant to subsection (4) of this section or RCW 84.33.130. The seller, transferor, or owner may appeal such removal to the county board of equalization.

(7) Unless the owner successfully applies for designation of such land or unless the removal is reversed on appeal, notation of removal from classification shall immediately be made upon the assessment and tax rolls, and commencing on January 1 of the year following the year in which the assessor made such notation, such land shall be assessed on the same basis as real property is assessed generally in that county. Except as provided in subsection (5)(e), (9), or (10) of this section and unless the assessor shall not have mailed notice of classification pursuant to subsection (3) of this section, a compensating tax shall be imposed which shall be due and payable to the county treasurer thirty days after the owner is notified of the amount of the compensating tax. As soon as possible, the assessor shall compute the amount of such compensating tax and mail notice to the owner of the amount thereof and the date on which payment is due. The amount of such compensating tax shall be equal to the difference, if any, between the amount of tax last levied on such land as forest land and an amount equal to the new assessed valuation of such land multiplied by the dollar rate of the last levy extended against such land, multiplied by a number, in no event greater than ten, equal to the number of years, commencing with assessment year 1975, for which such land was assessed and valued as forest land.

(8) Compensating tax, together with applicable interest thereon, shall become a lien on such land which shall attach at the time such land is removed from classification as forest land and shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or responsibility to or with which such land may become charged or liable. Such lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any compensating tax unpaid on its due date shall thereupon become delinquent. From the date of delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

(9) The compensating tax specified in subsection (7) of this section shall not be imposed if the removal of classification as forest land pursuant to subsection (5) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other forest land located within the state of Washington;

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power;

(c) A donation of fee title, development rights, or the right to harvest timber, to a government agency or organization qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections, or the sale or transfer of fee title to a governmental entity or a nonprofit nature conservancy corporation, as defined in RCW 64.04.130, exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan as defined in chapter 79.70 RCW: PROVIDED, That at such time as the land is not used for the purposes enumerated, the compensating tax specified in subsection (7) of this section shall be imposed upon the current owner;

(d) The sale or transfer of fee title to the parks and recreation commission for park and recreation purposes; (({- or -}))

(e) Official action by an agency of the state of Washington or by the county or city within which the land is located that disallows the present use of such land {+;

(f) The creation, sale, or transfer of forestry riparian easements under section 504 of this act; or

(g) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040 +}.



(10) In a county with a population of more than one million inhabitants, the compensating tax specified in subsection (7) of this section shall not be imposed if the removal of classification as forest land pursuant to subsection (5) of this section resulted solely from:

(a) An action described in subsection (9) of this section; or

(b) A transfer of a property interest to a government entity, or to a nonprofit historic preservation corporation or nonprofit nature conservancy corporation, as defined in RCW 64.04.130, to protect or enhance public resources, or to preserve, maintain, improve, restore, limit the future use of, or otherwise to conserve for public use or enjoyment, the property interest being transferred. At such time as the property interest is not used for the purposes enumerated, the compensating tax shall be imposed upon the current owner.

(11) With respect to any land that has been designated prior to May 6, 1974, pursuant to RCW 84.33.120(4) or 84.33.130, the assessor may, prior to January 1, 1975, on his or her own motion or pursuant to petition by the owner, change, without imposition of the compensating tax provided under RCW 84.33.140, the status of such designated land to classified forest land.

Sec. 703. RCW 84.33.140 and 1999 c 233 s 21 are each amended to read as follows:

(1) When land has been designated as forest land pursuant to RCW 84.33.120(4) or 84.33.130, a notation of such designation shall be made each year upon the assessment and tax rolls, a copy of the notice of approval together with the legal description or assessor's tax lot numbers for such land shall, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded, and such land shall be graded and valued pursuant to RCW 84.33.110 and 84.33.120 until removal of such designation by the assessor upon occurrence of any of the following:

(a) Receipt of notice from the owner to remove such designation;

(b) Sale or transfer to an ownership making such land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of such land to a new owner, unless the new owner has signed a notice of forest land designation continuance, except transfer to an owner who is an heir or devisee of a deceased owner, shall not, by itself, result in removal of classification. The signed notice of continuance shall be attached to the real estate excise tax affidavit provided for in RCW 82.45.150. The notice of continuance shall be on a form prepared by the department of revenue. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all compensating taxes calculated pursuant to subsection (3) of this section shall become due and payable by the seller or transferor at time of sale. The county auditor shall not accept an instrument of conveyance of designated forest land for filing or recording unless the new owner has signed the notice of continuance or the compensating tax has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (3) of this section to the county board of equalization. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that:

