
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-4432.2/02 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 The legislature is also concerned that some existing processing
27 facilities made investment decisions based upon the law that is
28 currently in effect. Therefore, it is the legislature's intent to
29 provide these processing facilities with a ten-year window under which
30 the existing law is maintained in order to adjust to the elimination of
31 the timber substitution rules at the end of this time period.

32 NEW SECTION. **Sec. 2.** The definitions in this section apply
33 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; and

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

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

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

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

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

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

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

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

31 (3) The prohibition against substitution contained in subsection
32 (2) of this section shall have no more force or effect after June 30,
33 2012. Beginning on July 1, 2012, any person not subject to a debarment
34 penalty under this chapter may bid on export restricted timber in this
35 state.

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

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

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

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

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

28 NEW SECTION. **Sec. 6.** (1) The department must develop and issue
29 uniform forms, including a primary purchaser certification form and a
30 transferee certification form, for purposes of submission under section
31 7 of this act. Each certification form must be signed and affirmed
32 with a notification, conspicuously placed, that the making of a false
33 statement on the certification is punishable as a gross misdemeanor
34 under RCW 9A.72.040. The certification forms shall affirm, under
35 penalty of law, the truth of each of the following:

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

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

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

6 (c) That prior to selling, trading, exchanging, or otherwise
7 conveying any timber that is export restricted timber to any other
8 person, the purchaser (transferor) must require the transferee to
9 provide to the purchaser a signed copy of a completed transferee
10 certification developed by the department; and that the purchaser must
11 provide the department with one copy not later than five days after
12 receipt from the transferee; and

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

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

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

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

28 NEW SECTION. **Sec. 7.** (1) Prior to issuing a contract for the sale
29 of export restricted timber, an agency that has offered the timber for
30 sale must require that the purchaser submit a signed copy of any
31 completed certification forms developed by the department.

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

36 (3) A person possessing export restricted timber must, prior to
37 selling, trading, exchanging, or otherwise conveying the timber to
38 another person, require the transferee to provide to the transferor a

1 signed copy of a completed transferee certification form developed by
2 the department. The transferee certification must include an
3 affirmation, under penalty of law, as to the truth of each of the items
4 required to be affirmed in a purchaser certification, as well as the
5 quantity of export restricted timber that is being transferred.

6 NEW SECTION. **Sec. 8.** (1) The department must establish and
7 maintain a list of persons who, due to violations of this chapter, are
8 ineligible to purchase export restricted timber. The department must
9 add a person's name to the list if it finds, or has been notified by an
10 agency, that the person has violated the provisions relating to the
11 prohibition against exports, the prohibition against substitution, or
12 the limitation on indirect transactions. A person must be removed from
13 the list after the period of time has elapsed as is required under the
14 debarment order issued under section 10 of this act.

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

22 NEW SECTION. **Sec. 9.** Agencies contracting for the sale of export
23 restricted timber from public lands must include in the contracts
24 clauses incorporating the applicable requirements relating to the
25 prohibitions on export and substitution, reporting, and enforcement.
26 In addition, the contracts must include clauses that provide that a
27 violation by the purchaser of the prohibitions relating to the
28 prohibitions on export and substitution are sufficient cause for the
29 agency to cancel the contract.

30 NEW SECTION. **Sec. 10.** (1) If the department finds that a person
31 has violated any provisions of this chapter, or any rule implementing
32 this chapter, the department must provide written notice of the
33 violation to the person and provide the person an opportunity to be
34 heard concerning the department's findings. The person must have an
35 opportunity to contest the department's findings or explain any
36 mitigating circumstances. If a person fails to respond to the notice,

1 or the department determines after the hearing that a provision of this
2 chapter or a rule implementing this chapter was violated, the
3 department may impose the following civil penalties:

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

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

10 (c) For all other violations:

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

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

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

20 (2) The department must adopt by rule standards for determining the
21 civil penalties to be imposed. These standards may be based upon the
22 value of the timber involved, the duration of the violation, the
23 frequency of the violations, any previous violations, and other facts
24 and circumstances the department determines are relevant to set the
25 civil penalties under this section.

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

32 (4) A second debarment of any person under this section, which is
33 for a violation by the same person committed after the first debarment
34 of the person under this section, will result in a debarment of the
35 person from bidding on or purchasing export restricted timber for a
36 period of five years.

37 (5) If the department becomes aware of a violation, or possible
38 violation, of the prohibitions relating to export, substitution, or
39 certain indirect transactions, it must notify the managing agency so

1 that the agency may promptly take appropriate action, as provided in
2 this chapter.

3 (6) The Washington administrative procedure act, chapter 34.05 RCW,
4 applies to the issuance of any order by the department, or any
5 determination by the department that a violation of any of the
6 prohibitions contained in section 4 of this act pertaining to export,
7 substitution, or indirect transactions has occurred. Agencies other
8 than state agencies must follow appropriate procedures in issuing an
9 order for a violation of the prohibitions contained in section 4 of
10 this act pertaining to export, substitution, or indirect transactions.

