

including any provision of any county charter, insofar as they may be in conflict with the provisions of this section.

Passed the House February 11, 1974.  
Passed the Senate February 7, 1974.  
Approved by the Governor February 16, 1974, with the exception of certain items which are vetoed.  
Filed in Office of Secretary of State February 26, 1974.  
Note: Governor's explanation of partial veto is as follows:  
"I am returning herewith without my approval as to certain items House Bill No. 474 entitled:

"AN ACT Relating to public employees."

Veto  
Message

House Bill No. 474 makes various changes to RCW 41.06.250 relating to political activities of public employees and political solicitations on public property.

One amendatory item in section 1 of RCW 41.06.250 would ease the present restriction of the law against all persons from soliciting on state property by confining the restriction to only elected officials or employees of the state and its political subdivisions. The consequences of this change would seem to be highly questionable and potentially disruptive. Thus, the door would be open to political solicitation not only by representatives of elected officials but also by any number of party or campaign officials and workers. For these reasons, I have determined to veto that item.

A second item in the same section broadens the restriction against solicitations on public property to include contributions for any political purposes. The existing language restricts only contributions for partisan political purposes. I believe this change is unnecessarily broad in its effect and rules out the opportunity for many public employees to contribute to issue-oriented political campaigns. Accordingly, I have vetoed the referenced item. With the foregoing exceptions, the remainder of House Bill No. 474 is approved."

CHAPTER 137

[Second Substitute House Bill No. 637]

FOREST PRACTICES ACT OF 1974

AN ACT Relating to forest practices; defining crimes; adding a new chapter to Title 76 RCW; adding a new section to chapter 90.48 RCW; repealing section 2, chapter 193, Laws of 1945, section 1, chapter 218, Laws of 1947, section 1, chapter 44, Laws of 1953, section 1, chapter 79, Laws of 1957, section 10, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.010; repealing section 1, chapter 193, Laws of 1945 and RCW 76.08.020; repealing section 3, chapter 193, Laws of 1945, section 2, chapter 218, Laws of 1947, section 1, chapter 115, Laws of 1955 and RCW 76.08.030; repealing section 4, chapter 193, Laws of 1945, section 3, chapter 218, Laws of 1947, section 2, chapter 79, Laws of 1957 and RCW 76.08.040; repealing section 5, chapter 193, Laws of 1945, section 4, chapter 218, Laws of 1947, section 3, chapter 79, Laws of 1957, section 11, chapter

207, Laws of 1971 ex. sess. and RCW 76.08.050; repealing section 6, chapter 193, Laws of 1945, section 5, chapter 218, Laws of 1947, section 2, chapter 44, Laws of 1953, section 12, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.060; repealing section 7, chapter 193, Laws of 1945 and RCW 76.08.070; repealing section 8, chapter 193, Laws of 1945, section 6, chapter 218, Laws of 1947, section 3, chapter 44, Laws of 1953, section 2, chapter 115, Laws of 1955, section 1, chapter 40, Laws of 1961 and RCW 76.08.080; repealing section 9, chapter 193, Laws of 1945, section 4, chapter 44, Laws of 1953 and RCW 76.08.090; prescribing penalties; prescribing effective dates; and declaring an emergency.

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

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

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

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

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

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

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

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

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

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

(h) To consider reasonable land use planning goals and concepts contained in local comprehensive plans and zoning regulations.

NEW SECTION. Sec. 2. For purposes of this chapter:

(1) "Appeals board" shall mean the forest practices appeals board created by section 21 of this 1974 act.

(2) "Commissioner" shall mean the commissioner of public lands.

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

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

(5) "Department" shall mean the department of natural resources.

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

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

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

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

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

(9) "Forest practices regulations" shall mean any rules promulgated pursuant to section 4 of this 1974 act.

(10) "Application" shall mean the application required pursuant to section 5 of this 1974 act.

(11) "Operator" shall mean any person engaging in forest practices except an employee with wages as his sole compensation.

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

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

(14) "Timber" shall mean forest trees, standing or down, of a commercial species, including Christmas trees.

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

(16) "Board" shall mean the forest practices board created in section 3 of this 1974 act.

NEW SECTION. Sec. 3. (1) There is hereby created the forest practices board of the state of Washington as an agency of state government consisting of seven members as follows:

(a) The commissioner of public lands or his designee;  
(b) The director of the department of commerce and economic development or his designee;  
(c) The director of the department of agriculture or his designee;

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

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

(f) Four members of the general public appointed by the governor.