(i) Such land is no longer primarily devoted to and used for growing and harvesting timber. However, land shall not be removed from designation if a governmental agency, organization, or other recipient identified in subsection (5) or (6) of this section as exempt from the payment of compensating tax has manifested its intent in writing or by other official action to acquire a property interest in designated forest land by means of a transaction that qualifies for an exemption under subsection (5) or (6) of this section. The governmental agency, organization, or recipient shall annually provide the assessor of the county in which the land is located reasonable evidence in writing of the intent to acquire the designated land as long as the intent continues or within sixty days of a request by the assessor. The assessor may not request this evidence more than once in a calendar year;

(ii) The owner has failed to comply with a final administrative or judicial order with respect to a violation of the restocking, forest management, fire protection, insect and disease control and forest debris provisions of Title 76 RCW or any applicable regulations thereunder; or

(iii) Restocking has not occurred to the extent or within the time specified in the application for designation of such land. Removal of designation upon occurrence of any of (a) through (c) of this subsection shall apply only to the land affected, and upon occurrence of (d) of this subsection shall apply only to the actual area of land no longer primarily devoted to and used for growing and harvesting timber, without regard to other land that may have been included in the same application and approval for

designation: PROVIDED, That any remaining designated forest land meets necessary definitions of forest land pursuant to RCW 84.33.100.

(2) Within thirty days after such removal of designation of forest land, the assessor shall notify the owner in writing, setting forth the reasons for such removal. The seller, transferor, or owner may appeal such removal to the county board of equalization.

(3) Unless the removal is reversed on appeal a copy of the notice of removal with notation of the action, if any, upon appeal, together with the legal description or assessor's tax lot numbers for the land removed from designation shall, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded, and commencing on January 1 of the year following the year in which the assessor mailed such notice, such land shall be assessed on the same basis as real property is assessed generally in that county. Except as provided in subsection (1)(c), (5), or (6) of this section, a compensating tax shall be imposed which shall be due and payable to the county treasurer thirty days after the owner is notified of the amount of the compensating tax. As soon as possible, the assessor shall compute the amount of such compensating tax and mail notice to the owner of the amount thereof and the date on which payment is due. The amount of such compensating tax shall be equal to the difference between the amount of tax last levied on such land as forest land and an amount equal to the new assessed valuation of such land multiplied by the dollar rate of the last levy extended against such land, multiplied by a number, in no event greater than ten, equal to the number of years for which such land was designated as forest land.

(4) Compensating tax, together with applicable interest thereon, shall become a lien on such land which shall attach at the time such land is removed from designation as forest land and shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or responsibility to or with which such land may become charged or liable. Such lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any compensating tax unpaid on its due date shall thereupon become delinquent. From the date of delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

(5) The compensating tax specified in subsection (3) of this section shall not be imposed if the removal of designation pursuant to subsection (1) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other forest land located within the state of Washington;

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power;

(c) A donation of fee title, development rights, or the right to harvest timber, to a government agency or organization qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections, or the sale or transfer of fee title to a governmental entity or a nonprofit nature conservancy corporation, as defined in RCW 64.04.130, exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan as defined in chapter 79.70 RCW: PROVIDED, That at such time as the land is not used for the purposes enumerated, the compensating tax specified in subsection (3) of this section shall be imposed upon the current owner;

(d) The sale or transfer of fee title to the parks and recreation commission for park and recreation purposes; (({- or -}))

(e) Official action by an agency of the state of Washington or by the county or city within which the land is located that disallows the present use of such land {+};

(f) The creation, sale, or transfer of forestry riparian easements under section 504 of this act; or

(g) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040 +}.

(6) In a county with a population of more than one million inhabitants, the compensating tax specified in subsection (3) of this section shall not be imposed if the removal of classification as forest land pursuant to subsection (1) of this section resulted solely from:

(a) An action described in subsection (5) of this section; or

(b) A transfer of a property interest to a government entity, or to a nonprofit historic preservation corporation or nonprofit nature conservancy corporation, as defined in RCW 64.04.130, to protect or enhance public resources, or to preserve, maintain, improve, restore, limit the future use of, or otherwise to conserve for public use or enjoyment, the property interest being transferred. At such time as the property interest is not used for the purposes enumerated, the compensating tax shall be imposed upon the current owner.

