
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-4431.2/02 2nd draft

ATTY/TYPIST: ML:ads

BRIEF DESCRIPTION:

2 **2SHB 2307** - H AMD
3 By Representative Sump

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature finds that the rules
8 adopted in 1990 in response to the passage of the federal forest
9 resources and conservation and shortage relief act did not provide any
10 mechanism to allow for any changes to these rules to reflect changes in
11 federal law. The legislature also finds that no state statutory
12 authority exists for these rules, and that the rules lack the authority
13 to impose civil penalties. The legislature further finds that the
14 state of Washington has broad discretion to develop a state timber
15 sales program to implement the federal act, including the discretion to
16 impose, modify, or eliminate substitution restrictions on unprocessed
17 timber harvested from public lands.

18 The legislature finds that the state of Washington and its
19 political subdivisions sell large amounts of timber from their public
20 lands. Revenues from those timber sales are used to support school
21 construction, benefit the state's higher education institutions, and
22 provide assistance to other trust beneficiaries. The legislature is
23 concerned with the declining revenues that are being generated for
24 these trusts, and at the amount of timber that is being harvested from
25 public lands in Washington but being processed outside of the state.

26 It is the legislature's intent to provide more flexibility in the
27 operation of the timber substitution rules in order to increase the
28 potential amount of money that can benefit the trusts, provide mills
29 within Washington state with a more certain wood supply, give necessary
30 rule-making authority to a state agency to adopt necessary changes to
31 the timber substitution rules, and to statutorily authorize the timber
32 substitution rules.

33 NEW SECTION. **Sec. 2.** The definitions in this section apply
34 throughout this chapter unless the context clearly requires otherwise.

1 (1) "Agency" means the state, its agencies or instrumentalities, or
2 unit of local government that owns or manages land from which timber is
3 harvested in the state of Washington.

4 (2) "Department" means the department of revenue.

5 (3) "Export" means either to load on a conveyance or vessel or put
6 in a log raft with the intent to ship to a foreign destination, or to
7 place at a facility such as a port, yard, pond, or dock with the intent
8 to load on a conveyance or vessel or put in a log raft for shipment to
9 a foreign destination.

10 (4) "Export restricted timber" means unprocessed timber originating
11 from a sale of timber from public lands that has been designated as
12 export restricted under section 3 of this act, and includes both logs
13 and stumpage originating from such a sale.

14 (5) "Federal forest resources conservation and shortage relief act"
15 or "act" means the federal forest resources conservation and shortage
16 relief act of 1990 (16 U.S.C. Sec. 1620 et seq.) as now or hereafter
17 amended.

18 (6) "Person" means any individual, partnership, corporation,
19 association, or other legal entity and includes any subsidiary,
20 subcontractor, parent company, and business affiliates where one
21 affiliate controls or has the power to control the other or when both
22 are controlled directly or indirectly by a third person.

23 (7) "Processing facility" means a facility for converting
24 unprocessed timber into any of the items of processed timber as defined
25 by the department by rule. Chip plants, pulp mills, and facilities
26 that process only western red cedar products are not considered
27 processing facilities.

28 (8) "Public lands" means lands in the state of Washington that are
29 held or owned by the state of Washington, an agency or instrumentality
30 of the state, or unit of local government within the state.

31 (9) "Purchaser" means a person who has been awarded a timber sale
32 contract to harvest or acquire export restricted timber from public
33 lands in the state of Washington.

34 (10) "Substitution" means the purchase of export restricted timber
35 or possession of an active sale contract for export restricted timber:
36 (a) By a person who owns and operates a domestic processing facility
37 within the United States; (b) where the person owning the processing
38 facility also exports or sells for export from the United States
39 unprocessed timber originating from private lands in Washington,

1 Oregon, or Idaho; and (c) where the lands are owned by the person, or
2 the person has exclusive rights to harvest timber from the lands, where
3 the rights may be exercised at any time during a period of more than
4 seven years.

5 (11) "Unit of local government" means any county, city, town,
6 special district, municipal corporation, or quasi-municipal corporation
7 in the state of Washington.