(2) The members of the initial board appointed by the governor shall be appointed so that the term of one member shall expire December 31, 1975, the term of one member shall expire December 31, 1976, the term of one member shall expire December 31, 1977, and the terms of two members shall expire December 31, 1978. Thereafter, each member shall be appointed for a term of four years. Vacancies on the board shall be filled in the same manner as the original appointments. Each member of the board shall continue in office until his successor is appointed and qualified. The commissioner of public lands or his designee shall be the chairman of the board. Four members of the board shall constitute a quorum. <sup>v</sup>

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

(4) Members of the board, except public employees and elected officials, shall receive forty dollars per diem for each day or major portion thereof actually spent in attending to their duties as board members and in addition they shall be entitled to reimbursement for subsistence and actual travel expenses incurred in the performance of their duties in the same manner as provided for state officials generally in chapter 43.03 RCW as now or hereafter amended.

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

NEW SECTION. Sec. 4. (1) Where necessary to accomplish the purposes and policies stated in section 1 of this 1974 act, and to implement the provisions of this chapter, the board shall promulgate forest practices regulations establishing minimum standards for forest practices and setting forth necessary administrative provisions, pursuant to chapter 34.04 RCW and in accordance with the procedures enumerated in this section and section 20 of this 1974 act. Forest practices regulations pertaining to water quality protection shall be promulgated individually by the board and by the department of ecology after they have reached agreement with respect thereto. All other forest practices regulations shall be promulgated by the board.

Forest practices regulations shall be administered and enforced by the department except as otherwise provided in this chapter. Such regulations shall be promulgated and administered so as to give consideration to all purposes and policies set forth in section 1 of this 1974 act.

(2) The board shall prepare proposed forest practices regulations. In addition to any forest practices regulations

relating to water quality protection proposed by the board, the department of ecology shall prepare proposed forest practices regulations relating to water quality protection.

Prior to initiating the rule making process, the proposed regulations shall be submitted for review and comments to the department of fisheries, the department of game, and to the counties of the state. After receipt of the proposed forest practices regulations, the departments of fisheries and game and the counties of the state shall have thirty days in which to review and submit comments to the board, and to the department of ecology with respect to its proposed regulations relating to water quality protection. After the expiration of such thirty day period the board and the department of ecology shall jointly hold one or more hearings on the proposed regulations pursuant to chapter 34.04 RCW. At such hearing(s) any county may propose specific forest practices regulations relating to problems existing within such county. The board and the department of ecology may adopt such proposals if they find the proposals are consistent with the purposes and policies of this chapter.

NEW SECTION. Sec. 5. (1) The board shall establish by rule which forest practices shall be included within each of the following classes:

Class I: Minimal or specific forest practices that may be conducted without submitting an application: PROVIDED, That no forest practice shall be within Class I if it has a direct potential for damaging a public resource.

Class II: Forest practices for which the application must be approved or disapproved by the department within fourteen calendar days from the date the department receives the application.

Class III: Forest practices for which the application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application.

(2) No Class II or Class III forest practice shall be commenced or continued after January 1, 1975 unless the department has approved an application containing all information required by section 6 of this 1974 act: PROVIDED, That any person commencing a forest practice during 1974 may continue such forest practice until April 1, 1975, if such person has submitted an application to the department prior to January 1, 1975: PROVIDED, FURTHER, That in the event forest practices regulations necessary for the scheduled implementation of this 1974 act have not been adopted in time to meet such schedules, the department shall have the authority to approve applications on such terms and conditions consistent with this 1974

act and the purposes and policies of section 1 of this 1974 act until applicable forest practices regulations are in effect.

(3) The department of natural resources shall notify the applicant in writing of either its approval of the application or its disapproval of the application and the specific manner in which the application fails to comply with the provisions of this section or with the forest practices regulations. If the department fails to either approve or disapprove an application or any portion thereof within the applicable time limit, then, on petition of the applicant the chairman of the appeals board shall issue an order directing the department to approve or disapprove the application within five days or issue a temporary approval until the application is either finally approved or disapproved: PROVIDED, That the temporary approval shall be issued only if it meets the conditions set by the board for such temporary approvals: PROVIDED, FURTHER, That the department shall have until April 1, 1975 to approve or disapprove an application involving forest practices allowed to continue to April 1, 1975 under the provisions of subsection (2) of this section. Upon receipt of any satisfactorily completed application the department shall in any event no later than two business days after such receipt transmit a copy to the departments of ecology, game, and fisheries, and to the county in which the forest practice is to be commenced. Any comments by such agencies shall be directed to the department of natural resources.

(4) If the county believes that an application is inconsistent with this chapter, the forest practices regulations, or any local authority consistent with section 24 of this 1974 act, it may so notify the department and the applicant, specifying its objections.

(5) The department shall not approve portions of applications to which a county objects if:

(a) The department receives written notice from the county of such objections within seven business days for a class II or fourteen business days for a class III application from the time of its transmittal to the county, or one day before the department acts on the application, whichever is later; and

(b) The objections relate to lands either:

(i) Platted after January 1, 1960; or

(ii) Being converted to another use.