Sec. 704. RCW 84.33.145 and 1997 c 299 s 3 are each amended to read as follows:

(1) If no later than thirty days after removal of classification or designation the owner applies for classification under RCW 84.34.020 (1), (2), or (3), then the classified or designated forest land shall not be considered removed from classification or designation for purposes of the compensating tax under RCW 84.33.120 or 84.33.140 until the application for current use classification under RCW 84.34.030 is denied or the property is removed from designation under RCW 84.34.108. Upon removal from designation under RCW 84.34.108, the amount of compensating tax due under this chapter shall be equal to:

(a) The difference, if any, between the amount of tax last levied on such land as forest land and an amount equal to the new assessed valuation of such land when removed from designation under RCW 84.34.108 multiplied by the dollar rate of the last levy extended against such land, multiplied by

(b) A number equal to:

(i) The number of years the land was classified or designated under this chapter, if the total number of years the land was classified or designated under this chapter and classified under chapter 84.34 RCW is less than ten; or

(ii) Ten minus the number of years the land was classified under chapter 84.34 RCW, if the total number of years the land was classified or designated under this chapter and classified under chapter 84.34 RCW is at least ten.

(2) Nothing in this section authorizes the continued classification or designation under this chapter or defers or reduces the compensating tax imposed upon forest land not transferred to classification under subsection (1) of this section which does not meet the necessary definitions of forest land under RCW 84.33.100. Nothing in this section affects the additional tax imposed under RCW 84.34.108.

(3) In a county with a population of more than one million inhabitants, no amount of compensating tax is due under this section if the removal from classification under RCW 84.34.108 results from a transfer of property described in RCW 84.34.108(~~(5)~~) ~~(- )~~ ~~(+ )~~.

Sec. 705. RCW 84.34.080 and 1992 c 69 s 11 are each amended to read as follows:

When land which has been classified under this chapter as open space land, farm and agricultural land, or timber land is applied to some other use, except through compliance with RCW 84.34.070, or except as a result solely from any one of the conditions listed in RCW 84.34.108(~~(5)~~) ~~(- )~~ ~~(+ )~~, the owner shall within sixty days notify the county assessor of such change in use and additional real property tax shall be imposed upon such land in an amount equal to the sum of the following:

(1) The total amount of the additional tax and applicable interest due under RCW 84.34.108; plus

(2) A penalty amounting to twenty percent of the amount determined in subsection (1) of this section.

Sec. 706. RCW 84.34.108 and 1999 c 139 s 2 are each amended to read as follows:

(1) When land has once been classified under this chapter, a notation of such classification shall be made each year upon the assessment and tax rolls and such land shall be valued pursuant to RCW 84.34.060 or 84.34.065 until removal of all or a portion of such classification by the assessor upon occurrence of any of the following:

(a) Receipt of notice from the owner to remove all or a portion of such classification;

(b) Sale or transfer to an ownership, except a transfer that resulted from a default in loan payments made to or secured by a governmental agency that intends to or is required by law or regulation to resell the property for the same use as before, making all or a portion of such land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of such land to a new owner, unless the new owner has signed a notice of classification continuance, except transfer to an owner who is an heir or devisee of a deceased owner shall not, by itself, result in removal of classification. (~~(- The signed notice of continuance shall be attached to the real estate excise tax affidavit provided for in RCW 82.45.150. -)~~) The notice of continuance shall be on a form prepared by the department of revenue. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all additional taxes calculated pursuant to subsection (~~(3)~~) ~~(- )~~ ~~(+ )~~ of this section shall become due and payable by the seller or transferor at time of sale. The county auditor shall not accept an instrument of conveyance of classified land for filing or recording unless the new owner has signed the notice of continuance or the additional tax has been paid. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (~~(3)~~) ~~(- )~~ ~~(+ )~~ of this section to the county board of equalization. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that all or a portion of such land no longer meets the criteria for classification under this chapter. The criteria for classification pursuant to this chapter continue to apply after classification has been granted.

The granting authority, upon request of an assessor, shall provide reasonable assistance to the assessor in making a determination whether such land continues to meet the qualifications of RCW 84.34.020 (1) or (3). The assistance shall be provided within thirty days of receipt of the request.

(2) {+ Land may not be removed from classification because of:

(a) The creation, sale, or transfer of forestry riparian easements under section 504 of this act; or

(b) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040.

