

Appendix C.

C



C. 1999 Forests and Fish Law (Engrossed Substitute House Bill 2091)

The Washington Legislature passed the 1999 Salmon Recovery Act (also known as the “Forests and Fish Law” and ESHB 2091), directing the Forest Practices Board to adopt forest practices rules consistent with the recommendations in the Forests and Fish Report (Appendix B).

This page is intentionally left blank.

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE 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

R. LORRAINE WOJAHN
President of the Senate

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

GARY LOCKE
Governor of the State of Washington

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

FILED
June 7, 1999 - 1:38 p.m.

**Secretary of State
State of Washington**

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.

1 AN ACT Relating to forest practices as they affect the recovery of
2 salmon and other aquatic resources; amending RCW 76.09.020, 76.13.010,
3 76.42.060, 76.09.330, 76.09.040, 84.33.120, 84.33.140, 84.33.145,
4 84.34.080, 84.34.108, 76.09.140, 76.09.150, 76.09.170, 76.09.010,
5 76.09.220, 76.09.030, and 90.48.420; adding new sections to chapter
6 75.46 RCW; adding new sections to chapter 76.09 RCW; adding a new
7 section to chapter 34.05 RCW; adding new sections to chapter 43.21C
8 RCW; adding a new section to chapter 84.33 RCW; adding new sections to
9 chapter 76.13 RCW; creating new sections; repealing RCW 90.28.150; and
10 declaring an emergency.

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

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

15 (1) The legislature finds that the forests and fish report as
16 defined in RCW 76.09.020 was developed through extensive negotiations
17 with the federal agencies responsible for administering the endangered
18 species act and the clean water act. The legislature further finds
19 that the forestry industry, small landowners, tribal governments, state

1 and federal agencies, and counties have worked diligently for nearly
2 two years to reach agreement on scientifically based changes to the
3 forest practices rules, set forth in the forests and fish report as
4 defined in RCW 76.09.020. The legislature further finds that if
5 existing forest practices rules are amended as proposed in the forests
6 and fish report as defined in RCW 76.09.020, the resulting changes in
7 forest practices (a) will lead to: (i) Salmon habitat that meets
8 riparian functions vital to the long-term recovery of salmon on more
9 than sixty thousand miles of streams in this state; (ii) identification
10 of forest roads contributing to habitat degradation and corrective
11 action to remedy those problems to protect salmon habitat; (iii)
12 increased protection of steep and unstable slopes; and (iv) the
13 implementation of scientifically based adaptive management and
14 monitoring processes for evaluating the impacts of forest practices on
15 aquatic resources, as defined in RCW 76.09.020, and a process for
16 amending the forest practices rules to incorporate new information as
17 it becomes available; (b) will lead to the protection of aquatic
18 resources to the maximum extent practicable consistent with maintaining
19 commercial forest management as an economically viable use of lands
20 suitable for that purpose; and (c) will provide a regulatory climate
21 and structure more likely to keep landowners from converting forest
22 lands to other uses that would be less desirable for salmon recovery.

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

33 (3) The legislature finds that coordination is needed between the
34 laws relating to forestry in chapter 76.09 RCW and the state salmon
35 recovery strategy being developed under this chapter. The coordination
36 should ensure that nonfederal forest lands are managed in ways that
37 make appropriate contributions to the recovery of salmonid fish, water
38 quality, and related environmental amenities while encouraging
39 continued investments in those lands for commercial forestry purposes.

1 Specifically, the legislature finds that forest practices rules
2 relating to water quality, salmon, certain other species of fish,
3 certain species of stream-associated amphibians, and their respective
4 habitats should be coordinated with the rules and policies relating to
5 other land uses through the state-wide salmon recovery planning
6 process. The legislature further finds that this subchapter is but one
7 part of a comprehensive salmon strategy as required in this chapter,
8 and this investment in salmon habitat will be of little value if a
9 comprehensive state plan is not completed and fully implemented.

10 (4) The legislature recognizes that the adoption of forest
11 practices rules consistent with the forests and fish report as defined
12 in RCW 76.09.020 will impose substantial financial burdens on forest
13 landowners which, if not partially offset through other changes in the
14 laws and rules governing forestry, could lead to significantly reduced
15 silvicultural investments on nonfederal lands, deterioration in the
16 quality, condition, and amounts of forests on those lands, and long-
17 term adverse effects on fish and wildlife habitat and other
18 environmental amenities associated with well managed forests.
19 Moreover, as the benefits of the proposed revisions to the forest
20 practices rules will benefit the general public, chapter . . . , Laws of
21 1999 1st sp. sess. (this act) suggests that some of these costs be
22 shared with the general public.

23 (5) As an integral part of implementing the salmon recovery
24 strategy, chapter . . . , Laws of 1999 1st sp. sess. (this act) (a)
25 provides direction to the forest practices board, the department of
26 natural resources, and the department of ecology with respect to the
27 adoption, implementation, and enforcement of rules relating to forest
28 practices and the protection of aquatic resources; (b) provides
29 additional enforcement tools to the department of natural resources to
30 enforce the forest practices rules; (c) anticipates the need for
31 adequate and consistent funding for the various programmatic elements
32 necessary to fully implement the strategy over time and derive the
33 long-term benefits; (d) provides for the acquisition by the state of
34 forest lands within certain stream channel migration zones where timber
35 harvest will not be allowed; (e) provides for small landowners to have
36 costs shared for a portion of any extraordinary economic losses
37 attributable to the revisions to the forest practices rules required by
38 chapter . . . , Laws of 1999 1st sp. sess. (this act); and (f) amends

1 other existing laws to aid in the implementation of the recommendations
2 set forth in the forests and fish report as defined in RCW 76.09.020.