The department shall either disapprove those portions of such application or appeal the county objections to the appeals board. If the objections are based on local authority consistent with section 24 of this 1974 act, the department shall disapprove the application until such time as the county consents to its approval or such

disapproval is reversed on appeal. The applicant shall be a party to all department appeals of county objections. Unless the county either consents or has waived its rights under this subsection, the department shall not approve portions of an application affecting such lands until the minimum time for county objections has expired.

(6) In addition to any rights under the above paragraph, the county may appeal any department approval of an application with respect to any lands within its jurisdiction. The appeals board may suspend the department's approval in whole or in part pending such appeal where there exists potential for immediate and material damage to a public resource.

(7) Appeals under this section shall be made to the appeals board in the manner and time provided in section 22 (9), of this 1974 act. In such appeals there shall be no presumption of correctness of either the county or the department position.

(8) The department shall, within four business days notify the county of all approvals and disapprovals of an application affecting lands within the county, except to the extent the county has waived its right to such notice.

(9) A county may waive in whole or in part its rights under this section, and may withdraw or modify any such waiver, at any time by written notice to the department.

NEW SECTION. Sec. 6. (1) The department shall prescribe the form and contents of the application. The forest practices regulations shall specify by whom and under what conditions the application shall be signed. The application shall be delivered in person or sent by certified mail to the department. The information required may include, but shall not be limited to:

(a) Name and address of the forest land owner, timber owner, and operator;

(b) Description of the proposed forest practice or practices to be conducted;

(c) Legal description of the land on which the forest practices are to be conducted;

(d) Planimetric and topographic maps showing location and size of all lakes and streams and other public waters in and immediately adjacent to the operating area and showing all existing and proposed roads and tractor roads;

(e) Description of the silvicultural, harvesting, or other forest practice methods to be used, including the type of equipment to be used and materials to be applied;

(f) Proposed plan for reforestation and for any revegetation necessary to reduce erosion potential from roadsides and yarding roads, as required by the forest practices regulations;



(g) Soil, geological, and hydrological data with respect to forest practices;

(h) The expected dates of commencement and completion of all forest practices specified in the application;

(i) Provisions for continuing maintenance of roads and other construction to afford protection to public resources; and

(j) An affirmation that the statements contained in the application are true.

(2) At the option of the applicant, the application may be submitted to cover a single forest practice or any number of forest practices within reasonable geographic or political boundaries as specified by the department. Long range plans may be submitted to the department for review and consultation.

The application shall indicate whether any land covered by the application will be converted or is intended to be converted to a use other than commercial timber production within three years after completion of the forest practices described in it. (a) If the application states that any such land will be or is intended to be so converted:

(i) The reforestation requirements of this chapter and of the forest practices regulations shall not apply if the land is in fact so converted unless applicable alternatives or limitations are provided in forest practices regulations issued under section 7 of this 1974 act;

(ii) Completion of such forest practice operations shall be deemed conversion of the lands to another use for purposes of chapters 84.28, 84.33 and 84.34 RCW unless the conversion is to a use permitted under a current use tax agreement permitted under chapter 84.34 RCW;

(iii) The forest practices described in the application are subject to applicable county, city and regional governmental authority permitted under section 24 of this 1974 act as well as the forest practices regulations.

(b) If the application does not state that any land covered by the application will be or is intended to be so converted;

(i) For six years after the date of the application the county or city and regional governmental entities may deny any or all applications for permits or approvals, including building permits and subdivision approvals, relating to nonforestry uses of land subject to the application;

(ii) Failure to comply with the reforestation requirements contained in any final order or decision shall constitute a removal from classification under the provisions of RCW 84.28.065, a removal of designation under the provisions of RCW 84.33.140, and a change of

use under the provisions of RCW 84.34.080, and, if applicable, shall subject such lands to the payments and/or penalties resulting from such removals or changes; and

(iii) Conversion to a use other than commercial timber operations within three years after completion of the forest practices without the consent of the county or municipality shall constitute a violation of each of the county, municipal and regional authorities to which the forest practice operations would have been subject if the application had so stated.

(4) The application shall be either signed by the forest land owner or accompanied by a statement signed by the forest land owner indicating his intent with respect to conversion and acknowledging that he is familiar with the effects of this subsection.

(5) Whenever an approved application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a greater than ordinary potential for causing material damage to a public resource, as determined by the department, the applicant shall notify the department five days before the commencement of actual operations.

(6) Before commencing any forest practice in a manner or to an extent significantly different from that described in a previously approved application, the applicant shall submit to the department a new application form in the manner set forth in this section.