(3) {+} Within thirty days after such removal of all or a portion of such land from current use classification, the assessor shall notify the owner in writing, setting forth the reasons for such removal. The seller, transferor, or owner may appeal such removal to the county board of equalization.

(({- (3) -})) {+ (4) +} Unless the removal is reversed on appeal, the assessor shall revalue the affected land with reference to full market value on the date of removal from classification. Both the assessed valuation before and after the removal of classification shall be listed and taxes shall be allocated according to that part of the year to which each assessed valuation applies. Except as provided in subsection (({- (5) -})) {+ (6) +} of this section, an additional tax, applicable interest, and penalty shall be imposed which shall be due and payable to the county treasurer thirty days after the owner is notified of the amount of the additional tax. As soon as possible, the assessor shall compute the amount of such an additional tax, applicable interest, and penalty and the treasurer shall mail notice to the owner of the amount thereof and the date on which payment is due. The amount of such additional tax, applicable interest, and penalty shall be determined as follows:

(a) The amount of additional tax shall be equal to the difference between the property tax paid as "open space land", "farm and agricultural land", or "timber land" and the amount of property tax otherwise due and payable for the seven years last past had the land not been so classified;

(b) The amount of applicable interest shall be equal to the interest upon the amounts of such additional tax paid at the same statutory rate charged on delinquent property taxes from the dates on which such additional tax could have been paid without penalty if the land had been assessed at a value without regard to this chapter;

(c) The amount of the penalty shall be as provided in RCW 84.34.080. The penalty shall not be imposed if the removal satisfies the conditions of RCW 84.34.070.

(({- (4) -})) {+ (5) +} Additional tax, applicable interest, and penalty, shall become a lien on such land which shall attach at the time such land is removed from classification under this chapter and shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or responsibility to or with which such land may become charged or liable. Such lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050 now or as hereafter amended. Any additional tax unpaid on its due date shall thereupon become delinquent. From the date of delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

(({- (5) -})) {+ (6) +} The additional tax, applicable interest, and penalty specified in subsection (({- (3) -})) {+ (4) +} of this section shall not be imposed if the removal of classification pursuant to subsection (1) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other land located within the state of Washington;

(b)(i) A taking through the exercise of the power of eminent domain, or (ii) sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power, said entity having manifested its intent in writing or by other official action;

(c) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the landowner changing the use of such property;

(d) Official action by an agency of the state of Washington or by the county or city within which the land is located which disallows the present use of such land;

(e) Transfer of land to a church when such land would qualify for exemption pursuant to RCW 84.36.020;

(f) Acquisition of property interests by state agencies or agencies or organizations qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections: PROVIDED, That at such time as

these property interests are not used for the purposes enumerated in RCW 84.34.210 and 64.04.130 the additional tax specified in subsection (({- (3) -})) {+ (4) +} of this section shall be imposed;

(g) Removal of land classified as farm and agricultural land under RCW 84.34.020(2)(d); (({- or -}))

(h) Removal of land from classification after enactment of a statutory exemption that qualifies the land for exemption and receipt of notice from the owner to remove the land from classification {+ ;

(i) The creation, sale, or transfer of forestry riparian easements under section 504 of this act; or

(j) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040 +}.

{+ NEW SECTION. +} Sec. 707. A new section is added to chapter 76.09 RCW to read as follows:

Prior to the sale or transfer of land or perpetual timber rights subject to continuing forest land obligations under the forest practices rules adopted under section 204 of this act, as specifically identified in the forests and fish report the seller shall notify the buyer of the existence and nature of such a continuing obligation and the buyer shall sign a notice of continuing forest land obligation indicating the buyer's knowledge thereof. The notice shall be on a form prepared by the department and shall be sent to the department by the seller at the time of sale or transfer of the land or perpetual timber rights and retained by the department. If the seller fails to notify the buyer about the continuing forest land obligation, the seller shall pay the buyer's costs related to such continuing forest land obligation, including all legal costs and reasonable attorneys' fees, incurred by the buyer in enforcing the continuing forest land obligation against the seller. Failure by the seller to send the required notice to the department at the time of sale shall be prima facie evidence, in an action by the buyer against the seller for costs related to the continuing forest land obligation, that the seller did not notify the buyer of the continuing forest land obligation prior to sale.