3 **PART II**
4 **RULE MAKING**

5 NEW SECTION. **Sec. 201.** A new section is added to chapter 76.09
6 RCW to read as follows:

7 (1) The legislature finds that the declines of fish stocks
8 throughout much of the state requires immediate action to be taken to
9 help restore these fish runs where possible. The legislature also
10 recognizes that federal and state agencies, tribes, county
11 representatives, and private timberland owners have spent considerable
12 effort and time to develop the forests and fish report. Given the
13 agreement of the parties, the legislature believes that the immediate
14 adoption of emergency rules is appropriate in this particular instance.
15 These rules can implement many provisions of the forests and fish
16 report to protect the economic well-being of the state, and to minimize
17 the risk to the state and landowners to legal challenges. This
18 authority is not designed to set any precedents for the forest
19 practices board in future rule making or set any precedents for other
20 rule-making bodies of the state.

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

1 board may only adopt recommendations contained in the forests and fish
2 report as emergency rules under this section.

3 NEW SECTION. **Sec. 202.** A new section is added to chapter 34.05
4 RCW to read as follows:

5 Emergency rules adopted by the forest practices board pertaining to
6 forest practices and the protection of aquatic resources are subject to
7 this chapter to the extent provided in section 201 of this act.

8 NEW SECTION. **Sec. 203.** A new section is added to chapter 43.21C
9 RCW to read as follows:

10 The duration and process for adopting emergency rules by the forest
11 practices board pertaining to forest practices and the protection of
12 aquatic resources as provided in section 201 of this act are exempt
13 from the procedural requirements of this chapter.

14 NEW SECTION. **Sec. 204.** A new section is added to chapter 76.09
15 RCW to read as follows:

16 (1) The legislature finds that the process that produced the
17 forests and fish report was instigated by the forest practices board,
18 the report is the product of considerable negotiations between several
19 diverse interest groups, and the report has the support of key federal
20 agencies. When adopting permanent rules under this section, the forest
21 practices board is strongly encouraged to follow the recommendations of
22 the forests and fish report, but may include other alternatives for
23 protection of aquatic resources. If the forest practices board chooses
24 to adopt rules under this section that are not consistent with the
25 recommendations contained in the forests and fish report, the board
26 must notify the appropriate legislative committees of the proposed
27 deviations, the reasons for the proposed deviations, and whether the
28 parties to the forests and fish report still support the agreement.
29 The board shall defer final adoption of such rules for sixty days of
30 the legislative session to allow for the opportunity for additional
31 public involvement and legislative oversight.

32 (2) The forest practices board shall follow the regular rules
33 adoption process contained in the administrative procedure act, chapter
34 34.05 RCW, when adopting permanent rules pertaining to forest practices
35 and the protection of aquatic resources except as limited by subsection
36 (1) of this section. The permanent rules must accomplish the policies

1 stated in RCW 76.09.010 without jeopardizing the economic viability of
2 the forest products industry.

3 (3) The rules adopted under this section should be as specific as
4 reasonably possible while also allowing an applicant to propose
5 alternate plans in response to site-specific physical features.
6 Alternate plans should provide protection to public resources at least
7 equal in overall effectiveness by alternate means.

8 (4) Rule making under subsection (2) of this section shall be
9 completed by June 30, 2001.

10 (5) The board should consider coordinating any environmental review
11 process under chapter 43.21C RCW relating to the adoption of rules
12 under subsection (2) of this section with any review of a related
13 proposal under the national environmental policy act (42 U.S.C. Sec.
14 4321, et seq.).

15 (6) After the board has adopted permanent rules under subsection
16 (2) of this section, changes to those rules and any new rules covering
17 aquatic resources may be adopted by the board but only if the changes
18 or new rules are consistent with recommendations resulting from the
19 scientifically based adaptive management process established by a rule
20 of the board. Any new rules or changes under this subsection need not
21 be based upon the recommendations of the adaptive management process
22 if: (a) The board is required to adopt or modify rules by the final
23 order of any court having jurisdiction thereof; or (b) future state
24 legislation directs the board to adopt or modify the rules.

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

37 NEW SECTION. **Sec. 205.** A new section is added to chapter 76.09
38 RCW to read as follows:

1 Prior to the adoption of permanent rules as required by chapter
2 . . . , Laws of 1999 1st sp. sess. (this act) and no later than January
3 1, 2000, the board shall report to the appropriate legislative
4 committees regarding the substance of emergency rules that have been
5 adopted under chapter . . . , Laws of 1999 1st sp. sess. (this act). In
6 addition, the report shall include information on changes made to the
7 forests and fish report after April 29, 1999, and an update on the
8 status of the adoption of permanent rules, including the anticipated
9 substance of the rules and the anticipated date of final adoption. The
10 board shall additionally provide a report to the appropriate
11 legislative committees by January 1, 2001.

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

17 **PART III**
18 **DEFINITIONS**

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

21 For purposes of this chapter:

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

25 (2) "Appeals board" (~~shall~~) means the forest practices appeals
26 board created by RCW 76.09.210.

27 (~~(2)~~) (3) "Aquatic resources" includes water quality, salmon,
28 other species of the vertebrate classes Cephalaspidomorphi and
29 Osteichthyes identified in the forests and fish report, the Columbia
30 torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent
31 salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander
32 (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dumni*), the
33 Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus*
34 truei), and their respective habitats.

35 (4) "Commissioner" (~~shall~~) means the commissioner of public
36 lands.

1 (~~(3)~~) (5) "Contiguous" (~~(shall)~~) means land adjoining or touching
2 by common corner or otherwise. Land having common ownership divided by
3 a road or other right of way shall be considered contiguous.

4 (~~(4)~~) (6) "Conversion to a use other than commercial timber
5 operation" (~~(shall)~~) means a bona fide conversion to an active use
6 which is incompatible with timber growing and as may be defined by
7 forest practices (~~(regulations)~~) rules.

8 (~~(5)~~) (7) "Department" (~~(shall)~~) means the department of natural
9 resources.

10 (~~(6)~~) (8) "Forest land" (~~(shall)~~) means all land which is capable
11 of supporting a merchantable stand of timber and is not being actively
12 used for a use which is incompatible with timber growing.