(7) The approval given by the department to an application to conduct a forest practice shall be effective for a term of one year from the date of approval and shall not be renewed unless a new application is filed and approved.

(8) Notwithstanding any other provision of this section, no prior application shall be required for any emergency forest practice necessitated by fire, flood, windstorm, earthquake, or other emergency as defined by the board, but the operator shall submit an application to the department within forty-eight hours after commencement of such practice.

NEW SECTION. Sec. 7. After the completion of a logging operation, satisfactory reforestation as defined by the rules and regulations promulgated by the board shall be completed within three years: PROVIDED, That a longer period may be authorized if seed or seedlings are not available: PROVIDED FURTHER, That a period of up to five years may be allowed where a natural regeneration plan is approved by the department. Upon the completion of a reforestation operation a report on such operation shall be filed with the department of natural resources. Within six months of receipt of such a report the department shall inspect the reforestation operation, and shall determine either that the reforestation

operation has been properly completed or that further reforestation and inspection is necessary.

The forest practices regulations may provide alternatives to or limitations on the applicability of reforestation requirements with respect to forest lands being converted in whole or in part to another use which is compatible with timber growing.

NEW SECTION. Sec. 8. (1) The department shall have the authority to serve upon an operator a stop work order which shall be a final order of the department if:

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

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

(c) Immediate action is necessary to prevent continuation of or to avoid material damage to a public resource.

(2) The stop work order shall set forth:

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

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

(c) The specific course of action needed to correct such violation or deviation or to prevent damage and to correct and/or compensate for damage to public resources which has resulted; and

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

The department shall immediately file a copy of such order with the appeals board and mail a copy thereof to the timber owner and forest land owner at the addresses shown on the application. The operator, timber owner, or forest land owner may commence an appeal to the appeals board within fifteen days after service upon the operator. If such appeal is commenced, a hearing shall be held not more than twenty days after copies of the notice of appeal were filed with the appeals board. Such proceeding shall be a contested case within the meaning of chapter 34.04 RCW. The operator shall comply with the order of the department immediately upon being served, but the appeals board if requested shall have authority to continue or discontinue in whole or in part the order of the department under such conditions as it may impose pending the outcome of the proceeding.

NEW SECTION. Sec. 9. If a violation, a deviation, material damage or potential for material damage to a public resource has occurred and the department determines that a stop work order is unnecessary, then the department shall issue and serve upon the operator a notice, which shall clearly set forth:

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

(b) The relevant provisions of this chapter or of the forest practice regulations relating thereto;

(2) The right of the operator to a hearing before the department; and

(3) The specific course of action ordered by the department to be followed by the operator to correct such failure to comply and to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

The department shall mail a copy thereof to the forest land owner and the timber owner at the addresses shown on the application, showing the date of service upon the operator. Such notice to comply shall become a final order of the department and such operator shall undertake the course of action so ordered by the department unless, within fifteen days after the date of service of such notice to comply, the operator, forest land owner, or timber owner, shall request the department in writing to schedule a hearing. If so requested, the department shall schedule a hearing on a date not more than twenty days after receiving such request. Within ten days after such hearing, the department shall issue a final order either withdrawing its notice to comply or clearly setting forth the specific course of action to be followed by such operator. Such operator shall undertake the course of action so ordered by the department unless within thirty days after the date of such final order, the operator, forest land owner, or timber owner appeals such final order to the appeals board.

NEW SECTION. Sec. 10. If the department of ecology determines that a person has failed to comply with the forest practices regulations relating to water quality protection, and that the department of natural resources has not issued a stop work order or notice to comply, the department of ecology shall inform the department thereof. If the department of natural resources fails to take authorized enforcement action under sections 8, 9, 12, 13, and 17 of this 1974 act, the department of ecology may take such action, except that no civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department of natural resources.

NEW SECTION. Sec. 11. Unless declared invalid on appeal, a final order of the department or a final decision of the appeals board shall be binding upon all parties.

NEW SECTION. Sec. 12. If an operator fails to undertake and complete any course of action with respect to a forest practice, as required by a final order of the department or a final decision of the appeals board or any court pursuant to sections 8 and 9 of this 1974 act, the department may determine the cost thereof and give written notice of such cost to the operator, the timber owner and the owner of the forest land upon or in connection with which such forest practice was being conducted. If such operator, timber owner, or forest land owner fails within thirty days after such notice is given to undertake such course of action, or having undertaken such course of action fails to complete it within a reasonable time, the department may expend any funds available to undertake and complete such course of action and such operator, timber owner, and forest land owner shall be jointly and severally liable for the actual, direct cost thereof, but in no case more than the amount set forth in the notice from the department. If not paid within sixty days after the department completes such course of action and notifies such forest land owner in writing of the amount due, such amount shall become a lien on such forest land and the department may collect such amount in the same manner provided in chapter 60.04 RCW for mechanics' liens.