## **PART VIII ENFORCEMENT**

Sec. 801. RCW 76.09.140 and 1993 c 482 s 1 are each amended to read as follows:

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

(2) On request of the department, the attorney general may take action necessary to enforce this chapter, including, but not limited to (({- , -})) {+ : S +} seeking penalties, {+ interest, costs, and attorneys' fees; +} enforcing final orders or decisions (({- , -})) {+ ; +} and seeking civil injunctions, show cause orders, or contempt orders.

(3) A county may bring injunctive, declaratory, or other actions for enforcement for forest practice activities within its jurisdiction in the superior court as provided by law against the department, the forest landowner, timber owner or operator to enforce the forest practice (({- regulations -})) {+ rules +} or any final order of the department, or the appeals board. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department. Injunctions, declaratory actions, or other actions for enforcement under this subsection may not be commenced unless the department fails to take appropriate action after ten days written notice to the department by the county of a violation of the forest practices rules or final orders of the department or the appeals board.

- {+ (4)(a) The department may require financial assurance prior to the conduct of any further forest practices from an operator or landowner who within the preceding three-year period has:
- (i) Operated without an approved forest practices application, other than an unintentional operation in connection with an approved application outside the approved boundary of such an application;
  - (ii) Continued to operate in breach of, or failed to comply with, the terms of an effective stop work order or notice to comply; or
  - (iii) Failed to pay any civil or criminal penalty.
- (b) The department may deny any application for failure to submit financial assurances as required. +}

Sec. 802. RCW 76.09.150 and 1974 ex.s. c 137 s 15 are each amended to read as follows:

{+ (1) +} The department shall make inspections of forest lands, before, during and after the conducting of forest practices as necessary for the purpose of (({- insuring -})) {+ ensuring +} compliance with this chapter and the forest practice {+ s +} (({- regulations -})) {+ rules +} and to (({- insure -})) {+ ensure +} that no material damage occurs to the natural resources of this state as a result of such practices.

{+ (2) +} Any duly authorized representative of the department shall have the right to enter upon forest land at any reasonable time to enforce the provisions of this chapter and the forest practices (({- regulations -})) {+ rules +}.

{+ (3) The department or the department of ecology may apply for an administrative inspection warrant to either Thurston county superior court, or the superior court in the county in which the property is located. An administrative inspection warrant may be issued where:

(a) The department has attempted an inspection of forest lands under this chapter to ensure compliance with this chapter and the forest practice rules or to ensure that no potential or actual material damage occurs to the natural resources of this state, and access to all or part of the forest lands has been actually or constructively denied; or

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

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

Sec. 803. RCW 76.09.170 and 1993 c 482 s 2 are each amended to read as follows:

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

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

- (a) Previous violation history;
- (b) Severity of the impact on public resources;
- (c) Whether the violation of this chapter or its rules was intentional;
- (d) Cooperation with the department;
- (e) Repairability of the adverse effect from the violation; and

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

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

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

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

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

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

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

## **PART IX WATERSHED ANALYSIS**

Sec. 901. RCW 76.09.010 and 1993 c 443 s 1 are each amended to read as follows:

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

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

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

- (b) Afford protection to forest soils and public resources by utilizing all reasonable methods of technology in conducting forest practices;
  - (c) Recognize both the public and private interest in the profitable growing and harvesting of timber;
  - (d) Promote efficiency by permitting maximum operating freedom consistent with the other purposes and policies stated herein;
  - (e) Provide for regulation of forest practices so as to avoid unnecessary duplication in such (({- regulation -})) {+ rules +};
  - (f) Provide for interagency input and intergovernmental and tribal coordination and cooperation;
  - (g) Achieve compliance with all applicable requirements of federal and state law with respect to nonpoint sources of water pollution from forest practices;
  - (h) To consider reasonable land use planning goals and concepts contained in local comprehensive plans and zoning regulations; (({- and -}))
  - (i) Foster cooperation among managers of public resources, forest landowners, Indian tribes and the citizens of the state{+ ; and
  - (j) Develop a watershed analysis system that addresses the cumulative effect of forest practices on, at a minimum, the public resources of fish, water, and public capital improvements of the state and its political subdivisions +}.
- (3) The legislature further finds and declares that it is also in the public interest of the state to encourage forest landowners to undertake corrective and remedial action to reduce the impact of mass earth movements and fluvial processes.
- (4) The legislature further finds and declares that it is in the public interest that the applicants for state forest practice{+ s +} permits should assist in paying for the cost of review and permitting necessary for the environmental protection of these resources.

