
SUBSTITUTE HOUSE BILL 2307

State of Washington

57th Legislature

2002 Regular Session

By House Committee on Natural Resources (originally sponsored by Representatives Doumit, Sump, Sommers, Sehlin, Kessler and Eickmeyer)

Read first time 01/30/2002. Referred to Committee on .

1 AN ACT Relating to timber substitution; adding a new chapter to
2 Title 79 RCW; prescribing penalties; providing an effective date; and
3 providing a contingent effective date.

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

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

16 The legislature finds that the state of Washington and its
17 political subdivisions sell large amounts of timber from their public
18 lands. Revenues from those timber sales are used to support school
19 construction, benefit the state's higher education institutions, and

1 provide assistance to other trust beneficiaries. The legislature is
2 concerned with the declining revenues that are being generated for
3 these trusts, and at the amount of timber that is being harvested from
4 public lands in Washington but being processed outside of the state.

5 It is the legislature's intent to provide more flexibility in the
6 operation of the timber substitution rules in order to increase the
7 potential amount of money that can benefit the trusts, provide mills
8 within Washington state with a more certain wood supply, give necessary
9 rule-making authority to a state agency to adopt necessary changes to
10 the timber substitution rules, and to statutorily authorize the timber
11 substitution rules.

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

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

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

18 (3) "Export" means either to load on a conveyance or vessel or put
19 in a log raft with the intent to ship to a foreign destination, or to
20 place at a facility such as a port, yard, pond, or dock with the intent
21 to load on a conveyance or vessel or put in a log raft for shipment to
22 a foreign destination.

23 (4) "Export restricted open timber sales" means a timber sale of
24 export restricted timber offered by an agency under section 7 of this
25 act in which the prohibitions against substitution do not apply.

26 (5) "Export restricted timber" means unprocessed timber originating
27 from a sale of timber from public lands that has been designated as
28 export restricted under section 3 of this act, and includes both logs
29 and stumpage originating from such a sale.

30 (6) "Federal forest resources conservation and shortage relief act"
31 or "act" means the federal forest resources conservation and shortage
32 relief act of 1990 (16 U.S.C. Sec. 1620 et seq.) as now or hereafter
33 amended.

34 (7) "Person" means any individual, partnership, corporation,
35 association, or other legal entity and includes any subsidiary,
36 subcontractor, parent company, and business affiliates where one
37 affiliate controls or has the power to control the other or when both
38 are controlled directly or indirectly by a third person.

1 (8) "Processing facility" means a facility for converting
2 unprocessed timber into any of the items of processed timber as defined
3 by the department by rule. Chip plants, pulp mills, and facilities
4 that process only western red cedar products are not considered
5 processing facilities.

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

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

12 (11) "Substitution" means the purchase of export restricted timber
13 or possession of an active sale contract for export restricted timber:
14 (a) By a person who owns and operates a domestic processing facility
15 within the United States; (b) where the person owning the processing
16 facility also exports or sells for export from the United States
17 unprocessed timber originating from private lands in Washington,
18 Oregon, or Idaho; and (c) where the lands are owned by the person, or
19 the person has exclusive rights to harvest timber from the lands, where
20 the rights may be exercised at any time during a period of more than
21 seven years.

22 (12) "Unit of local government" means any county, city, town,
23 special district, municipal corporation, or quasi-municipal corporation
24 in the state of Washington.

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

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

36 NEW SECTION. **Sec. 4.** (1) No person may export from the United
37 States export restricted timber. No person may sell, trade, exchange,

1 or otherwise convey export restricted timber to any other person for
2 the purpose of export from the United States.

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

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

8 (b) No person may purchase from another person export restricted
9 timber if the person is prohibited under (a) of this subsection from
10 purchasing the timber directly from the agency managing the public
11 lands from which the timber originated.