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

14 NEW SECTION. **Sec. 11.** (1) The department is responsible for the
15 proper administration of this chapter. The department has the
16 authority to adopt all rules to implement this chapter. The department
17 also has the authority to administer and otherwise modify chapter 240-
18 15 WAC, as recodified pursuant to section 12(2) of this act, to ensure
19 that it is consistent with the provisions of this chapter. The
20 department may undertake studies, analysis, or research necessary to
21 carry out the provisions of this chapter. The department may also
22 enter into all necessary contracts and accept any gifts, grants, or
23 funds for the purposes of this chapter.

24 (2) The department must develop and implement a program for the
25 monitoring of export restricted timber in transit and at ports and
26 other facilities for the purpose of ensuring that export restricted
27 timber is not exported from the United States or used in substitution.
28 This monitoring program may also include requests for information on
29 the processing and transfer of timber grown by the purchaser within
30 Washington, Oregon, and Idaho. The purchaser must maintain reasonable
31 records regarding the processing and transfers of its timber and
32 produce these records at the request of the department. The department
33 may enter into contracts or agreements with other appropriate state,
34 federal, or other public authorities for the purpose of meeting the
35 monitoring requirements of this section.

36 NEW SECTION. **Sec. 12.** (1) The legislature finds that the rules
37 pertaining to timber substitution have been established within the

1 Washington Administrative Code since 1990. The legislature also finds
2 that these rules were adopted without the benefit of state statutes
3 providing direction for these rules. The legislature is concerned that
4 there will be considerable disruption to the timber substitution
5 program if the department is required to adopt rules to administer a
6 program it is already administering. The legislature further
7 recognizes that all details contained in agency rules are not
8 appropriate for codification into statute because efficiencies in
9 administration may allow for such improvements as simpler reporting
10 requirements. Future efficiencies could reduce the burden for the
11 department, the government agencies calling for bids and issuing timber
12 contracts, and the timber community. Therefore, this section gives
13 effect to the rules adopted by the governor in chapter 240-15 WAC
14 without requiring the readoption of these rules or the preparation of
15 small business economic impact statements by the department. The
16 absence of language contained within that chapter of regulations
17 concerning this chapter may not be construed as an intent by the
18 legislature to change or repeal the requirements of chapter 240-15 WAC
19 as it existed on January 1, 2002. Only those provisions of chapter
20 240-15 WAC that are clearly inconsistent with the provisions and
21 purposes of this chapter may be considered no longer in effect. The
22 legislature intends by the adoption of this chapter to expand the
23 current exemptions from the substitution rules, to give the department
24 the necessary rule-making authority to administer this chapter, to
25 create a pilot program, and to place the current system into statute.

26 (2) The code reviser's office must recodify the rules contained in
27 chapter 240-15 WAC as a separate chapter under the responsibility of
28 the department. The department must issue an interpretive statement
29 that discusses any changes in the current administration of the timber
30 substitution rules program. The interpretive statement must also
31 describe which, if any, of these changes will be subject to a rule-
32 making proceeding under chapter 34.05 RCW. The code reviser's office
33 must publish this interpretive statement in the Washington State
34 Register.

35 NEW SECTION. **Sec. 13.** (1) This chapter does not apply to the
36 extent that an order issued by the secretary of commerce of the United
37 States under the federal forest resources conservation and shortage

1 relief act is suspended, removed, or modified by the president of the
2 United States, or the federal act is modified or repealed by congress.

3 (2) If federal law establishes a partial ban instead of a total ban
4 on the export of unprocessed timber originating from public lands, then
5 sales designated by an agency as export restricted must be distributed
6 proportionately throughout the geographical area of land owned or
7 managed by the agency. Timber originating from sales designated as
8 export restricted must be representative of the species and grade
9 distribution of the agency's sale program. Designation of timber sales
10 as export restricted and as exportable must be on a sale-by-sale basis
11 and apply to the entire sale being considered. However, a sale must be
12 subdivided into portions that are export restricted and exportable if
13 there are insufficient sales in the annual sales program to ensure that
14 designation on a sale-by-sale basis meets the applicable requirements
15 of the federal act. By March 31st of each year, each agency selling
16 timber from public lands must report to the department on the results
17 of its sales program for the preceding calendar year. The report must
18 include information on the volume, species, grade, and geographical
19 distribution of sales sold as export restricted and nonexport
20 restricted.

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

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

34 NEW SECTION. **Sec. 16.** Section 12 of this act takes effect July 1,
35 2002. The remainder of this act takes effect upon the approval of this
36 act by the secretary of commerce under 16 U.S.C. Sec. 620c(d)(2).

1 NEW SECTION. **Sec. 17.** Sections 1 through 16 of this act
2 constitute a new chapter in Title 79 RCW."

3 Correct the title.

EFFECT: Eliminates all proposed changes to the current
substitution rules, including contingent bids, additional exemptions to
the rules, and the phase-out of the rules. Eliminates the substitution
rules after ten years.

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