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SECOND SUBSTITUTE HOUSE BILL 2307

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State of Washington

57th Legislature

2002 Regular Session

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

Read first time 02/09/2002. 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 for salvage or forest health that includes  
7 trees that have suffered damage from fire, insects, disease, wind, ice,  
8 volcanic, or other 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.** An agency must accept bids from persons not  
17 otherwise eligible to bid on sales of export restricted timber for the  
18 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 NEW SECTION. **Sec. 7.** (1) The legislature finds that there is some  
28 disagreement regarding the impacts that may result from increasing the  
29 number of eligible bidders on public sales of export restricted timber.  
30 The legislature believes that it is in the public interest and for the  
31 benefit of the general welfare of the citizens of the state to relax  
32 the state timber substitution rules by allowing a partial phase-in of  
33 eligible bidders over a ten-year period.

34 (2) Beginning July 1, 2002, or as soon thereafter if approval of  
35 the secretary of commerce under 16 U.S.C. Sec. 620c(d)(2) is required,  
36 each agency selling timber must designate twenty-five percent of its  
37 annual sales volume as export restricted open timber sales. The

1 prohibition against substitution does not apply to export restricted  
2 open timber sales. However, all timber harvested from public lands  
3 pursuant to an export restricted open timber sale must still be  
4 processed domestically. On July 1, 2007, each agency selling timber  
5 must designate thirty-eight percent of its annual sales volume as  
6 export restricted open timber sales. On July 1, 2012, each agency  
7 selling timber must designate fifty percent of its annual sales volume  
8 as export restricted open timber sales.

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

14 (4) Each agency selling timber must collect information on an  
15 annual basis on the volume, sales prices, number of bidders, and the  
16 species, grade, and geographic distribution of sales sold as export  
17 restricted open timber sales and sales sold subject to the prohibition  
18 against substitution. The agencies must forward this information to  
19 the department of natural resources. The department of natural  
20 resources must maintain this information and submit a report  
21 summarizing this information to the appropriate legislative committees  
22 by January 1, 2008. The department of natural resources must submit a  
23 follow-up report to the appropriate legislative committees by January  
24 1, 2013. In addition to the summary of timber sales data, the  
25 department of natural resources must include information regarding how  
26 making more bidders eligible to bid on export restricted timber affects  
27 the income to the trusts, impacts workers and processing facilities in  
28 Washington's forest products industry, and affects the agencies selling  
29 the public timber. The department, the department of trade and  
30 economic development, and other state agencies must provide any  
31 information they have that is necessary for these reports to the  
32 department of natural resources.

33 NEW SECTION. **Sec. 8.** (1) The department must develop and issue  
34 uniform forms, including a primary purchaser certification form and a  
35 transferee certification form, for purposes of submission under section  
36 9 of this act. Each certification form must be signed and affirmed  
37 with a notification, conspicuously placed, that the making of a false  
38 statement on the certification is punishable as a gross misdemeanor

1 under RCW 9A.72.040. The certification forms shall affirm, under  
2 penalty of law, the truth of each of the following:

3 (a) That the timber, while still in unprocessed form, will not be:

4 (i) Exported by the purchaser or used in substitution by the  
5 purchaser; or

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

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

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

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

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

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

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

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

37 (2) An agency must submit a copy of the purchaser's forms to the  
38 department no later than five days after the receipt of the purchaser's

1 forms pursuant to this section. The agency must make copies of the  
2 reports available to the public at reasonable times and locations.

3 (3) A person possessing export restricted timber must, prior to  
4 selling, trading, exchanging, or otherwise conveying the timber to  
5 another person, require the transferee to provide to the transferor a  
6 signed copy of a completed transferee certification form developed by  
7 the department. The transferee certification must include an  
8 affirmation, under penalty of law, as to the truth of each of the items  
9 required to be affirmed in a purchaser certification, as well as the  
10 quantity of export restricted timber that is being transferred.

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

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

27 NEW SECTION. **Sec. 11.** Agencies contracting for the sale of export  
28 restricted timber from public lands must include in the contracts  
29 clauses incorporating the applicable requirements relating to the  
30 prohibitions on export and substitution, reporting, and enforcement.  
31 In addition, the contracts must include clauses that provide that a  
32 violation by the purchaser of the prohibitions relating to the  
33 prohibitions on export and substitution are sufficient cause for the  
34 agency to cancel the contract.

35 NEW SECTION. **Sec. 12.** (1) If the department finds that a person  
36 has violated any provisions of this chapter, or any rule implementing



1 this chapter, the department must provide written notice of the  
2 violation to the person and provide the person an opportunity to be  
3 heard concerning the department's findings. The person must have an  
4 opportunity to contest the department's findings or explain any  
5 mitigating circumstances. If a person fails to respond to the notice,  
6 or the department determines after the hearing that a provision of this  
7 chapter or a rule implementing this chapter was violated, the  
8 department may impose the following civil penalties:

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

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

15 (c) For all other violations:

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

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

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

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

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

37 (4) A second debarment of any person under this section, which is  
38 for a violation by the same person committed after the first debarment  
39 of the person under this section, will result in a debarment of the

1 person from bidding on or purchasing export restricted timber for a  
2 period of five years.

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

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

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

19 NEW SECTION. **Sec. 13.** (1) The department is responsible for the  
20 proper administration of this chapter. The department has the  
21 authority to adopt all rules to implement this chapter. The department  
22 also has the authority to administer and otherwise modify chapter 240-  
23 15 WAC, as recodified pursuant to section 14(2) of this act, to ensure  
24 that it is consistent with the provisions of this chapter. The  
25 department may undertake studies, analysis, or research necessary to  
26 carry out the provisions of this chapter. The department may also  
27 enter into all necessary contracts and accept any gifts, grants, or  
28 funds for the purposes of this chapter.

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

1 federal, or other public authorities for the purpose of meeting the  
2 monitoring requirements of this section.

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

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

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

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

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

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

1        NEW SECTION.    **Sec. 18.**    Sections 7 and 14 of this act take effect  
2 July 1, 2002. The remainder of this act takes effect upon the approval  
3 of this act by the secretary of commerce under 16 U.S.C. Sec.  
4 620c(d)(2).

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

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