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

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

16 (2) The sale of up to fifty percent of the volume in any sale
17 purchased in calendar year 2002 or thereafter to a person or persons
18 who are otherwise ineligible under section 4 of this act to purchase
19 export restricted timber, but only if the timber is processed at a
20 domestic facility. Hardwoods, western red cedar, and logs described in
21 subsection (4) of this section are not considered as part of the volume
22 within a sale under this exemption. The transferor must notify the
23 department in writing of such a transaction prior to physically
24 transferring the timber to the transferee. Rights to purchase export
25 restricted timber under this subsection may be used on a sale-by-sale
26 basis and may not be accumulated or transferred to other sales. The
27 advertised volume or volume specified in the sale agreement must serve
28 as the basis for determining the sale volume to which the percentage
29 applies;

30 (3) The purchase by any person of export restricted timber
31 originating from public lands east of the crest of the Cascade mountain
32 range if such a person does not export or sell for export timber from
33 private lands in that geographic area. However, a person located east
34 of the crest of the Cascade mountain range who was ineligible to
35 purchase export restricted timber east of the Columbia river under the
36 regulations in effect upon January 1, 2002, may not bid on export
37 restricted timber sales of timber located in the Loomis forest until

1 July 1, 2004, unless some other exemption contained in this section
2 applies to those timber sales;

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

6 (5) The sale of timber that includes trees that have suffered
7 damage from fire, insects, disease, wind, ice, volcanic, or other
8 biological or geological event;

9 (6) The sale of thinnings and small patch clear-cuts; or

10 (7) Situations that the department has determined constitute
11 exceptional circumstances so that the seven-year restriction contained
12 in section 2(11)(c) of this act, relating to a person's rights to
13 exclusively harvest timber from privately owned lands at any time
14 during a period of more than seven years, does not apply. The
15 department must make such determinations on a case-by-case basis.

16 NEW SECTION. **Sec. 6.** (1) An agency must accept bids from persons
17 not otherwise eligible to bid on sales of export restricted timber for
18 the purpose of opening these bids on a contingent basis. Bids received
19 from otherwise ineligible persons may be opened only if the agency
20 receives less than three bids on the proposed timber sale from eligible
21 bidders. Once opened, contingent bids are treated in the same manner
22 as if the bid had been received from a person who is eligible to bid on
23 export restricted timber. If the agency does receive bids from at
24 least three persons who are eligible to bid on export restricted timber
25 sales, all contingent bids received by the agency must be returned to
26 the bidder unopened.

27 (2) Each agency must collect information on an annual basis
28 regarding the number of export restricted timber sales in which
29 contingent bids are received, the number of contingent bids received,
30 the number of times contingent bids are opened on an export restricted
31 timber sale, the number of export restricted timber sales in which a
32 contingent bidder was awarded the sale, and the successful bid amount
33 for all export restricted timber sales awarded to contingent bidders.
34 Information collected regarding contingent bids must be forwarded to
35 the department of natural resources. The department of natural
36 resources must maintain the information regarding contingent bids and
37 provide a summary of this activity to the appropriate legislative
38 committees on a biennial basis.

1 NEW SECTION. **Sec. 7.** (1) The legislature finds that there is some
2 disagreement regarding the impacts that may result from increasing the
3 number of eligible bidders on public sales of export restricted timber.
4 The legislature believes that it is in the public interest and for the
5 benefit of the general welfare of the citizens of the state to relax
6 the state timber substitution rules by allowing a partial phase-in of
7 eligible bidders over a ten-year period.

8 (2) Beginning July 1, 2002, or as soon thereafter if approval of
9 the secretary of commerce under 16 U.S.C. Sec. 620c(d)(2) is required,
10 each agency selling timber must designate twenty-five percent of its
11 annual sales volume as export restricted open timber sales. The
12 prohibition against substitution does not apply to export restricted
13 open timber sales. However, all timber harvested from public lands
14 pursuant to an export restricted open timber sale must still be
15 processed domestically. On July 1, 2007, each agency selling timber
16 must designate thirty-eight percent of its annual sales volume as
17 export restricted open timber sales. On July 1, 2012, each agency
18 selling timber must designate fifty percent of its annual sales volume
19 as export restricted open timber sales.

20 (3) Each agency must, to the greatest extent possible, distribute
21 the sales under this section proportionately throughout the geographic
22 area of land owned or managed by the agency. The timber originating
23 from sales under this section must be representative of the species and
24 grade distribution of the agency's sales program.