8 (12) "Unprocessed timber" means trees or portions of trees or other
9 roundwood not processed to standards and specifications suitable for
10 end product use. Unprocessed timber does not include timber processed
11 into any one of the exemptions contained in section 620e(9)(B) of the
12 federal forest resources conservation and shortage relief act from the
13 federal definition of unprocessed timber.

14 NEW SECTION. **Sec. 3.** Each agency managing public lands subject to
15 this chapter must designate its timber sales as export restricted until
16 such time as the restrictions are changed. An order issued by the
17 secretary of commerce of the United States remains in effect until
18 revised by order of the secretary.

19 NEW SECTION. **Sec. 4.** (1) No person may export from the United
20 States export restricted timber. No person may sell, trade, exchange,
21 or otherwise convey export restricted timber to any other person for
22 the purpose of export from the United States.

23 (2) Except as specifically provided under this chapter:

24 (a) No person may purchase or possess an active contract for export
25 restricted timber from an agency if the person owns and operates a
26 processing facility and the processing of export restricted timber at
27 the facility by such a person would constitute substitution;

28 (b) No person may purchase from another person export restricted
29 timber if the person is prohibited under (a) of this subsection from
30 purchasing the timber directly from the agency managing the public
31 lands from which the timber originated.

32 NEW SECTION. **Sec. 5.** The prohibition against substitution in
33 section 4 of this act does not apply to:

34 (1) The use of timber originating from public lands that is either
35 hardwood timber or western red cedar;

1 (2) The sale of up to twenty percent of the volume in any sale
2 purchased in calendar year 2002 or thereafter to a person or persons
3 who are otherwise ineligible under section 4 of this act to purchase
4 export restricted timber, but only if the timber is processed at a
5 domestic facility. Hardwoods, western red cedar, and logs described in
6 subsection (4) of this section are not considered as part of the volume
7 within a sale under this exemption. The transferor must notify the
8 department in writing of such a transaction prior to physically
9 transferring the timber to the transferee. Rights to purchase export
10 restricted timber under this subsection may be used on a sale-by-sale
11 basis and may not be accumulated or transferred to other sales. The
12 advertised volume or volume specified in the sale agreement must serve
13 as the basis for determining the sale volume to which the percentage
14 applies;

15 (3) The purchase by any person of export restricted timber
16 originating from public lands east of the crest of the Cascade mountain
17 range beginning from the Columbia river and running north to state
18 highway 20, east to the Okanogan river, and north to the Canadian
19 border, if such a person does not export or sell for export timber from
20 private lands in that geographic area;

21 (4) A log, regardless of gross scale, sold to a domestic processing
22 facility for the purpose of conversion into chips, pulp, or pulp
23 products;

24 (5) The sale of timber for salvage or forest health in which at
25 least ninety percent of the volume of the sale consists of trees that
26 have suffered damage from fire, insects, disease, wind, ice, volcanic,
27 or other biological or geological event; or

28 (6) Situations that the department has determined constitute
29 exceptional circumstances so that the seven-year restriction contained
30 in section 2(10)(c) of this act, relating to a person's rights to
31 exclusively harvest timber from privately owned lands at any time
32 during a period of more than seven years, does not apply. The
33 department must make such determinations on a case-by-case basis.

34 NEW SECTION. **Sec. 6.** An agency must accept bids from persons not
35 otherwise eligible to bid on sales of export restricted timber for the
36 purpose of opening these bids on a contingent basis. Bids received
37 from otherwise ineligible persons may be opened only if the agency
38 receives less than three bids on the proposed timber sale from eligible

1 bidders. Once opened, contingent bids are treated in the same manner
2 as if the bid had been received from a person who is eligible to bid on
3 export restricted timber. If the agency does receive bids from at
4 least three persons who are eligible to bid on export restricted timber
5 sales, all contingent bids received by the agency must be returned to
6 the bidder unopened.

7 NEW SECTION. **Sec. 7.** The department of natural resources shall
8 report to the appropriate legislative committees by January 1, 2005, on
9 the impact this act has upon the trust beneficiaries of public timber
10 sales.