NEW SECTION. Sec. 13. When the operator has failed to obey a stop work order issued under the provisions of section 8 of this 1974 act the department may take immediate action to prevent continuation of or avoid material damage to public resources. If a final order or decision fixes liability with the operator, timber owner, or forest land owner, they shall be jointly and severally liable for such emergency costs which may be collected in the manner provided for in section 12 of this 1974 act.

NEW SECTION. Sec. 14. (1) The department of natural resources, through the attorney general, may take any necessary action to enforce any final order or final decision, or to enjoin any forest practices by any person for a one year period after such person has failed to comply with a final order or a final decision.

(2) The department of ecology, through the attorney general, may take any necessary action to enforce any final order of such department or any final decision of the pollution control hearings board relating to water quality protection, or to enjoin any forest practices relating to water quality protection by any person for a one year period after such person has failed to comply with a final order or final decision.

(3) A county may bring injunctive, declaratory, or other actions for enforcement for forest practice activities within its jurisdiction in the superior court as provided by law against the

department or the department of ecology, the forest landowner, timber owner or operator to enforce the forest practice regulations or any final order of the department, or the department of ecology, the appeals board or the pollution control hearings board: PROVIDED, That no civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department of natural resources or department of ecology: AND PROVIDED FURTHER, That such actions shall not be commenced unless the department or the department of ecology fails to take appropriate action after ten days written notice to the respective department by the county of a violation of the forest practices regulations or final orders of the department or the department of ecology or the appeals board or the pollution control hearings board.

NEW SECTION. Sec. 15. The department shall make inspections of forest lands, before, during and after the conducting of forest practices as necessary for the purpose of insuring compliance with this chapter and the forest practice regulations and to insure that no material damage occurs to the natural resources of this state as a result of such practices.

Any duly authorized representative of the department shall have the right to enter upon forest land at any reasonable time to enforce the provisions of this chapter and the forest practices regulations.

NEW SECTION. Sec. 16. Any duly authorized representative of the department of ecology shall have the right to enter upon forest land at any reasonable time to administer the provisions of this chapter and section 30 of this 1974 act.

NEW SECTION. Sec. 17. Every person who fails to comply with any provision of sections 1 through 28 of this 1974 act or of the forest practices regulations shall be subject to a penalty in an amount of not more than one thousand dollars per day for every such violation. Each and every such violation shall be a separate and distinct offense. In case of a continuing violation, every day's continuance shall be a separate and distinct violation. Every person who through an act of commission or omission procures, aids or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty herein provided for: PROVIDED, That no penalty shall be imposed under this section upon any governmental official, an employee of any governmental department, agency, or entity, or a member of any board or advisory committee created by this chapter for any act or omission in his duties in the administration of this chapter or of any regulation promulgated thereunder.

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

Any person incurring any penalty hereunder may appeal the same to the forest practices appeals board: PROVIDED, That the appeal of any penalty imposed by the department of ecology relating to water quality protection shall be to the pollution controls hearing board.

Such appeals shall be filed within thirty days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the department or the department of ecology. When such an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the department or the department of ecology setting forth the disposition of the application.

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

If the amount of any penalty is not paid to the department or the department of ecology within thirty days after it becomes due and payable, the attorney general, upon the request of the respective director, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county

in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise in this chapter provided.

NEW SECTION. Sec. 18. All penalties received or recovered by state agency action for violations as prescribed in section 17 of this 1974 act shall be deposited in the state general fund. All such penalties recovered as a result of local government action shall be deposited in the local government general fund. Any funds recovered as reimbursement for damages pursuant to sections 8 and 9 of this 1974 act shall be transferred to that agency with jurisdiction over the public resource damaged, including but not limited to political subdivisions, the department of game, the department of fisheries, the department of ecology, the department of natural resources, or any other department that may be so designated: PROVIDED, That nothing herein shall be construed to affect the provisions of RCW 90.48.142.

NEW SECTION. Sec. 19. In addition to the penalties imposed pursuant to section 17 of this 1974 act, any person who conducts any forest practice or knowingly aids or abets another in conducting any forest practice in violation of any provisions of sections 1 through 28 or 30 of this 1974 act, or of the regulations implementing sections 1 through 28 or 30 of this 1974 act, shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment for a term of not more than one year or by both fine and imprisonment for each separate violation. Each day upon which such violation occurs shall constitute a separate violation.