Sec. 902. RCW 76.09.220 and 1999 c 90 s 1 are each amended to read as follows:

- (1) The appeals board shall operate on either a part-time or a full-time basis, as determined by the governor. If it is determined that the appeals board shall operate on a full-time basis, each member shall receive an annual salary to be determined by the governor. If it is determined that the appeals board shall operate on a part-time basis, each member shall be compensated in accordance with RCW 43.03.250. The director of the environmental hearings office shall make the determination, required under RCW 43.03.250, as to what statutorily prescribed duties, in addition to attendance at a hearing or meeting of the board, shall merit compensation. This compensation shall not exceed ten thousand dollars in a fiscal year. Each member shall receive reimbursement for travel expenses incurred in the discharge of his {+ or her +} duties in accordance with the provisions of RCW 43.03.050 and 43.03.060.
- (2) The appeals board shall as soon as practicable after the initial appointment of the members thereof, meet and elect from among its members a chair, and shall at least biennially thereafter meet and elect or reelect a chair.
- (3) The principal office of the appeals board shall be at the state capital, but it may sit or hold hearings at any other place in the state. A majority of the appeals board shall constitute a quorum for making orders or decisions, (({- promulgating -})) {+ adopting +} rules (({- and regulations -})) necessary for the conduct of its powers and duties, or transacting other official business, and may act though one position on the board be vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The appeals board shall perform all the powers and duties granted to it in this chapter or as otherwise provided by law.
- (4) The appeals board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decision shall be effective upon being signed by two or more members and upon being filed at the appeals board's principal office, and shall be open to public inspection at all reasonable times.
- (5) The appeals board shall either publish at its expense or make arrangements with a publishing firm for the publication of those of its findings and decisions which are of general public interest, in such form as to assure reasonable distribution thereof.
- (6) The appeals board shall maintain at its principal office a journal which shall contain all official actions of the appeals board, with the exception of findings and decisions, together with the vote of each member on such actions. The journal shall be available for public inspection at the principal office of the appeals board at all reasonable times.



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

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

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

\*{+ NEW SECTION. +} Sec. 903. In order to facilitate healthy streams and foster salmonid recovery efforts, the department of natural resources shall conduct a survey of publicly held lands in Washington with unconfined avulsing streams as defined in section 301 of this act that do not have sufficient forest canopy to adequately shade such streams. By January 1, 2001, the department shall report such findings to the legislature along with the reasons for the lack of canopy and an estimate of the resources needed and a schedule for reforestation of such lands. \*Sec. 903 was vetoed. See message at end of chapter.

## **PART X FOREST PRACTICES BOARD COMPOSITION**

Sec. 1001. RCW 76.09.030 and 1995 c 399 s 207 are each amended to read as follows:

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

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

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

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

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

(e) {+ The director of the department of fish and wildlife or the director's designee;

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

(({- (f) -}) {+ (g) +} Six members of the general public appointed by the governor, one of whom shall be an owner of not more than five hundred acres of forest land, and one of whom shall be an independent logging contractor.

(2) {+ The director of the department of fish and wildlife's service on the board may be terminated two years after the effective date of this section if the legislature finds that after two years the department has not made substantial progress toward integrating the laws, rules, and programs governing forest practices, chapter 76.09 RCW, and the laws, rules, and programs governing hydraulic projects, chapter 75.20 RCW. Such a finding shall be based solely on whether the department of fish and wildlife makes substantial progress as defined in this subsection, and will not be based on other actions taken as a member of the board. Substantial progress shall include recommendations to the legislature for closer integration of the existing rule-making authorities of the board and the department of fish and wildlife, and closer integration of the forest practices and hydraulics permitting processes, including exploring the potential for a consolidated permitting process. These recommendations shall be designed to resolve problems currently associated with the existing dual regulatory and permitting processes.

(3) +} The members of the initial board appointed by the governor shall be appointed so that the term of one member shall expire December 31, 1975, the term of one member shall expire December 31, 1976, the term of one member shall expire December 31, 1977, the terms of two members shall expire December 31, 1978, and the terms of two members shall expire December 31, 1979. Thereafter, each member shall be appointed for a term of four years. Vacancies on the board shall be filled in the same manner as the original appointments. Each member of the board shall continue in office until his or her successor is

appointed and qualified. The commissioner of public lands or the commissioner's designee shall be the chairman of the board.

