

# **HOUSE BILL ANALYSIS**

## **HB 3002**

---

**Title:** An act relating to implementing and enforcing the federal prohibition against export from the United States of unprocessed timber from lands owned by the state.

**Brief Description:** Implementing the federal ban on exports of logs from state land and maximizing the prices obtained by state entities from public timber sales.

**Sponsors:** Representatives Huff, Doumit, Radcliff, Hatfield, Cairnes, Clements, Campbell, Kessler, Parlette, McDonald, Lisk, Mulliken, Woods, Sump, Alexander, Ogden, Wensman, Benson, D. Sommers, B. Chandler, Dunn, Edwards and Mitchell.

---

### **HOUSE COMMITTEE ON NATURAL RESOURCES**

**Meeting Date:** February 2, 2000.

**Bill Analysis Prepared by:** Carole Richmond, Analyst (786-7114)

**Background:**

By the end of the 1980s, logging from public and private forest lands had reached an all time high, as domestic and foreign demand for wood continued unabated. In particular, remaining old growth stands in the national forests were in high demand from Japan and other Asian countries. These countries were willing to pay a higher price than domestic mills for unprocessed high quality logs that they could mill to their specifications. As the supply of old growth diminished on public lands, species dependent on old growth, notably the spotted owl, became candidates for listing under the federal Endangered Species Act, and eventually were listed. The dominant issue of concern when the spotted owl was listed in 1990 was the impact that curtailment of old growth harvest would have on timber-dependent communities, mills, and workers.

*The Forest Resources Conservation and Shortage Relief Act*

To offset this impact, Congress enacted the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620). The purpose of this law is to prevent the sale of unprocessed or raw logs from federal lands. This law codified a policy of prohibiting the sale of raw logs from Forest Service land that had existed for many years. The law also prohibits the substitution— of timber; that is, the continued

export of private timber by a company while that company buys timber from federal lands for domestic processing. Such substitution is believed by some to defeat the intent of the federal law to promote domestic processing and to result in the indirect export of logs from public lands. The prohibition on substitution is carried out by preventing companies from bidding on state or federal timber if they export logs from their own lands. The law prohibits substitution in every state except states that harvest over 400 million board feet per year. Only Washington falls in this category and as a result is not required to prohibit substitution. Congress authorized but did not require exempt states to adopt substitution language.

The law was supported by environmentalists and by small mills dependent upon Forest Service timber. The law was opposed by large timber companies that, in general, promote free trade in forest products, and by the Department of Natural Resources, which harvests timber for the benefit of school and other capitol construction. Timber from state trust lands is sold at auction to the highest bidder. The department argued that preventing the export of unprocessed timber from state trust lands would lower revenues to the trust, thus depriving trust beneficiaries of school construction funds. The department has estimated that the log-export ban has cost the state \$350 million between 1990 and 1997. The impact has diminished since the Asian economic downturn.

The department challenged the Forest Resources Conservation and Shortage Relief Act of 1990 in federal district court and lost. The department appealed to the Ninth Circuit Court and won in 1993 on the grounds that Congress cannot compel states to enact or administer federal regulatory programs. Accordingly, Congress amended the law in 1993 to allow, rather than require, states to enforce the prohibition on log exports from state lands. States wishing to develop their own program must obtain approval for their program from the U.S. Secretary of Commerce.

As originally envisioned, the export restrictions were to be a temporary means to offset the loss of federal timber. In 1997, Congress amended the law again making the restrictions on the export from non-federal lands permanent. The amendment also modified the law that controls substitutions rules for federal timber, making it easier for firms to qualify to purchase federal sales.

#### *State Implementation of the Log-Export Ban*

In 1991, the state adopted substitution– rules administered by the Department of Revenue to implement the federal ban on the export of unprocessed timber (chapter 240-15 WAC). The rules prohibit firms that export unprocessed logs from bidding on state timber. The result has been fewer bidders for state timber and, thus, lower prices and lower revenues for school construction. In addition, fewer small independent mills exist now than did when the log export ban was enacted.

Another consequence of Washington's rule is that Oregon mills may bid on Washington timber, even though they export timber from Oregon timberlands.

The 1993 amendments to the federal law provide that states may either implement the federal program, or adopt a state program for approval by the U.S. Secretary of Commerce that prohibits log exports.

***Summary of Bill:***

The policy of the state is declared to be:

(1) the enforcement of the ban on unprocessed timber from state trust lands to the extent required by federal law; and

(2) the maintenance of competitive markets to the extent permitted by federal law.

The export of unprocessed timber from public lands by any person is prohibited. Public lands includes land owned by the state or its subdivisions. The term unprocessed timber— is defined. The species, grades, and geographic origin of the unprocessed timber prohibited from export must be representative of the species, grades, and geographic origin of timber comprising the total public land sales program in the state.

The Department of Revenue is charged with administering and enforcing the provisions of the chapter and any implementing rules. State and local government timber sales contracts may include provisions to facilitate enforcement of the chapter. The Department of Revenue may assess and collect penalties for violation of the export ban in amounts up to \$10,000, or three times the value of unprocessed timber for public lands that was unlawfully exported, whichever is greater.

An agency selling timber may amend any existing timber sales contract to ensure compliance with the provisions of the chapter.

The Governor is required to submit this chapter and any implementing rules to the Secretary of Commerce for approval, and to provide any information reasonably requested by the secretary for the purpose of determining compliance with the log export ban.

***Appropriation:*** None.

***Fiscal Note:*** Requested January 28, 2000.

***Effective Date:*** Ninety days after adjournment of session in which bill, except Section 5 which contains an emergency clause and takes effect immediately.

***Rulemaking Authority:*** Department of Revenue.