NEW SECTION. Sec. 20. (1) On or before the thirtieth day after the effective date of this section, the governor shall appoint, with the approval of the board, the forest practices advisory committee to consist of the following members: a designated representative of the college of forest resources of the University of Washington, a designated representative of the department of forestry and range management of the college of agriculture of Washington State University, a designated representative of the Washington soil and water conservation districts, a designated representative of the department of fisheries, and a designated representative of the department of game; three representatives of private forest land owners and timber owners who regularly engage in forest operations, who are selected for staggered three year terms to represent eastern and western Washington and large and small owners; and three members of the public at large selected for staggered three



year terms who have no direct financial interest other than wages in the forest products industry. The advisory committee shall select a chairman from among its members whose vote shall be counted twice in case of a tie vote.

(2) The advisory committee shall hold hearings and take testimony and, on or before August 1, 1974, shall prepare proposed forest practices regulations and submit them to the board. The forest practices regulations shall be applicable state-wide to the extent practicable but shall establish not less than two or more than five forest regions within the state to which different regulations may be applicable, reflecting variations in such factors as timber and soil types and climatic conditions. To assist in the initial preparation of proposed forest practices regulations for different forest regions, the chairman of the advisory committee shall establish regional committees to assist the advisory committee. Such regional committees shall be composed of nine members, four of whom are private forest land owners regularly engaged in forest practices.

(3) No permanent forest practices regulations shall be promulgated by the board until it first requests and receives the written recommendation of the advisory committee.

(4) Nothing contained in this section shall be construed to preclude submission of proposed forest practices regulations by any other persons or to eliminate any procedures set forth in chapter 34.04 RCW for adoption, repeal, or modification of rules.

NEW SECTION. Sec. 21. (1) There is hereby created the forest practices appeals board of the state of Washington as an agency of state government.

(2) The appeals board shall consist of three members qualified by experience and training in pertinent matters pertaining to the environment, and at least one member of the appeals board shall have been admitted to the practice of law in this state and shall be engaged in the legal profession at the time of his appointment. The appeals board shall be appointed by the governor with the advice and consent of the senate, and no more than two of the members at the time of appointment or during their term shall be members of the same political party.

(3) Members shall be appointed for a term of six years and shall serve until their successors are appointed and have qualified. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which such vacancy occurs. The terms of the first three members of the appeals board shall be staggered so that their terms shall expire after two, four, and six years.

(4) Any member may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time of the hearing, which shall be public, and the procedure for the hearing, and the decision of such tribunal shall be final and not subject to review by the supreme court. Removal of any member by the tribunal shall disqualify such member for reappointment.

(5) Each member of the appeals board:

(a) Shall not be a candidate for nor hold any other public office or trust, and shall not engage in any occupation or business interfering with or inconsistent with his duty as a member, nor shall he serve on or under any committee of any political party; and

(b) Shall not for a period of one year after the termination of his membership, act in a representative capacity before the appeals board on any matter.

NEW SECTION. Sec. 22. (1) The appeals board shall operate on either a part time or a full time basis, as determined by the governor. If it is determined that the appeals board shall operate on a full time basis, each member shall receive an annual salary to be determined by the governor. If it is determined that the appeals board shall operate on a part time basis, each member shall receive compensation on the basis of seventy-five dollars for each day spent in performance of his duties: PROVIDED, That such compensation shall not exceed ten thousand dollars in a fiscal year. Each member shall receive reimbursement for travel and other expenses incurred in the discharge of his duties in accordance with the provisions of chapter 43.03 RCW.

(2) The appeals board may appoint, discharge, and fix the compensation of an executive secretary, a clerk, and such other clerical, professional, and technical assistants as may be necessary. As specified in RCW 41.06.073, such employment shall be in accordance with the rules of the state civil service law, chapter 41.06 RCW.

(3) The appeals board shall as soon as practicable after the initial appointment of the members thereof, meet and elect from among its members a chairman, and shall at least biennially thereafter meet and elect or reelect a chairman.

(4) The principal office of the appeals board shall be at the state capital, but it may sit or hold hearings at any other place in the state. A majority of the appeals board shall constitute a quorum for making orders or decisions, promulgating rules and regulations

necessary for the conduct of its powers and duties, or transacting other official business, and may act though one position on the board be vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The appeals board shall perform all the powers and duties granted to it in this chapter or as otherwise provided by law.

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

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

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

(8) The forest practices appeals board shall have exclusive jurisdiction to hear appeals arising from an action or determination by the department, and the pollution control hearings board established by RCW 43.21B.010 shall have exclusive jurisdiction to hear appeals arising from an action or determination by the department of ecology.

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

(b) The review proceedings authorized in subparagraph (a) of this subsection are subject to the provisions of chapter 34.04 RCW pertaining to procedures in contested cases. The scope of review by the board and the standards of reviews used by the boards for determining the validity of any final decision shall be those contained in RCW 34.04.130.