(({- (3) -})) {+ (4) +} The board shall meet at such times and places as shall be designated by the chairman or upon the written request of the majority of the board. The principal office of the board shall be at the state capital.

(({- (4) -})) {+ (5) +} Members of the board, except public employees and elected officials, shall be compensated in accordance with RCW 43.03.250. Each member shall be entitled to reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060.

(({- (5) -})) {+ (6) +} The board may employ such clerical help and staff pursuant to chapter 41.06 RCW as is necessary to carry out its duties.

## **PART XI WATER QUALITY COORDINATION**

Sec. 1101. RCW 90.48.420 and 1975 1st ex.s. c 200 s 13 are each amended to read as follows:

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

(({- Promulgation -})) {+ Adoption +} of forest practices (({- regulations -})) {+ rules +} pertaining to water quality +} by (({- the department of ecology and -})) the forest practices board(({- , -})) shall be accomplished {+ after reaching agreement with the director of the department or the director's designee on the board. Adoption shall be accomplished +} so that compliance with such forest practice (({- regulations -})) {+ rules +} will achieve compliance with water pollution control laws.

(2) The department of ecology shall monitor water quality to determine whether revisions in such water quality standards or revisions in such forest practices (({- regulations -})) {+ rules +} are necessary to accomplish the foregoing result, and either (({- promulgate -})) {+ adopt +} appropriate revisions to such water quality standards or propose appropriate revisions to such forest practices (({- regulations -})) {+ rules +} or both.

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

(4) Prior to the department of ecology taking action under statutes or (({- regulations -})) {+ rules +} relating to water quality, regarding violations of water quality standards arising from forest practices, the department of ecology shall notify the department of natural resources.

## **PART XII STATE ENVIRONMENTAL POLICY ACT**

{+ NEW SECTION. +} Sec. 1201. A new section is added to chapter 43.21C RCW to read as follows:

(1) Decisions pertaining to the following kinds of actions under chapter . . . , Laws of 1999 1st sp. sess. (this act) are not subject to any procedural requirements implementing RCW 43.21C.030(2)(c): (a) Approval of forest road maintenance and abandonment plans under chapter 76.09 RCW and RCW 75.20.100; (b) approval by the department of natural resources of future timber harvest schedules involving east-side clear cuts under rules implementing chapter 76.09 RCW; (c) acquisitions of forest lands in stream channel migration zones under RCW 76.09.040; and (d) acquisitions of conservation easements pertaining to forest lands in riparian zones under section 504 of this act.

(2) For purposes of the department's threshold determination on a watershed analysis, the department shall not make a determination of significance unless the prescriptions themselves, compared to rules or prescriptions in place prior to the analysis, will cause probable significant adverse impact on elements of the environment other than those addressed in the watershed analysis process. Nothing in this subsection shall be construed to effect the outcome of pending litigation regarding the department's authority in making a threshold determination on a watershed analysis.

### **PART XIII FEDERAL ASSURANCES**

{+ NEW SECTION. +} Sec. 1301. A new section is added to chapter 75.46 RCW under the subchapter heading "federal assurances related to forest practices conducted under the state salmon recovery strategy" to read as follows:

(1) Chapter . . . , Laws of 1999 1st sp. sess. (this act) has been enacted on the assumption that the federal assurances described in the forests and fish report as defined in RCW 76.09.020 will be obtained and that forest practices conducted in accordance with chapter . . . , Laws of 1999 1st sp. sess. (this act) and the rules adopted under chapter . . . , Laws of 1999 1st sp. sess. (this act) will not be subject to additional regulations or restrictions for aquatic resources except as provided in the forests and fish report.

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

(a) Either (i) the national marine fisheries service or the United States fish and wildlife service fails to promulgate an effective rule under 16 U.S.C. Sec. 1533(d) covering each aquatic resource that is listed as threatened under the endangered species act within two years after the date on which the aquatic resource is so listed or, in the case of bull trout, within two years after the effective date of this section; or (ii) any such rule fails to permit any incidental take that would occur from the conduct of forest practices in compliance with the rules adopted under chapter . . . , Laws of 1999 1st sp. sess. (this act) or fails to confirm that such forest practices would not otherwise be in violation of the endangered species act and the regulations promulgated under that act. However, this subsection (2)(a) is not applicable to any aquatic resource covered by an incidental take permit described in (c) of this subsection;