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

22 (~~(8)~~) (10) "Forest practice" (~~(shall)~~) means any activity
23 conducted on or directly pertaining to forest land and relating to
24 growing, harvesting, or processing timber, including but not limited
25 to:

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

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

1 NEW SECTION. **Sec. 401.** A new section is added to chapter 84.33

2 RCW to read as follows:

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

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

11 (b) For a small harvester who elects to calculate tax under RCW
12 84.33.074, the credit is equal to sixteen percent of the tax imposed
13 under this chapter.

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

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

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

1 chapter 76.09 RCW, the forest practices act, or a federally approved
2 habitat conservation plan.

3 (4) For forest practices notification or applications submitted
4 after January 1, 2000, the department of natural resources shall
5 indicate whether the notification or application is subject to enhanced
6 aquatic resource requirements and, unless notified of a contrary
7 determination by the forest practices appeals board, the department of
8 revenue shall use such indication in determining the credit to be
9 allowed against the tax assessed under RCW 84.33.041. The department
10 of natural resources shall develop revisions to the form of the forest
11 practices notifications and applications to provide a space for the
12 applicant to indicate and the department of natural resources to
13 confirm or not confirm, whether the notification or application is
14 subject to enhanced aquatic resource requirements. For forest
15 practices notifications or applications submitted before January 1,
16 2000, the applicant may submit the approved notification or application
17 to the department of natural resources for confirmation that the
18 notification or application is subject to enhanced aquatic resource
19 requirements. Upon any such submission, the department of natural
20 resources will within thirty days confirm or deny that the notification
21 or application is subject to enhanced aquatic resource requirements and
22 will forward separate evidence of each confirmation to the department
23 of revenue. Unless notified of a contrary ruling by the forest
24 practices appeals board, the department of revenue shall use the
25 separate confirmations in determining the credit to be allowed against
26 the tax assessed under RCW 84.33.041.

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

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

34 NEW SECTION. **Sec. 402.** The department of revenue and the
35 department of natural resources shall conduct a joint study of the tax
36 credits under section 401 of this act. The study shall examine the
37 relationship between the amount of tax credit received by each taxpayer
38 and the extent that the taxpayer's timber harvests have been limited as

1 a result of complying with enhanced aquatic resource requirements. The
2 departments shall submit the study to the legislature by November 1,
3 2002.

4 **PART V**

5 **SMALL FOREST LANDOWNERS**

6 NEW SECTION. **Sec. 501.** A new section is added to chapter 76.13
7 RCW to read as follows:

8 (1) The legislature finds that increasing regulatory requirements
9 continue to diminish the economic viability of small forest landowners.
10 The concerns set forth in section 101 of this act about the importance
11 of sustaining forestry as a viable land use are particularly applicable
12 to small landowners because of the location of their holdings, the
13 expected complexity of the regulatory requirements, and the need for
14 significant technical expertise not readily available to small
15 landowners. The further reduction in harvestable timber owned by small
16 forest landowners as a result of the rules to be adopted under section
17 201 of this act will further erode small landowners' economic viability
18 and willingness or ability to keep the lands in forestry use and,
19 therefore, reduce the amount of habitat available for salmon recovery
20 and conservation of other aquatic resources, as defined in RCW
21 76.09.020.

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

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

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply (~~((throughout this chapter))~~) to RCW 76.13.005,
5 76.13.007, 76.13.020, and 76.13.030.

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

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

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

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

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

28 NEW SECTION. **Sec. 503.** A new section is added to chapter 76.13
29 RCW to read as follows:

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

37 (2) The small forest landowner office shall administer the
38 provisions of the forestry riparian easement program created under

1 section 504 of this act. With respect to that program, the office
2 shall have the authority to contract with private consultants that the
3 office finds qualified to perform timber cruises of forestry riparian
4 easements.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 NEW SECTION. **Sec. 504.** A new section is added to chapter 76.13
2 RCW to read as follows:

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

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

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

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

23 (c) "Small forest landowner" means a landowner meeting all of the
24 following characteristics: (i) A forest landowner as defined in RCW
25 76.09.020 whose interest in the land and timber is in fee or who has
26 rights to the timber to be included in the forestry riparian easement
27 that extend at least fifty years from the date the forest practices
28 application associated with the easement is submitted; (ii) an entity
29 that has harvested from its own lands in this state during the three
30 years prior to the year of application an average timber volume that
31 would qualify the owner as a small timber harvester under RCW
32 84.33.073(1); and (iii) an entity that certifies at the time of
33 application that it does not expect to harvest from its own lands more
34 than the volume allowed by RCW 84.33.073(1) during the ten years
35 following application. If a landowner's prior three-year average
36 harvest exceeds the limit of RCW 84.33.073(1), or the landowner expects
37 to exceed this limit during the ten years following application, and
38 that landowner establishes to the department of natural resources'
39 reasonable satisfaction that the harvest limits were or will be

1 exceeded to raise funds to pay estate taxes or equally compelling and
2 unexpected obligations such as court-ordered judgments or extraordinary
3 medical expenses, the landowner shall be deemed to be a small forest
4 landowner.

5 For purposes of determining whether a person qualifies as a small
6 forest landowner, the small forest landowner office, created in section
7 503 of this act, shall evaluate the landowner under this definition as
8 of the date that the forest practices application is submitted with
9 which the forestry riparian easement is associated. A small forest
10 landowner can include an individual, partnership, corporate, or other
11 nongovernmental legal entity. If a landowner grants timber rights to
12 another entity for less than five years, the landowner may still
13 qualify as a small forest landowner under this section.

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

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

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

31 (5) Forestry riparian easements shall be restrictive only, and
32 shall preserve all lawful uses of the easement premises by the
33 landowner that are consistent with the terms of the easement and the
34 requirement to protect riparian functions during the term of the
35 easement, subject to the restriction that the leave trees required by
36 the rules to be left on the easement premises may not be cut during the
37 term of the easement. No right of public access to or across, or any
38 public use of the easement premises is created by this statute or by
39 the easement. Forestry riparian easements shall not be deemed to

1 trigger the compensating tax of or otherwise disqualify land from being
2 taxed under chapter 84.33 or 84.34 RCW.

