
Natural Resources Committee

HB 2307

Brief Description: Providing flexibility in the operation of the timber substitution rules.

Sponsors: Representatives Doumit, Sump, Sommers, Sehlin, Kessler and Eickmeyer.

Brief Summary of Bill

- The prohibition against the substitution of timber is codified in statute and is administered by the Department of Revenue.
- Exemptions to the definition of substitution are added.
- Ineligible bidders may bid on restricted timber on a contingent basis, and the bids may only be opened if there are less than three bidders on a sale.
- A three-year pilot program is created for Klickitat County which allows the timber mill currently in operation to bid on restricted timber.

Hearing Date: 1/18/02

Staff: Bill Lynch (786-7092).

Background:

In 1990 Congress passed the Forest Resources Conservation and Shortage Relief Act. (See 16 U.S.C. Section 620 et seq.) This law made permanent the federal ban on the export of unprocessed timber harvested from western federal lands, restricted the substitution of timber from federal lands, and restricted the export of unprocessed timber harvested from western state lands. This federal law also directed the Governor of Washington to adopt rules to carry out the purposes of the federal act.

In 1990, the Governor adopted rules, found in chapter 240-15 WAC, to implement the Forest Resources Conservation and Shortage Relief Act. These rules included a prohibition against the substitution of unprocessed timber which was not required under the federal law. The federal law was declared unconstitutional in 1993 because the directive for the Governor to adopt rules violated the Tenth Amendment. [See Board of Natural Resources v. Brown, 992 F.2d (937 1993)]. Congress amended the federal act in 1993 to reinstate the export ban. These amendments also did not require the state to adopt restrictions on the substitution of

timber.

The rules prohibiting the substitution of timber are administered by the Department of Revenue. The purpose of the substitution rules is to keep log exporters from buying public timber to process in their mills as a substitute for their own private timber which they are exporting. The intent of the rules is to make more logs available for domestic processing in order to preserve timber jobs because of the cut-backs in timber sales from federal lands.

Although the Department of Revenue administers the substitution rules, they have no authority to make changes to these rules because the rules were adopted without the benefit of state statute. Concerns have been raised about whether the rules are accomplishing the purposes for which they were intended, and whether the rules are causing an impact upon revenues received from the harvest of timber from public lands by the trust beneficiaries.

The Legislature created a Joint Select Legislative Task Force on Timber Substitution during the 2001 session pursuant to EHCR 4410. This task force was assisted by an advisory committee made up of affected stakeholders. The advisory committee developed a report to the task force in November 2001 which discussed a number of recommendations on how the current rules might be changed.

Summary of Bill:

The current rules prohibiting the export or substitution of restricted timber are codified into state statute, with certain exceptions. The Department of Revenue is responsible for administering these laws, including the authority to adopt or modify rules to ensure that the rules are consistent with the statutes. The absence of language that is contained in the current rules from the statutes is not to be construed as a change or repeal to the current rules.

Each state and local agency managing public lands must designate timber sales as exportable and export restricted. No person may export from the United States export restricted timber, or convey this timber to another person for the purpose of export from the United States. No person may bid on a restricted timber sale from a state or local agency if the person owns and operates a processing facility, and the processing of the export restricted timber at the facility by the person constitutes substitution. This prohibition also extends to the purchase or possession of an active contract for export restricted timber by an ineligible bidder. It is prohibited for an ineligible bidder to purchase export restricted timber from another person in excess of the amount allowed.

"Substitution" is defined as the purchase of export of export restricted timber or possession of an active sale contract for this timber by a person:

- Who owns and operates a processing facility;
- Who exports or sells for export unprocessed timber that originates from private lands in Washington, Oregon, or Idaho (currently this only applies to Washington lands); and
- Who owns the lands, or has the exclusive right to harvest timber from the lands at any time during a period of more than seven years.

The exemptions from the prohibition against substitution contained in the current rules are

generally maintained, but contain some modifications. These changes include:

- An ineligible bidder may purchase up to 50% of the volume of any sale on the secondary market. The current rules allow secondary market sales up to 10% of the volume of a sale;
- The sale of timber that has been damaged by fire, insects, or disease;
- The sale of timber in which at least 90% of the volume is not export grade. This exemption is intended to apply to thinnings and small patch clear-cuts; and
- The purchase of export restricted timber originating from lands east of the crest of the Cascade Mountains if the person purchasing the timber does not export or sell for export timber from private lands in that geographic area. This is a change from the limitation contained in current rules which uses the Columbia River rather than the Cascade Mountains as the boundary. A person previously ineligible to bid on restricted timber east of the Columbia River may not bid on export restricted timber sales located in the Loomis Forest until July 1, 2004.

State and local agencies must accept bids from ineligible bidders for sales of export restricted timber, but these bids may only be opened on a contingent basis. If less than three bids are received from eligible bidders on the proposed timber sale, than the contingent bids are opened and treated as if they were received from eligible bidders. If the agency receives at least three bids from eligible bidders, the contingent bids must be destroyed without being opened. Each agency must collect information on an annual basis regarding contingent bids.

Civil penalties are added to the current debarment penalties that may be imposed by the Department of Revenue for violation of the provisions regarding export or substitution. A fine of up to \$50,000 may be imposed may be imposed for each violation that a person should have known constituted a violation. A fine of up to \$500,000 may be imposed for each willful violation.

A pilot program is established in Klickitat County to examine the effect of the temporary relaxation of the substitution rules in this county. Legislative findings are made regarding the high unemployment rate in Klickitat County and the operation of the timber mill currently in operation in this county. The pilot program is authorized for a three-year period beginning on July 1, 2002, and ending on June 30, 2005. A joint agreement must be signed by the Department of Revenue, Klickitat County, and the existing timber mill that outlines the responsibilities of each party in the pilot program. A number of restrictions are placed upon the timber mill in exchange for participation in this pilot program.

The Governor is directed to submit this act and any implementing rules to the United States Secretary of Commerce for approval.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: Upon approval of the act and related regulations by United States Secretary of Commerce.