11 NEW SECTION. **Sec. 8.** (1) The department must develop and issue
12 uniform forms, including a primary purchaser certification form and a
13 transferee certification form, for purposes of submission under section
14 9 of this act. Each certification form must be signed and affirmed
15 with a notification, conspicuously placed, that the making of a false
16 statement on the certification is punishable as a gross misdemeanor
17 under RCW 9A.72.040. The certification forms shall affirm, under
18 penalty of law, the truth of each of the following:

19 (a) That the timber, while still in unprocessed form, will not be:
20 (i) Exported by the purchaser or used in substitution by the
21 purchaser; or

22 (ii) Transferred to any other person for the purpose either of
23 export or to be used in substitution;

24 (b) That hammer brands and paint applied to the timber as required
25 by this chapter and by rule remain on the timber until it is
26 domestically processed;

27 (c) That prior to selling, trading, exchanging, or otherwise
28 conveying any timber that is export restricted timber to any other
29 person, the purchaser (transferor) must require the transferee to
30 provide to the purchaser a signed copy of a completed transferee
31 certification developed by the department; and that the purchaser must
32 provide the department with one copy not later than five days after
33 receipt from the transferee; and

34 (d) That the purchaser must not sell, trade, exchange, or otherwise
35 convey export restricted timber in violation of this chapter to any
36 person identified on the list of ineligible purchasers published by the
37 department under this chapter.

1 The certification forms must also include all necessary provisions
2 to account for exemptions allowed under section 5 of this act.

3 (2) Copies of all certifications and forms received by the
4 department must be available for public inspection at reasonable hours
5 and locations.

6 (3) In developing and implementing a program to audit compliance
7 with this chapter, the department may audit certifications or other
8 forms submitted by any person in order to ensure that the person is
9 able to account for the disposition of all export restricted timber
10 that the person has purchased from a public agency or received by means
11 of transfer from another person.

12 NEW SECTION. **Sec. 9.** (1) Prior to issuing a contract for the sale
13 of export restricted timber, an agency that has offered the timber for
14 sale must require that the purchaser submit a signed copy of any
15 completed certification forms developed by the department.

16 (2) An agency must submit a copy of the purchaser's forms to the
17 department no later than five days after the receipt of the purchaser's
18 forms pursuant to this section. The agency must make copies of the
19 reports available to the public at reasonable times and locations.

20 (3) A person possessing export restricted timber must, prior to
21 selling, trading, exchanging, or otherwise conveying the timber to
22 another person, require the transferee to provide to the transferor a
23 signed copy of a completed transferee certification form developed by
24 the department. The transferee certification must include an
25 affirmation, under penalty of law, as to the truth of each of the items
26 required to be affirmed in a purchaser certification, as well as the
27 quantity of export restricted timber that is being transferred.

28 NEW SECTION. **Sec. 10.** (1) The department must establish and
29 maintain a list of persons who, due to violations of this chapter, are
30 ineligible to purchase export restricted timber. The department must
31 add a person's name to the list if it finds, or has been notified by an
32 agency, that the person has violated the provisions relating to the
33 prohibition against exports, the prohibition against substitution, or
34 the limitation on indirect transactions. A person must be removed from
35 the list after the period of time has elapsed as is required under the
36 debarment order issued under section 12 of this act.

1 (2) The department must post a copy of the list of ineligible
2 purchasers on its web site and provide a copy of this list, either
3 electronically or in writing at the requesting person's option, to each
4 person who requests to receive copies of the list. Upon a request for
5 future updated copies of the list, the department must provide revised
6 copies of the list to all of these persons whenever a person is added
7 to or removed from the list.

8 NEW SECTION. **Sec. 11.** Agencies contracting for the sale of export
9 restricted timber from public lands must include in the contracts
10 clauses incorporating the applicable requirements relating to the
11 prohibitions on export and substitution, reporting, and enforcement.
12 In addition, the contracts must include clauses that provide that a
13 violation by the purchaser of the prohibitions relating to the
14 prohibitions on export and substitution are sufficient cause for the
15 agency to cancel the contract.