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

13 The small forest landowner office shall establish the volume of the
14 qualifying timber. Based on that volume and using data obtained or
15 maintained by the department of revenue under RCW 84.33.074 and
16 84.33.091, the small forest landowner office shall attempt to determine
17 the fair market value of the qualifying timber as of the date the
18 forest practices application associated with the qualifying timber was
19 submitted. If, under the forest practices rules adopted under
20 chapter. . ., Laws of 1999 1st sp. sess. (this act), some qualifying
21 timber may be removed prior to the expiration of the fifty-year term of
22 the easement, the small forest landowner office shall apply a reduced
23 compensation factor to ascertain the value of those trees based on the
24 proportional economic value, considering income and growth, lost to the
25 landowner.

26 (7) Except as provided in subsection (8) of this section, the small
27 forest landowner office shall, subject to available funding, offer
28 compensation to the small forest landowner in the amount of fifty
29 percent of the value determined in subsection (6) of this section. If
30 the landowner accepts the offer, the department of natural resources
31 shall pay the compensation promptly upon (a) completion of harvest in
32 the area covered by the forestry riparian easement; (b) verification
33 that there has been compliance with the rules requiring leave trees in
34 the easement area; and (c) execution and delivery of the easement to
35 the department of natural resources. Upon donation or payment of
36 compensation, the department of natural resources may record the
37 easement.

38 (8) For approved forest practice applications where the regulatory
39 impact is greater than the average percentage impact for all small

1 landowners as determined by the department of natural resources
2 analysis under the regulatory fairness act, chapter 19.85 RCW, the
3 compensation offered will be increased to one hundred percent for that
4 portion of the regulatory impact that is in excess of the average.
5 Regulatory impact includes trees left in buffers, special management
6 zones, and those rendered uneconomic to harvest by these rules. A
7 separate average or high impact regulatory threshold shall be
8 established for western and eastern Washington. Criteria for these
9 measurements and payments shall be established by the small forest
10 landowner office.

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

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

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

20 (c) Methods and standards for cruises and valuation of forestry
21 riparian easements for purposes of establishing the compensation. The
22 department of natural resources shall perform the timber cruises of
23 forestry riparian easements required under this chapter and chapter
24 76.09 RCW. Any rules concerning the methods and standards for
25 valuations of forestry riparian easements shall apply only to the
26 department of natural resources, small forest landowners, and the small
27 forest landowner office;

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

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

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

38 (g) High impact regulatory thresholds;

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

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

7 NEW SECTION. **Sec. 505.** A new section is added to chapter 76.13
8 RCW to read as follows:

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

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

36 **PART VI**

37 **LARGE WOODY DEBRIS**

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

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

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

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

1 PART VII

2 RIPARIAN OPEN SPACE

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

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

10 (a) Establish minimum standards for forest practices;

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

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

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

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

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

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

32 (2) The board shall prepare proposed forest practices
33 ~~((regulations))~~ rules. In addition to any forest practices
34 ~~((regulations))~~ rules relating to water quality protection proposed by
35 the board, the department of ecology ~~((shall prepare))~~ may submit to
36 the board proposed forest practices ~~((regulations))~~ rules relating to
37 water quality protection.

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

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

1 sales under this section, the legislature declares that these lands are
2 presumed to have a value equal to: (a) The acreage in the sale
3 multiplied by the average value of commercial forest land in the region
4 under the land value tables used for property tax purposes under RCW
5 84.33.120; plus (b) the cruised volume of any timber located within the
6 channel migration multiplied by the appropriate quality code stumpage
7 value for timber of the same species shown on the appropriate table
8 used for timber harvest excise tax purposes under RCW 84.33.091. For
9 purposes of this section, there shall be an eastside region and a
10 westside region as defined in the forests and fish report as defined in
11 RCW 76.09.020.

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

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

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

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

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

35	LAND	OPERABILITY	VALUES
36	GRADE	CLASS	PER ACRE
37			

1		1	\$141
2	1	2	136
3		3	131
4		4	95
5			
6		1	118
7	2	2	114
8		3	110
9		4	80
10			
11		1	93
12	3	2	90
13		3	87
14		4	66
15			
16		1	70
17	4	2	68
18		3	66
19		4	52
20			
21		1	51
22	5	2	48
23		3	46
24		4	31
25			
26		1	26
27	6	2	25
28		3	25
29		4	23
30			
31		1	12
32	7	2	12
33		3	11
34		4	11
35			
36	8		1
37			

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

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

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

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

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

29 (3) In preparing the assessment roll for 1972 and each year
30 thereafter, the assessor shall enter as the true and fair value of each
31 parcel of forest land the appropriate grade value certified to him or
32 her by the department of revenue, and he or she shall compute the
33 assessed value of such land by using the same assessment ratio he or
34 she applies generally in computing the assessed value of other property
35 in his or her county. In preparing the assessment roll for 1975 and
36 each year thereafter, the assessor shall assess and value as classified
37 forest land all forest land that is not then designated pursuant to RCW
38 84.33.120(4) or 84.33.130 and shall make a notation of such
39 classification upon the assessment and tax rolls. On or before January

1 15 of the first year in which such notation is made, the assessor shall
2 mail notice by certified mail to the owner that such land has been
3 classified as forest land and is subject to the compensating tax
4 imposed by this section. If the owner desires not to have such land
5 assessed and valued as classified forest land, he or she shall give the
6 assessor written notice thereof on or before March 31 of such year and
7 the assessor shall remove from the assessment and tax rolls the
8 classification notation entered pursuant to this subsection, and shall
9 thereafter assess and value such land in the manner provided by law
10 other than this chapter 84.33 RCW.