NEW SECTION. Sec. 23. (1) In all appeals over which the appeals board has jurisdiction, a party taking an appeal may elect either a formal or an informal hearing, unless such party has had an informal hearing with the department. Such election shall be made according to the rules of practice and procedure to be promulgated by the appeals board. In the event that appeals are taken from the same decision, order, or determination, as the case may be, by different parties and only one of such parties elects a formal hearing, a formal hearing shall be granted.

(2) In all appeals the appeals board shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions but such powers shall be exercised in conformity with chapter 34.04 RCW.

(3) In all appeals involving formal hearing the appeals board, and each member thereof, shall be subject to all duties imposed upon and shall have all powers granted to, an agency by those provisions of chapter 34.04 RCW relating to contested cases.

(4) All proceedings, including both formal and informal hearings, before the appeals board or any of its members shall be conducted in accordance with such rules of practice and procedure as the board may prescribe. The appeals board shall publish such rules and arrange for the reasonable distribution thereof.

(5) Judicial review of a decision of the appeals board shall be de novo except when the decision has been rendered pursuant to the formal hearing, in which event judicial review may be obtained only pursuant to RCW 34.04.130 and 34.04.140.

NEW SECTION. Sec. 24. No county, city, municipality or other local or regional governmental entity shall adopt or enforce any law, ordinance, or regulation pertaining to forest practices, except that to the extent otherwise permitted by law, such entities may exercise any:

(1) Land use planning or zoning authority: PROVIDED, That exercise of such authority may regulate forest practices only: (a) Where the application submitted under section 6 of this 1974 act indicates that the lands will be converted to a use other than commercial timber production; or (b) on lands which have been platted after January 1, 1960; or (c) on tracts of forest land not otherwise covered under subsections (a) and (b) and less than twenty acres including road rights of way in contiguous ownership not classified, designated and taxed under chapter 84.34 RCW, chapter 84.33 RCW, or chapter 84.28 RCW: PROVIDED, That no permit system solely for forest practices shall be allowed; that any additional or more stringent regulations shall not be inconsistent with the forest practices

regulations enacted under this chapter; and such local regulations shall not unreasonably prevent timber harvesting;

(2) Taxing powers;

(3) Regulatory authority with respect to public health; and

(4) Authority granted by chapter 90.58 RCW, the "Shoreline Management Act of 1971".

NEW SECTION. Sec. 25. The board shall establish a policy for a continuing program of orientation and training to be conducted by the department with relation to forest practices and the regulation thereof pursuant to sections 1 through 28 of this 1974 act.

NEW SECTION. Sec. 26. The department shall represent the state's interest in matters pertaining to forestry and forest practices, including federal matters, and may consult with and cooperate with the federal government and other states, as well as other public agencies, in the study and enhancement of forestry and forest practices. The department is authorized to accept, receive, disburse, and administer grants or other funds or gifts from any source, including private individuals or agencies, the federal government, and other public agencies for the purposes of carrying out the provisions of this chapter.

Nothing in this chapter shall modify the designation of the department of ecology as the agency representing the state for all purposes of the Federal Water Pollution Control Act.

NEW SECTION. Sec. 27. The department, along with other affected agencies and institutions, shall annually determine the state's needs for research in forest practices and the impact of such practices on public resources and shall recommend needed projects to the governor and the legislature.

NEW SECTION. Sec. 28. Forest land owners shall permit reasonable access requested by appropriate agencies for removal from stream beds abutting their property of log and debris jams accumulated from upstream ownerships. Any owner of logs in such jams in claiming or removing them shall be required to remove all unmerchantable material from the stream bed in accordance with the forest practices regulations. Any material removed from stream beds must also be removed in compliance with all applicable laws administered by other agencies.

NEW SECTION. Sec. 29. Sections 1 through 28 of this 1974 act shall be known and may be cited as the "Forest Practices Act of 1974".

NEW SECTION. Sec. 30. There is added to chapter 90.48 RCW a new section to read as follows:

(1) The department of ecology, pursuant to powers vested in it previously by chapter 90.48 RCW and consistent with the policies

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

Promulgation of forest practices regulations by the department of ecology and the forest practices board, shall be accomplished so that compliance with such forest practice regulations will achieve compliance with such water quality standards.

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

(3) Notwithstanding any other provisions of chapter 90.48 RCW or of the rules and regulations promulgated thereunder, no permit system pertaining to nonpoint sources of pollution arising from forest practices shall be authorized, and no civil or criminal penalties shall be imposed with respect to any forest practices conducted in full compliance with the applicable provisions of sections 1 through 28 of this 1974 act, forest practices regulations, and any approvals or directives of the department of natural resources thereunder.

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

NEW SECTION. Sec. 31. Nothing in sections 1 through 28 or section 30 of this 1974 act shall modify chapter 70.94 RCW or any other provision of law relating to the control of air pollution.