16 NEW SECTION. **Sec. 12.** (1) If the department finds that a person
17 has violated any provisions of this chapter, or any rule implementing
18 this chapter, the department must provide written notice of the
19 violation to the person and provide the person an opportunity to be
20 heard concerning the department's findings. The person must have an
21 opportunity to contest the department's findings or explain any
22 mitigating circumstances. If a person fails to respond to the notice,
23 or the department determines after the hearing that a provision of this
24 chapter or a rule implementing this chapter was violated, the
25 department may impose the following civil penalties:

26 (a) For exporting unprocessed export restricted public timber, a
27 fine not to exceed fifty thousand dollars for each violation that the
28 person should have known constituted a violation;

29 (b) For exporting unprocessed export restricted public timber, a
30 fine not to exceed five hundred thousand dollars for each violation the
31 person committed willfully;

32 (c) For all other violations:

33 (i) A fine not to exceed twenty-five thousand dollars for each
34 violation the person should have known constituted a violation;

35 (ii) A fine not to exceed one hundred thousand dollars for each
36 violation the person committed willfully; and

1 (iii) A fine not to exceed ten thousand dollars for a minor
2 violation that is not an intentional violation, involves a single
3 contract, purchase order, processing facility, or log yard involving a
4 quantity of less than twenty-five logs and has a total value of less
5 than ten thousand dollars.

6 (2) The department must adopt by rule standards for determining the
7 civil penalties to be imposed. These standards may be based upon the
8 value of the timber involved, the duration of the violation, the
9 frequency of the violations, any previous violations, and other facts
10 and circumstances the department determines are relevant to set the
11 civil penalties under this section.

12 (3) A person who willfully violates any of the prohibitions
13 contained in section 4 of this act pertaining to export, substitution,
14 or indirect transactions must be debarred, by an order issued by the
15 department, from bidding on or purchasing export restricted timber
16 originating from any public lands covered by this chapter for a period
17 of two years.

18 (4) A second debarment of any person under this section, which is
19 for a violation by the same person committed after the first debarment
20 of the person under this section, will result in a debarment of the
21 person from bidding on or purchasing export restricted timber for a
22 period of five years.

23 (5) If the department becomes aware of a violation, or possible
24 violation, of the prohibitions relating to export, substitution, or
25 certain indirect transactions, it must notify the managing agency so
26 that the agency may promptly take appropriate action, as provided in
27 this chapter.

28 (6) The Washington administrative procedure act, chapter 34.05 RCW,
29 applies to the issuance of any order by the department, or any
30 determination by the department that a violation of any of the
31 prohibitions contained in section 4 of this act pertaining to export,
32 substitution, or indirect transactions has occurred. Agencies other
33 than state agencies must follow appropriate procedures in issuing an
34 order for a violation of the prohibitions contained in section 4 of
35 this act pertaining to export, substitution, or indirect transactions.

36 (7) For the purposes of this section, the term "person" includes
37 any previously formed but no longer existing entity that would be
38 included in section 2(6) of this act if the entity were in existence.

1 NEW SECTION. **Sec. 13.** (1) The department is responsible for the
2 proper administration of this chapter. The department has the
3 authority to adopt all rules to implement this chapter. The department
4 also has the authority to administer and otherwise modify chapter 240-
5 15 WAC, as recodified pursuant to section 14(2) of this act, to ensure
6 that it is consistent with the provisions of this chapter. The
7 department may undertake studies, analysis, or research necessary to
8 carry out the provisions of this chapter. The department may also
9 enter into all necessary contracts and accept any gifts, grants, or
10 funds for the purposes of this chapter.

11 (2) The department must develop and implement a program for the
12 monitoring of export restricted timber in transit and at ports and
13 other facilities for the purpose of ensuring that export restricted
14 timber is not exported from the United States or used in substitution.
15 This monitoring program may also include requests for information on
16 the processing and transfer of timber grown by the purchaser within
17 Washington, Oregon, and Idaho. The purchaser must maintain reasonable
18 records regarding the processing and transfers of its timber and
19 produce these records at the request of the department. The department
20 may enter into contracts or agreements with other appropriate state,
21 federal, or other public authorities for the purpose of meeting the
22 monitoring requirements of this section.