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

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

26 (a) Receipt of notice from the owner to remove such land from
27 classification as forest land;

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

30 (c) Determination by the assessor, after giving the owner written
31 notice and an opportunity to be heard, that, because of actions taken
32 by the owner, such land is no longer primarily devoted to and used for
33 growing and harvesting timber. However, land shall not be removed from
34 classification if a governmental agency, organization, or other
35 recipient identified in subsection (9) or (10) of this section as
36 exempt from the payment of compensating tax has manifested its intent
37 in writing or by other official action to acquire a property interest
38 in classified forest land by means of a transaction that qualifies for
39 an exemption under subsection (9) or (10) of this section. The

1 governmental agency, organization, or recipient shall annually provide
2 the assessor of the county in which the land is located reasonable
3 evidence in writing of the intent to acquire the classified land as
4 long as the intent continues or within sixty days of a request by the
5 assessor. The assessor may not request this evidence more than once in
6 a calendar year;

7 (d) Determination that a higher and better use exists for such land
8 than growing and harvesting timber after giving the owner written
9 notice and an opportunity to be heard;

10 (e) Sale or transfer of all or a portion of such land to a new
11 owner, unless the new owner has signed a notice of forest land
12 classification continuance, except transfer to an owner who is an heir
13 or devisee of a deceased owner, shall not, by itself, result in removal
14 of classification. The signed notice of continuance shall be attached
15 to the real estate excise tax affidavit provided for in RCW 82.45.150.
16 The notice of continuance shall be on a form prepared by the department
17 of revenue. If the notice of continuance is not signed by the new
18 owner and attached to the real estate excise tax affidavit, all
19 compensating taxes calculated pursuant to subsection (7) of this
20 section shall become due and payable by the seller or transferor at
21 time of sale. The county auditor shall not accept an instrument of
22 conveyance of classified forest land for filing or recording unless the
23 new owner has signed the notice of continuance or the compensating tax
24 has been paid, as evidenced by the real estate excise tax stamp affixed
25 thereto by the treasurer. The seller, transferor, or new owner may
26 appeal the new assessed valuation calculated under subsection (7) of
27 this section to the county board of equalization. Jurisdiction is
28 hereby conferred on the county board of equalization to hear these
29 appeals.

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

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

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

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

1 date of delinquency until paid, interest shall be charged at the same
2 rate applied by law to delinquent ad valorem property taxes.

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

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

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

11 (c) A donation of fee title, development rights, or the right to
12 harvest timber, to a government agency or organization qualified under
13 RCW 84.34.210 and 64.04.130 for the purposes enumerated in those
14 sections, or the sale or transfer of fee title to a governmental entity
15 or a nonprofit nature conservancy corporation, as defined in RCW
16 64.04.130, exclusively for the protection and conservation of lands
17 recommended for state natural area preserve purposes by the natural
18 heritage council and natural heritage plan as defined in chapter 79.70
19 RCW: PROVIDED, That at such time as the land is not used for the
20 purposes enumerated, the compensating tax specified in subsection (7)
21 of this section shall be imposed upon the current owner;

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

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

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

29 (g) The creation, sale, or transfer of a fee interest or a
30 conservation easement for the riparian open space program under RCW
31 76.09.040.

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

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

37 (b) A transfer of a property interest to a government entity, or to
38 a nonprofit historic preservation corporation or nonprofit nature
39 conservancy corporation, as defined in RCW 64.04.130, to protect or

1 enhance public resources, or to preserve, maintain, improve, restore,
2 limit the future use of, or otherwise to conserve for public use or
3 enjoyment, the property interest being transferred. At such time as
4 the property interest is not used for the purposes enumerated, the
5 compensating tax shall be imposed upon the current owner.

6 (11) With respect to any land that has been designated prior to May
7 6, 1974, pursuant to RCW 84.33.120(4) or 84.33.130, the assessor may,
8 prior to January 1, 1975, on his or her own motion or pursuant to
9 petition by the owner, change, without imposition of the compensating
10 tax provided under RCW 84.33.140, the status of such designated land to
11 classified forest land.

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

14 (1) When land has been designated as forest land pursuant to RCW
15 84.33.120(4) or 84.33.130, a notation of such designation shall be made
16 each year upon the assessment and tax rolls, a copy of the notice of
17 approval together with the legal description or assessor's tax lot
18 numbers for such land shall, at the expense of the applicant, be filed
19 by the assessor in the same manner as deeds are recorded, and such land
20 shall be graded and valued pursuant to RCW 84.33.110 and 84.33.120
21 until removal of such designation by the assessor upon occurrence of
22 any of the following:

- 23 (a) Receipt of notice from the owner to remove such designation;
24 (b) Sale or transfer to an ownership making such land exempt from
25 ad valorem taxation;
26 (c) Sale or transfer of all or a portion of such land to a new
27 owner, unless the new owner has signed a notice of forest land
28 designation continuance, except transfer to an owner who is an heir or
29 devisee of a deceased owner, shall not, by itself, result in removal of
30 classification. The signed notice of continuance shall be attached to
31 the real estate excise tax affidavit provided for in RCW 82.45.150.
32 The notice of continuance shall be on a form prepared by the department
33 of revenue. If the notice of continuance is not signed by the new
34 owner and attached to the real estate excise tax affidavit, all
35 compensating taxes calculated pursuant to subsection (3) of this
36 section shall become due and payable by the seller or transferor at
37 time of sale. The county auditor shall not accept an instrument of
38 conveyance of designated forest land for filing or recording unless the

1 new owner has signed the notice of continuance or the compensating tax
2 has been paid, as evidenced by the real estate excise tax stamp affixed
3 thereto by the treasurer. The seller, transferor, or new owner may
4 appeal the new assessed valuation calculated under subsection (3) of
5 this section to the county board of equalization. Jurisdiction is
6 hereby conferred on the county board of equalization to hear these
7 appeals;

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

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

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

29 (iii) Restocking has not occurred to the extent or within the time
30 specified in the application for designation of such land.

31 Removal of designation upon occurrence of any of (a) through (c) of
32 this subsection shall apply only to the land affected, and upon
33 occurrence of (d) of this subsection shall apply only to the actual
34 area of land no longer primarily devoted to and used for growing and
35 harvesting timber, without regard to other land that may have been
36 included in the same application and approval for designation:
37 PROVIDED, That any remaining designated forest land meets necessary
38 definitions of forest land pursuant to RCW 84.33.100.