NEW SECTION. Sec. 32. Nothing in sections 1 through 28 of this 1974 act shall modify any requirements to obtain permits, or any violations that may be found, under the Shoreline Management Act of 1971 (chapter 90.58 RCW), the Hydraulics Act (RCW 75.20.100), other

state statutes in effect on January 1, 1975, and any local ordinances not inconsistent with section 24 of this 1974 act.

NEW SECTION. Sec. 33. Sections 1 through 29 and sections 31 and 32 of this 1974 act shall constitute a new chapter in Title 76 RCW.

NEW SECTION. Sec. 34. (1) The following acts or parts of acts are each repealed:

(a) Section 2, chapter 193, Laws of 1945, section 1, chapter 218, Laws of 1947, section 1, chapter 44, Laws of 1953, section 1, chapter 79, Laws of 1957, section 10, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.010;

(b) Section 1, chapter 193, Laws of 1945 and RCW 76.08.020;

(c) Section 3, chapter 193, Laws of 1945, section 2, chapter 218, Laws of 1947, section 1, chapter 115, Laws of 1955 and RCW 76.08.030;

(d) Section 4, chapter 193, Laws of 1945, section 3, chapter 218, Laws of 1947, section 2, chapter 79, Laws of 1957 and RCW 76.08.040;

(e) Section 5, chapter 193, Laws of 1945, section 4, chapter 218, Laws of 1947, section 3, chapter 79, Laws of 1957, section 11, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.050;

(f) Section 6, chapter 193, Laws of 1945, section 5, chapter 218, Laws of 1947, section 2, chapter 44, Laws of 1953, section 12, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.060;

(g) Section 7, chapter 193, Laws of 1945 and RCW 76.08.070;

(h) Section 8, chapter 193, Laws of 1945, section 6, chapter 218, Laws of 1947, section 3, chapter 44, Laws of 1953, section 2, chapter 115, Laws of 1955, section 1, chapter 40, Laws of 1961 and RCW 76.08.080; and

(i) Section 9, chapter 193, Laws of 1945, section 4, chapter 44, Laws of 1953 and RCW 76.08.090.

(2) Notwithstanding the foregoing repealer, obligations under such sections or permits issued thereunder and in effect on the effective date of this section shall continue in full force and effect, and no liability thereunder, civil or criminal, shall be in any way modified.

NEW SECTION. Sec. 35. Permits issued by the department under the provisions of RCW 76.08.030 during 1974 shall be effective until April 1, 1975 if an application has been submitted under the provisions of section 5 of this 1974 act prior to January 1, 1975.

NEW SECTION. Sec. 36. If any provision of this 1974 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provisions to other persons or circumstances shall not be affected.

NEW SECTION. Sec. 37. Sections 3, 4, 5, 6, 20, 30, and 36 of this 1974 act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. Sections 1, 2, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, and 35 shall take effect January 1, 1975.

Passed the House January 29, 1974.  
Passed the Senate February 5, 1974.  
Approved by the Governor February 14, 1974, with the exception of certain items which are vetoed.  
Filed in Office of Secretary of State February 26, 1974.  
Note: Governor's explanation of partial veto is as follows:  
"I am returning herewith without my approval as to certain items Second Substitute House Bill No. 637 entitled:

Veto  
Message

"AN ACT Relating to forest practices."

Section 3 of the bill purports to create a seven member forest practices board to be appointed by the Governor. However, the section elsewhere requires the appointment of nine members. Accordingly, I have vetoed that item limiting the board to seven members. Section 3 also provides that a quorum of the board shall consist of four members. Since this provision is obviously related to a board of seven members, I have vetoed that item establishing the quorum at four. Additionally, this section provides for the staggering of the terms of the board members, but does not do so for all nine members. I would urge the Legislature to consider future amendments to this act that would provide an appropriate quorum and establish the initial terms of office for all board members.

Subsection 3 of section 20 provides that the forest practices board may not permanently adopt forest practice regulations without first requesting and receiving the recommendations of the advisory committee. Such a provision could unduly restrict the forest practices board in its responsibility to adopt regulations. Accordingly, I have vetoed that item. Section 20 also provides for the appointment of the advisory committee members by the Governor. However, in so doing reference is made to the appointment of "designated representatives" of certain agencies. In the absence of any language identifying who is to designate the representative appointed by the Governor, appointments will be made on the basis that it is the Governor.

Subsection 9 of section 22 would limit the scope of review of the appeals board over administrative decisions to that provided in the Administrative Procedures Act for judicial review of decisions in contested cases before an administrative body. Such a limitation was specifically drawn for judicial review, not administrative review such as will be conducted by the appeals board. Accordingly, I have vetoed that item.

With the exception of those items noted above, I have approved the remainder of Second Substitute House Bill No. 637."