23 NEW SECTION. **Sec. 14.** (1) The legislature finds that the rules
24 pertaining to timber substitution have been established within the
25 Washington Administrative Code since 1990. The legislature also finds
26 that these rules were adopted without the benefit of state statutes
27 providing direction for these rules. The legislature is concerned that
28 there will be considerable disruption to the timber substitution
29 program if the department is required to adopt rules to administer a
30 program it is already administering. The legislature further
31 recognizes that all details contained in agency rules are not
32 appropriate for codification into statute because efficiencies in
33 administration may allow for such improvements as simpler reporting
34 requirements. Future efficiencies could reduce the burden for the
35 department, the government agencies calling for bids and issuing timber
36 contracts, and the timber community. Therefore, this section gives
37 effect to the rules adopted by the governor in chapter 240-15 WAC
38 without requiring the readoption of these rules or the preparation of

1 small business economic impact statements by the department. The
2 absence of language contained within that chapter of regulations
3 concerning this chapter may not be construed as an intent by the
4 legislature to change or repeal the requirements of chapter 240-15 WAC
5 as it existed on January 1, 2002. Only those provisions of chapter
6 240-15 WAC that are clearly inconsistent with the provisions and
7 purposes of this chapter may be considered no longer in effect. The
8 legislature intends by the adoption of this chapter to expand the
9 current exemptions from the substitution rules, to give the department
10 the necessary rule-making authority to administer this chapter, to
11 create a pilot program, and to place the current system into statute.

12 (2) The code reviser's office must recodify the rules contained in
13 chapter 240-15 WAC as a separate chapter under the responsibility of
14 the department. The department must issue an interpretive statement
15 that discusses any changes in the current administration of the timber
16 substitution rules program. The interpretive statement must also
17 describe which, if any, of these changes will be subject to a rule-
18 making proceeding under chapter 34.05 RCW. The code reviser's office
19 must publish this interpretive statement in the Washington State
20 Register.

21 NEW SECTION. **Sec. 15.** (1) This chapter does not apply to the
22 extent that an order issued by the secretary of commerce of the United
23 States under the federal forest resources conservation and shortage
24 relief act is suspended, removed, or modified by the president of the
25 United States, or the federal act is modified or repealed by congress.

26 (2) If federal law establishes a partial ban instead of a total ban
27 on the export of unprocessed timber originating from public lands, then
28 sales designated by an agency as export restricted must be distributed
29 proportionately throughout the geographical area of land owned or
30 managed by the agency. Timber originating from sales designated as
31 export restricted must be representative of the species and grade
32 distribution of the agency's sale program. Designation of timber sales
33 as export restricted and as exportable must be on a sale-by-sale basis
34 and apply to the entire sale being considered. However, a sale must be
35 subdivided into portions that are export restricted and exportable if
36 there are insufficient sales in the annual sales program to ensure that
37 designation on a sale-by-sale basis meets the applicable requirements
38 of the federal act. By March 31st of each year, each agency selling

1 timber from public lands must report to the department on the results
2 of its sales program for the preceding calendar year. The report must
3 include information on the volume, species, grade, and geographical
4 distribution of sales sold as export restricted and nonexport
5 restricted.

6 NEW SECTION. **Sec. 16.** The governor shall submit this chapter to
7 the secretary of commerce for approval under 16 U.S.C. Sec. 620c(d)(2).
8 The governor must also provide any information reasonably requested by
9 the secretary of commerce to determine whether the state's program
10 complies with all requirements of federal law. If the secretary of
11 commerce disapproves the state's program as submitted, the department
12 must notify the governor and the appropriate legislative committees of
13 the secretary's disapproval and inform them of those deficiencies in
14 the program identified by the secretary of commerce.

15 NEW SECTION. **Sec. 17.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

19 NEW SECTION. **Sec. 18.** Sections 7 and 14 of this act take effect
20 July 1, 2002. The remainder of this act takes effect upon the approval
21 of this act by the secretary of commerce under 16 U.S.C. Sec.
22 620c(d)(2).

23 NEW SECTION. **Sec. 19.** Sections 1 through 18 of this act
24 constitute a new chapter in Title 79 RCW."

25 Correct the title.

EFFECT: Removes the 50% phase-out of the substitution rules over
ten years. Requires DNR to report to the Legislature on the impact of
the law on the trusts after three years. Reduces the amount of
secondary market sales from 50% to 20% of the volume of the sale.
Limits the salvage exemption from the substitution rules to sales where
at least 90% of the timber has been damaged. Eliminates the thinnings
exemption from the substitution rules. Modifies the sourcing area for
timber companies from the crest of the Cascade Mountains.

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