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

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

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

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

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

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

6 (c) A donation of fee title, development rights, or the right to
7 harvest timber, to a government agency or organization qualified under
8 RCW 84.34.210 and 64.04.130 for the purposes enumerated in those
9 sections, or the sale or transfer of fee title to a governmental entity
10 or a nonprofit nature conservancy corporation, as defined in RCW
11 64.04.130, exclusively for the protection and conservation of lands
12 recommended for state natural area preserve purposes by the natural
13 heritage council and natural heritage plan as defined in chapter 79.70
14 RCW: PROVIDED, That at such time as the land is not used for the
15 purposes enumerated, the compensating tax specified in subsection (3)
16 of this section shall be imposed upon the current owner;

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

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

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

24 (g) The creation, sale, or transfer of a fee interest or a
25 conservation easement for the riparian open space program under RCW
26 76.09.040.

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

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

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

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

3 (1) If no later than thirty days after removal of classification or
4 designation the owner applies for classification under RCW 84.34.020
5 (1), (2), or (3), then the classified or designated forest land shall
6 not be considered removed from classification or designation for
7 purposes of the compensating tax under RCW 84.33.120 or 84.33.140 until
8 the application for current use classification under RCW 84.34.030 is
9 denied or the property is removed from designation under RCW 84.34.108.
10 Upon removal from designation under RCW 84.34.108, the amount of
11 compensating tax due under this chapter shall be equal to:

12 (a) The difference, if any, between the amount of tax last levied
13 on such land as forest land and an amount equal to the new assessed
14 valuation of such land when removed from designation under RCW
15 84.34.108 multiplied by the dollar rate of the last levy extended
16 against such land, multiplied by

17 (b) A number equal to:

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

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

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

32 (3) In a county with a population of more than one million
33 inhabitants, no amount of compensating tax is due under this section if
34 the removal from classification under RCW 84.34.108 results from a
35 transfer of property described in RCW 84.34.108((+5)) (6).

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

1 When land which has been classified under this chapter as open
2 space land, farm and agricultural land, or timber land is applied to
3 some other use, except through compliance with RCW 84.34.070, or except
4 as a result solely from any one of the conditions listed in RCW
5 84.34.108(~~((+5+))~~) (6), the owner shall within sixty days notify the
6 county assessor of such change in use and additional real property tax
7 shall be imposed upon such land in an amount equal to the sum of the
8 following:

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

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

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

15 (1) When land has once been classified under this chapter, a
16 notation of such classification shall be made each year upon the
17 assessment and tax rolls and such land shall be valued pursuant to RCW
18 84.34.060 or 84.34.065 until removal of all or a portion of such
19 classification by the assessor upon occurrence of any of the following:

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

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

27 (c) Sale or transfer of all or a portion of such land to a new
28 owner, unless the new owner has signed a notice of classification
29 continuance, except transfer to an owner who is an heir or devisee of
30 a deceased owner shall not, by itself, result in removal of
31 classification. (~~((The signed notice of continuance shall be attached
32 to the real estate excise tax affidavit provided for in RCW
33 82.45.150.))~~) The notice of continuance shall be on a form prepared by
34 the department of revenue. If the notice of continuance is not signed
35 by the new owner and attached to the real estate excise tax affidavit,
36 all additional taxes calculated pursuant to subsection (~~((+3+))~~) (4) of
37 this section shall become due and payable by the seller or transferor
38 at time of sale. The county auditor shall not accept an instrument of

1 conveyance of classified land for filing or recording unless the new
2 owner has signed the notice of continuance or the additional tax has
3 been paid. The seller, transferor, or new owner may appeal the new
4 assessed valuation calculated under subsection ~~((+3+))~~ (4) of this
5 section to the county board of equalization. Jurisdiction is hereby
6 conferred on the county board of equalization to hear these appeals;

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

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

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

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

20 (b) The creation, sale, or transfer of a fee interest or a
21 conservation easement for the riparian open space program under RCW
22 76.09.040.

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

28 ~~((+3+))~~ (4) Unless the removal is reversed on appeal, the assessor
29 shall revalue the affected land with reference to full market value on
30 the date of removal from classification. Both the assessed valuation
31 before and after the removal of classification shall be listed and
32 taxes shall be allocated according to that part of the year to which
33 each assessed valuation applies. Except as provided in subsection
34 ~~((+5+))~~ (6) of this section, an additional tax, applicable interest,
35 and penalty shall be imposed which shall be due and payable to the
36 county treasurer thirty days after the owner is notified of the amount
37 of the additional tax. As soon as possible, the assessor shall compute
38 the amount of such an additional tax, applicable interest, and penalty
39 and the treasurer shall mail notice to the owner of the amount thereof

1 and the date on which payment is due. The amount of such additional
2 tax, applicable interest, and penalty shall be determined as follows:

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

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

13 (c) The amount of the penalty shall be as provided in RCW
14 84.34.080. The penalty shall not be imposed if the removal satisfies
15 the conditions of RCW 84.34.070.

16 ~~((+4))~~ (5) Additional tax, applicable interest, and penalty, shall
17 become a lien on such land which shall attach at the time such land is
18 removed from classification under this chapter and shall have priority
19 to and shall be fully paid and satisfied before any recognizance,
20 mortgage, judgment, debt, obligation or responsibility to or with which
21 such land may become charged or liable. Such lien may be foreclosed
22 upon expiration of the same period after delinquency and in the same
23 manner provided by law for foreclosure of liens for delinquent real
24 property taxes as provided in RCW 84.64.050 now or as hereafter
25 amended. Any additional tax unpaid on its due date shall thereupon
26 become delinquent. From the date of delinquency until paid, interest
27 shall be charged at the same rate applied by law to delinquent ad
28 valorem property taxes.