25 (4) Each agency selling timber must collect information on an
26 annual basis on the volume, sales prices, number of bidders, and the
27 species, grade, and geographic distribution of sales sold as export
28 restricted open timber sales and sales sold subject to the prohibition
29 against substitution. The agencies must forward this information to
30 the department of natural resources. The department of natural
31 resources must maintain this information and submit a report
32 summarizing this information to the appropriate legislative committees
33 by January 1, 2008. The department of natural resources must submit a
34 follow-up report to the appropriate legislative committees by January
35 1, 2013. In addition to the summary of timber sales data, the
36 department of natural resources must include information regarding how
37 making more bidders eligible to bid on export restricted timber affects
38 the income to the trusts, impacts workers and processing facilities in
39 Washington's forest products industry, and affects the agencies selling

1 the public timber. The department, the department of trade and
2 economic development, and other state agencies must provide any
3 information they have that is necessary for these reports to the
4 department of natural resources.

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

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

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

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

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

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

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

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

37 (3) In developing and implementing a program to audit compliance
38 with this chapter, the department may audit certifications or other

1 forms submitted by any person in order to ensure that the person is
2 able to account for the disposition of all export restricted timber
3 that the person has purchased from a public agency or received by means
4 of transfer from another person.

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

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

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

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

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

1 NEW SECTION. **Sec. 11.** (1) Agencies contracting for the sale of
2 export restricted timber from public lands must include in the
3 contracts clauses incorporating the applicable requirements relating to
4 the prohibitions on export and substitution, reporting, and
5 enforcement. In addition, the contracts must include clauses that
6 provide that a violation by the purchaser of the prohibitions relating
7 to the prohibitions on export and substitution are sufficient cause for
8 the agency to cancel the contract.

9 (2) Agencies contracting for the sale of export restricted timber
10 from public lands must attach to the contracts a copy of the most
11 recent list of ineligible purchasers published by the department
12 pursuant to section 10 of this act.

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

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

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

29 (c) For all other violations:

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

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

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

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

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

13 (4) A second debarment of any person under this section, which is
14 for a violation by the same person committed after the first debarment
15 of the person under this section, will result in a debarment of the
16 person from bidding on or purchasing export restricted timber for a
17 period of five years.

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

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

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

34 NEW SECTION. **Sec. 13.** (1) The department is responsible for the
35 proper administration of this chapter. The department has the
36 authority to adopt all rules to implement this chapter. The department
37 also has the authority to administer and otherwise modify chapter 240-
38 15 WAC, as recodified pursuant to section 14(2) of this act, to ensure

1 that it is consistent with the provisions of this chapter. The
2 department may undertake studies, analysis, or research necessary to
3 carry out the provisions of this chapter. The department may also
4 enter into all necessary contracts and accept any gifts, grants, or
5 funds for the purposes of this chapter.

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

18 NEW SECTION. **Sec. 14.** (1) The legislature finds that the rules
19 pertaining to timber substitution have been established within the
20 Washington Administrative Code since 1990. The legislature also finds
21 that these rules were adopted without the benefit of state statutes
22 providing direction for these rules. The legislature is concerned that
23 there will be considerable disruption to the timber substitution
24 program if the department is required to adopt rules to administer a
25 program it is already administering. The legislature further
26 recognizes that all details contained in agency rules are not
27 appropriate for codification into statute because efficiencies in
28 administration may allow for such improvements as simpler reporting
29 requirements. Future efficiencies could reduce the burden for the
30 department, the government agencies calling for bids and issuing timber
31 contracts, and the timber community. Therefore, this section gives
32 effect to the rules adopted by the governor in chapter 240-15 WAC
33 without requiring the readoption of these rules or the preparation of
34 small business economic impact statements by the department. The
35 absence of language contained within that chapter of regulations
36 concerning this chapter may not be construed as an intent by the
37 legislature to change or repeal the requirements of chapter 240-15 WAC
38 as it existed on January 1, 2002. Only those provisions of chapter

1 240-15 WAC that are clearly inconsistent with the provisions and
2 purposes of this chapter may be considered no longer in effect. The
3 legislature intends by the adoption of this chapter to expand the
4 current exemptions from the substitution rules, to give the department
5 the necessary rule-making authority to administer this chapter, to
6 create a pilot program, and to place the current system into statute.

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

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

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

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

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

14 NEW SECTION. **Sec. 18.** Sections 7 and 14 of this act take effect
15 July 1, 2002. The remainder of this act takes effect upon the approval
16 of this act by the secretary of commerce under 16 U.S.C. Sec.
17 620c(d)(2).

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

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