(b) Either the national marine fisheries service or the United States fish and wildlife service shall promulgate an effective rule under 16 U.S.C. Sec. 1533(d) covering any aquatic resource that would preclude the conduct of forest practices consistent with the prescriptions outlined in the forests and fish report. However, this subsection (2)(b) is not applicable to any aquatic resource covered by an incidental take permit described in (c) of this subsection;

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

(d) Either the national marine fisheries service or the United States fish and wildlife service fails to promulgate an effective rule under 16 U.S.C. Sec. 1533(d) within five years after the date on which a fish species is listed as threatened or endangered under the endangered species act which prohibits actions listed under 16 U.S.C. 1538;

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

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

Upon the occurrence of a failure of assurances, any agency, tribe, or other interested person including, without limitation, any forest landowner, may provide written notice of the occurrence of such failure of assurances to the legislature and to the office of the governor. Promptly upon receipt of such a notice, the governor shall review relevant information and if he or she determines that a failure of assurances has occurred, the governor shall make such a finding in a written report with recommendations and deliver such report to the legislature. Upon notice of the occurrence of a failure of assurances, the legislature shall

review chapter . . ., Laws of 1999 1st sp. sess. (this act), all rules adopted by the forest practices board, the department of ecology, or the department of fish and wildlife at any time after January 1, 1999, that were adopted primarily for the protection of one or more aquatic resources and affect forest practices and the terms of the forests and fish report, and shall take such action, including the termination of funding or the modification of other statutes, as it deems appropriate.

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

#### **PART XIV MISCELLANEOUS**

{+ NEW SECTION. +} Sec. 1401. RCW 90.28.150 (Improving streams for logging) and 1891 c 120 s 1 are each repealed.

{+ NEW SECTION. +} Sec. 1402. A new section is added to chapter 76.09 RCW to read as follows:  
The forests and fish account is created in the state treasury. Receipts from appropriations, federal grants, and gifts from private organizations and individuals or other sources may be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may only be used for the establishment and operation of the small forest landowner office under section 503 of this act, the purchase of easements under section 504 of this act, the purchase of lands under RCW 76.09.040, or other activities necessary to implement chapter . . ., Laws of 1999 1st sp. sess. (this act).

{+ NEW SECTION. +} Sec. 1403. Part headings used in this act are not any part of the law.

\*{+ NEW SECTION. +} Sec. 1404. If by December 31, 2004, harvest levels of Snake river fall chinook salmon, Lower Columbia river wild chinook salmon and Willamette river spring chinook salmon in Alaskan waters are not reduced twenty-five percent from 1997 harvest levels, this act is null and void.  
\*Sec. 1404 was vetoed. See message at end of chapter.

{+ NEW SECTION. +} Sec. 1405. Sections 201, 202, and 203 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

Passed the House May 19, 1999.

Passed the Senate May 17, 1999.

Approved by the Governor June 7, 1999, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State June 7, 1999.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 903 and 1404, Engrossed Substitute House Bill No. **2091** entitled:

"AN ACT Relating to forest practices as they affect the recovery of salmon and other aquatic resources;"

Engrossed Substitute House Bill No. **2091** establishes legislative direction for the use of the Forest and Fish Report of February 1999, prepared by the Forest Practices Board, to protect salmon habitat and water quality.

Section 903 of the bill would direct the Department of Natural Resources to evaluate certain publicly held lands, report the reasons those lands may not provide sufficient shade to streams, and estimate the resources needed to reforest the lands. This activity would involve considerable staff time and expense (approximately \$250,000) and money for it was not included in the budget passed by the legislature. Given the funding strain already inherent in the requirements of this legislation, I prefer to veto this section.

Section 1404 of the bill would make this act null and void if harvest levels of certain salmon runs in Alaskan waters were not reduced by twenty-five percent by December 31, 2004. This section was added to the bill immediately prior to final passage and was not part of the negotiated package. It is vague and ambiguous. Further, it would provide an unnecessary linkage between two distinct elements of a comprehensive salmon protection strategy. It would jeopardize the goal of long-term certainty intended with this legislation, risk the loss of federal assurances against certain types of lawsuits due to the incidental take of salmon, and make unworkable long-term incentive programs such as the forestry riparian easement program.

For these reasons, I have vetoed sections 903 and 1404 of Engrossed Substitute House Bill No. **2091**. With the exception of sections 903 and 1404, ESHB **2091** is approved."