29 ~~((+5))~~ (6) The additional tax, applicable interest, and penalty
30 specified in subsection ~~((+3))~~ (4) of this section shall not be
31 imposed if the removal of classification pursuant to subsection (1) of
32 this section resulted solely from:

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

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

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

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

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

9 (f) Acquisition of property interests by state agencies or agencies
10 or organizations qualified under RCW 84.34.210 and 64.04.130 for the
11 purposes enumerated in those sections: PROVIDED, That at such time as
12 these property interests are not used for the purposes enumerated in
13 RCW 84.34.210 and 64.04.130 the additional tax specified in subsection
14 ~~((+3+))~~ (4) of this section shall be imposed;

15 (g) Removal of land classified as farm and agricultural land under
16 RCW 84.34.020(2)(d); ~~((or))~~

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

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

22 (j) The creation, sale, or transfer of a fee interest or a
23 conservation easement for the riparian open space program under RCW
24 76.09.040.

25 NEW SECTION. Sec. 707. A new section is added to chapter 76.09
26 RCW to read as follows:

27 Prior to the sale or transfer of land or perpetual timber rights
28 subject to continuing forest land obligations under the forest
29 practices rules adopted under section 204 of this act, as specifically
30 identified in the forests and fish report the seller shall notify the
31 buyer of the existence and nature of such a continuing obligation and
32 the buyer shall sign a notice of continuing forest land obligation
33 indicating the buyer's knowledge thereof. The notice shall be on a
34 form prepared by the department and shall be sent to the department by
35 the seller at the time of sale or transfer of the land or perpetual
36 timber rights and retained by the department. If the seller fails to
37 notify the buyer about the continuing forest land obligation, the
38 seller shall pay the buyer's costs related to such continuing forest

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

9 **PART VIII**
10 **ENFORCEMENT**

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

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

36 (2) On request of the department, the attorney general may take
37 action necessary to enforce this chapter, including, but not limited

1 to((~~7~~)): Seeking penalties, interest, costs, and attorneys' fees;
2 enforcing final orders or decisions((~~7~~)); and seeking civil
3 injunctions, show cause orders, or contempt orders.

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

17 (4)(a) The department may require financial assurance prior to the
18 conduct of any further forest practices from an operator or landowner
19 who within the preceding three-year period has:

20 (i) Operated without an approved forest practices application,
21 other than an unintentional operation in connection with an approved
22 application outside the approved boundary of such an application;

23 (ii) Continued to operate in breach of, or failed to comply with,
24 the terms of an effective stop work order or notice to comply; or

25 (iii) Failed to pay any civil or criminal penalty.

26 (b) The department may deny any application for failure to submit
27 financial assurances as required.

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

30 (1) The department shall make inspections of forest lands, before,
31 during and after the conducting of forest practices as necessary for
32 the purpose of ((~~insuring~~)) ensuring compliance with this chapter and
33 the forest practices ((~~regulations~~)) rules and to ((~~insure~~)) ensure
34 that no material damage occurs to the natural resources of this state
35 as a result of such practices.

36 (2) Any duly authorized representative of the department shall have
37 the right to enter upon forest land at any reasonable time to enforce

1 the provisions of this chapter and the forest practices (~~regulations~~)
2 rules.

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

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

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

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

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

28 (1) Every person who violates any provision of RCW 76.09.010
29 through 76.09.280 or of the forest practices rules, or who converts
30 forest land to a use other than commercial timber operation within
31 three years after completion of the forest practice without the consent
32 of the county, city, or town, shall be subject to a penalty in an
33 amount of not more than ten thousand dollars for every such violation.
34 Each and every such violation shall be a separate and distinct offense.
35 In case of a failure to comply with a stop work order, every day's
36 continuance shall be a separate and distinct violation. Every person
37 who through an act of commission or omission procures, aids or abets in
38 the violation shall be considered to have violated the provisions of

1 this section and shall be subject to the penalty in this section. No
2 penalty shall be imposed under this section upon any governmental
3 official, an employee of any governmental department, agency, or
4 entity, or a member of any board or advisory committee created by this
5 chapter for any act or omission in his or her duties in the
6 administration of this chapter or of any rule adopted under this
7 chapter.

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

13 (a) Previous violation history;

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

15 (c) Whether the violation of this chapter or its rules was
16 intentional;

17 (d) Cooperation with the department;

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

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

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

36 (4) Any person incurring a penalty under this section may appeal
37 the penalty to the forest practices appeals board. Such appeals shall
38 be filed within thirty days of receipt of notice imposing any penalty
39 unless an application for remission or mitigation is made to the

1 department. When such an application for remission or mitigation is
2 made, such appeals shall be filed within thirty days of receipt of
3 notice from the department setting forth the disposition of the
4 application for remission or mitigation.

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

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

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

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

37 **PART IX**
38 **WATERSHED ANALYSIS**

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

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

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

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

21 (b) Afford protection to forest soils and public resources by
22 utilizing all reasonable methods of technology in conducting forest
23 practices;

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

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

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

30 (f) Provide for interagency input and intergovernmental and tribal
31 coordination and cooperation;

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

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

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

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

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

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

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

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

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

33 (3) The principal office of the appeals board shall be at the state
34 capital, but it may sit or hold hearings at any other place in the
35 state. A majority of the appeals board shall constitute a quorum for
36 making orders or decisions, (~~promulgating~~) adopting rules (~~and~~
37 ~~regulations~~) necessary for the conduct of its powers and duties, or
38 transacting other official business, and may act though one position on

1 the board be vacant. One or more members may hold hearings and take
2 testimony to be reported for action by the board when authorized by
3 rule or order of the board. The appeals board shall perform all the
4 powers and duties granted to it in this chapter or as otherwise
5 provided by law.

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

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

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

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

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

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

1 this section if the legislature finds that after two years the
2 department has not made substantial progress toward integrating the
3 laws, rules, and programs governing forest practices, chapter 76.09
4 RCW, and the laws, rules, and programs governing hydraulic projects,
5 chapter 75.20 RCW. Such a finding shall be based solely on whether the
6 department of fish and wildlife makes substantial progress as defined
7 in this subsection, and will not be based on other actions taken as a
8 member of the board. Substantial progress shall include
9 recommendations to the legislature for closer integration of the
10 existing rule-making authorities of the board and the department of
11 fish and wildlife, and closer integration of the forest practices and
12 hydraulics permitting processes, including exploring the potential for
13 a consolidated permitting process. These recommendations shall be
14 designed to resolve problems currently associated with the existing
15 dual regulatory and permitting processes.

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

27 ((+3)) (4) The board shall meet at such times and places as shall
28 be designated by the chairman or upon the written request of the
29 majority of the board. The principal office of the board shall be at
30 the state capital.

31 ((+4)) (5) Members of the board, except public employees and
32 elected officials, shall be compensated in accordance with RCW
33 43.03.250. Each member shall be entitled to reimbursement for travel
34 expenses incurred in the performance of their duties as provided in RCW
35 43.03.050 and 43.03.060.

36 ((+5)) (6) The board may employ such clerical help and staff
37 pursuant to chapter 41.06 RCW as is necessary to carry out its duties.

1 PART XI

2 WATER QUALITY COORDINATION

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

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

19 (~~Promulgation~~) Adoption of forest practices (~~regulations~~) rules
20 pertaining to water quality by (the department of ecology and) the
21 forest practices board(7) shall be accomplished after reaching
22 agreement with the director of the department or the director's
23 designee on the board. Adoption shall be accomplished so that
24 compliance with such forest practice (~~regulations~~) rules will achieve
25 compliance with water pollution control laws.

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

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

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

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

8 **PART XII**

9 **STATE ENVIRONMENTAL POLICY ACT**

10 NEW SECTION. **Sec. 1201.** A new section is added to chapter 43.21C
11 RCW to read as follows:

12 (1) Decisions pertaining to the following kinds of actions under
13 chapter . . ., Laws of 1999 1st sp. sess. (this act) are not subject to
14 any procedural requirements implementing RCW 43.21C.030(2)(c): (a)
15 Approval of forest road maintenance and abandonment plans under chapter
16 76.09 RCW and RCW 75.20.100; (b) approval by the department of natural
17 resources of future timber harvest schedules involving east-side clear
18 cuts under rules implementing chapter 76.09 RCW; (c) acquisitions of
19 forest lands in stream channel migration zones under RCW 76.09.040; and
20 (d) acquisitions of conservation easements pertaining to forest lands
21 in riparian zones under section 504 of this act.

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

31 **PART XIII**

32 **FEDERAL ASSURANCES**

33 NEW SECTION. **Sec. 1301.** A new section is added to chapter 75.46
34 RCW under the subchapter heading "federal assurances related to forest

1 practices conducted under the state salmon recovery strategy" to read
2 as follows:

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

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

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

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

34 (c) Either the secretary of the interior or the secretary of
35 commerce fails to issue an acceptable incidental take permit under 16
36 U.S.C. Sec. 1539(a) covering all fish and wildlife species included
37 within aquatic resources on or before June 30, 2003. An acceptable
38 incidental take permit will (i) permit the incidental take, if any, of
39 all fish and wildlife species included within aquatic resources

1 resulting from the conduct of forest practices in compliance with the
2 prescriptions outlined in the forests and fish report; (ii) provide
3 protection to the state of Washington and its subdivisions and to
4 landowners and operators; (iii) not require the commitment of
5 additional resources beyond those required to be committed under the
6 forests and fish report; and (iv) provide "no-surprises" protection as
7 described in 50 C.F.R. Parts 17 and 222 (1998);

8 (d) Either the national marine fisheries service or the United
9 States fish and wildlife service fails to promulgate an effective rule
10 under 16 U.S.C. Sec. 1533(d) within five years after the date on which
11 a fish species is listed as threatened or endangered under the
12 endangered species act which prohibits actions listed under 16 U.S.C.
13 1538;

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

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

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

38 (3) The governor may negotiate with federal officials, directly or
39 through designated representatives, on behalf of the state and its

1 agencies and subdivisions, to obtain assurances from federal agencies
2 to the effect that compliance with the forest practices rules as
3 amended under chapter . . . , Laws of 1999 1st sp. sess. (this act) and
4 implementation of the recommendations in the forests and fish report
5 will satisfy federal requirements under the endangered species act and
6 the clean water act and related regulations, including the negotiation
7 of a rule adopted under section 4(d) of the endangered species act,
8 entering into implementation agreements and receiving incidental take
9 permits under section 10 of the endangered species act or entering into
10 other intergovernmental agreements.

11 **PART XIV**
12 **MISCELLANEOUS**

13 NEW SECTION. **Sec. 1401.** RCW 90.28.150 (Improving streams for
14 logging) and 1891 c 120 s 1 are each repealed.

15 NEW SECTION. **Sec. 1402.** A new section is added to chapter 76.09
16 RCW to read as follows:

17 The forests and fish account is created in the state treasury.
18 Receipts from appropriations, federal grants, and gifts from private
19 organizations and individuals or other sources may be deposited into
20 the account. Moneys in the account may be spent only after
21 appropriation. Expenditures from the account may only be used for the
22 establishment and operation of the small forest landowner office under
23 section 503 of this act, the purchase of easements under section 504 of
24 this act, the purchase of lands under RCW 76.09.040, or other
25 activities necessary to implement chapter . . . , Laws of 1999 1st sp.
26 sess. (this act).

27 NEW SECTION. **Sec. 1403.** Part headings used in this act are not
28 any part of the law.

29 **NEW SECTION.* *Sec. 1404. If by December 31, 2004, harvest levels*
30 *of Snake river fall chinook salmon, Lower Columbia river wild chinook*
31 *salmon and Willamette river spring chinook salmon in Alaskan waters are*
32 *not reduced twenty-five percent from 1997 harvest levels, this act is*
33 *null and void.*

34 **Sec. 1404 was vetoed. See message at end of chapter.*

1 NEW SECTION. **Sec. 1405.** Sections 201, 202, and 203 of this act
2 are necessary for the immediate preservation of the public peace,
3 health, or safety, or support of the state government and its existing
4 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.

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

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

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

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

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

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

29 For these reasons, I have vetoed sections 903 and 1404 of Engrossed
30 Substitute House Bill No. 2091. With the exception of sections 903 and
31 1404, ESHB 2091 is approved."